

HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT SRINAGAR

WP(Crl) no. 276/2023

Pronounced on: 27.12.2023

Nazir Ahmad Gudoo

.....Petitioner

Through: Mr. Mr. Z. A. Qureshi, Sr. Advocate with
Ms. Monisa Manzoor, Advocate

V/s

UT of JK and others

..... Respondent(s)

Through: Mr. Sajad Ashraf, GA

CORAM:

HON'BLE MS. JUSTICE SINDHU SHARMA, JUDGE

JUDGMENT

1. By way of this petition, the petitioner/detenu has assailed the Order No. DMS/PSA/09/2023 dated 21.01.2023 passed by District Magistrate, Srinagar, detaining Shri Nazir Ahmad Gudoo under Section 8 of the J&K Public Safety Act, with a view to prevent him from the activities which are prejudicial for the maintenance of the security of state. The detenu has assailed this order of detention through his father, Mohammad Maqbool Gudoo.
2. The detenu submits that he has been detained under the impugned order of detention by the detaining authority without any application of mind. The allegations mentioned in the grounds of detention have no nexus with the activities of the detenu. The detaining authority has passed the order of detention without satisfying itself that the alleged activities are prejudicial to the maintenance of the security of State. The grounds of detention are vague and against these grounds of detention no representation by any prudent person could have been made. The detenu has not been provided with all the material relied upon by the detaining

authority while passing the order of detention, thus, detenu has been prevented from making an effective representation.

3. It is further submitted that all the constitutional and procedural safeguards provided to the detenu have not been complied with in this case as the material which form the basis of the impugned detention has not been provided to the detenu. Lastly it was submitted that there is delay in the execution of the detention order which has rendered the detention order unsustainable.
4. Mr. Sajad Ashraf, learned GA, has filed the counter affidavit as well as produced the record. The respondents in their counter affidavit have submitted that the detenu was detained under the provisions of the Public Safety Act validly and legally by virtue of detention order dated 21.01.2023 issued by the District Magistrate, Srinagar. All the statutory requirements and constitutional guarantees have been fulfilled and complied with by the detaining authority, keeping in view the fact that the very object of law that the preventive detention is not punitive but only preventive. The detaining authority has passed the order of detention after deriving subjective satisfaction in the matter. Grounds of detention, order of detention as well as all the material relied upon by the detaining authority was furnished to the detenu within the statutory period provided under the Act. The detention order on the warrant was executed by the executing officer who handed the detenu to the jail authorities of the Kotebhalwal. The detenu was informed of the detention order in the language he understood and he has received the signature of the same.
5. So far as the first ground of challenge is concerned the perusal of the record reveals that the petitioner has not been provided all the material relied upon by the detaining authority while passing the order of detention. The receipt of the grounds of detention and other relevant record reveals the detenu has received copies of detention order (01 leaf) Notice of detention (01 leaf) grounds of detention (03 leaves), Dossier of detention (nil), Copies of FIR,

statements of witnesses and other related relevant documents (02 leaves) (Total 07 leaves). Thus the petitioner has not been provided the Dossier and thus precluded from making an effective representation. The petitioner had to consider what made the detaining authority to pass the order of detention in order to make an effective representation. Thus the contention of the petitioner that all the relevant material was not provided to him by the detaining authority is apparent from the record. The petitioner has been hampered by non-supply of these documents for making an effective representation before the authorities. This has resulted in violation of the safeguards provided to the petitioner and, as such, the impugned order is unsustainable in law. In **Sophia Gulam Mohd. Bham vs. State of Maharashtra and others, AIR 1999 SC 3051** the Supreme Court has held as under:

“The right to be communicated the grounds of detention flows from Article 22(5) while the right to be supplied all the material on which the grounds are based flows from the right given to the detenu to make a representation against the order of detention. A representation can be made and the order of detention can be assailed only when all the grounds on which the order is based are communicated the detenu and the material on which those grounds are based are also disclosed and copies thereof are supplied to the person detained, in his own language.”

The failure on the part of detaining authority to supply the material to the detenu renders the detention order illegal and unsustainable.

6. It was next submitted by learned counsel for the petitioner that the detenu had submitted a representation through his father against the detention and same has not been considered by the respondents. Perusal of record reveals that the father of the petitioner had made a representation to the respondents against the detention of the detenu. The detaining authority had sent the representation for comments to the police authorities vide their communication dated 15.08.2023. Though they have received the same but the detention record reveals that the representation has not been considered either by the Government or by the Advisory Board. The non-consideration of the representation resulted in

violation of the constitutional safeguards provided under Article 22 (5) of the Constitution. The Hon'ble Apex Court in **Sarabjeet Singh Mokha vs. The District Magistrate, Jabalpur and others.**, reported as **2021 SCC Online SC 1019**, has held as under:-

“.....Article 22(5) reflects a keen awareness of the framers of the Constitution that preventive detention leads to the detention of a person without trial and hence, it incorporates procedural safeguards which mandate an immediacy in terms of time. The significance of Article 22 is that the representation which has been submitted by the detenu must be disposed of at an early date. The communication of the grounds of detention, as soon as may be, and the affording of the earliest opportunity to submit a representation against the order of detention will have no constitutional significance unless the detaining authority deals with the representation and communicates its decision with expedition.”

7. In view of the aforesaid position, it is clear that the non consideration of the representation amounts to non-compliance of Article 22(5) of the Constitution which has rendered the detention order unsustainable in law.
8. For the aforesaid reasons, this petition is allowed. Impugned Detention Order No DMS/PSA/09/2023 dated 21.01.2023 is quashed. Respondents are directed to release forthwith the detenu, namely, Shri Nazir Ahmad Gudoo S/o Mohammad Maqbool Gudoo R/o Anchar Tiploo Mohalla, Soura, Srinagar, from preventive custody, if he is not required in any other case.
9. Record be returned back.

(SINDHU SHARMA)
JUDGE

SRINAGAR
27.12.2023
“Imtiyaz”

Whether the order is reportable: Yes/No