

IN THE HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT SRINAGAR

LPA 202/2023 in WP(Crl) 112/2023, CM 7071/2023

RAFEEQ AHMAD KHAN

...Petitioner(s)/appellant(s)

Through: Mr. N. A. Ronga, Advocate,
Mr. B. A. Khan, Advocate and
Mr. Tuba Manzoor, Advocate
Vs.

UNION TERRITORY OF J AND K AND ANR

...Respondent(s)

Through: Mr. Jahangir Ahmad Dar, GA

CORAM:

HON'BLE THE CHIEF JUSTICE

HON'BLE MR. JUSTICE M. A. CHOWDHARY, JUDGE

J U D G M E N T

28.12.2023

N. KOTISWAR SINGH, CJ (ORAL)

1. The present appeal has been filed against the order dated 20.09.2023 passed by the learned Single Judge in WP(Crl) No. 112/2023 by which the challenge made to the detention order bearing No. 17/DMB/PSA/2023 issued on 10.03.2023 by the District Magistrate, Baramulla detaining the petitioner under the provisions of Public Safety Act, 1978, was dismissed.

2. Learned counsel for the appellant has submitted that the detention order is based on only three FIRs which have no connection with the security of the State. It has been submitted that the preventive detention order was issued by invoking Section 8(a) of the Jammu & Kashmir Public Safety Act, 1978 which provides that the Government may if satisfied with respect to any person that with a view to preventing him from acting in any manner prejudicial to the security of the State or the maintenance of the public order, detain such person.

3. It has been submitted that however, as can be seen from the grounds of detention, the aforesaid detention order is based on certain crimes allegedly

committed by the petitioner relating to which three FIRs have been registered against him as mentioned in the grounds of detention but a cursory glance of the nature of the FIRs mentioned in the grounds of detention would clearly indicate that the crimes alleged against him have no connection with the security of the State for which Section 8(a) of the PSA was invoked by the detaining authority.

4. The FIRs registered against the petitioner, for reference, are reproduced hereunder:-

- (i) FIR No. 52/2016 U/Ss 379 RPC, 6 Forest Act of PS Boniyar.
- (ii) FIR No. 58/2020 U/S 323, 148, 149, 452, 354 IPC of PS Boniyar.
- (iii) FIR No. 134/2016 under section 8/21 NDPS of PS Gangyal, Jammu.

5. As regards FIR No. 52/2016 registered under sections 379 RPC, and 6 Forest Act, of PS Boniyar, it has been submitted that the same relates to alleged smuggling of timber in which he had already been acquitted by the trial court on 13.12.2018 before the detention order was passed. Acquittal by the trial court would mean restoration of innocence of the accused of his charges for which he was tried and as such it would wipe out any stain on his character. However, the detaining authority without appreciating the said aspect that the petitioner had been already discharged in the said case, and oblivious of the said fact invoked the allegations made in the FIR as one of the basis for detaining him under Section 8(a) of the Public Safety Act.

6. Coming to the second FIR No. 58/2020, it has been submitted that the same was registered U/Ss 323, 148, 149, 452, 354 IPC of PS Boniyar and these relate to trespass and assault on women but have no bearing on the security of the State.

As regards the third FIR No. 134/2016 which has been registered under Section 8/21 NDPS of PS Gangyal, Jammu, it has been submitted that

the same was registered for possession of narcotic drugs, however, the same also has no connection with the security of the State. It has been submitted that under the circumstances the subjective satisfaction of the detaining authority in arriving at the conclusion that the behavior and activities of the petitioner on being involved in the aforesaid criminal activities would warrant preventive detention by invoking Section 8(a) of the Public Safety Act amounts to non-application of mind inasmuch as the allegations made in the grounds of detention have no bearing with the security of the State or the maintenance of public order.

Further, it has been submitted that, apart from any lack of close nexus with the aforesaid alleged criminal acts of the petitioner with the issue of security of State, all these FIRs related to a remote past of the year 2016 and 2020 whereas, the petitioner has been detained by an order dated 10.03.2023 i.e., after a lapse of three years of the second FIR and 07 years after the first and third FIRs and no mention has been made by the detaining authority as to continuation in any such prejudicial activities which would warrant invoking of the aforesaid provision of Public Safety Act.

In other words, the submission of learned counsel for the appellant is that the detention order is based on stale materials without any proximate nexus with the security of the State.

7. Learned counsel for the appellant has also submitted that all the relevant materials which were the basis of the detention order were not furnished to him because of which he could not file an effective representation which is a guaranteed right under Article 22(5) of the Constitution of India.

8. Learned counsel for the appellant also submits that the fact that the petitioner was acquitted in FIR No. 52/2016 has not been mentioned at all in

the grounds of detention which also clearly indicates the lack of application of mind by the detaining authority. In support of his contentions, learned counsel for the appellant has relied upon the decisions reported as 2017 (11) SLJ 650; AIR 1979 SC 1925; AIR 1987 SC 137 and, accordingly, it has been submitted by learned counsel for the appellant that since the allegations made in the grounds of detention has no bearing with the security of the State, the detention order is vitiated.

Further, these allegations relate to the year 2016 and 2020 and nothing has been shown in the grounds of detention as to the continued activities of the petitioner which would have any nexus with the security of the State which would warrant detaining him by invoking Section 8(a) of the Public Safety Act, 1978. The contention is that there is lack of application of mind inasmuch as the grounds of detention do not mention that the petitioner has already been acquitted in the first FIR case.

9. Learned counsel for the appellant has also submitted that it is on record that the detention order was not executed by the detaining authority itself but by a Sub-Inspector who is stated to have explained the grounds of detention to the petitioner in Kashmiri language but he has not filed affidavit in support of his contention. Mr. N. A. Ronga, learned counsel for the appellant submits that in such a situation where the detention order is executed by a person other than the detaining authority, the affidavit of such executing person/agency is to be filed before the court in support of the contention that the grounds of detention or documents were furnished to the detainee and it was explained in the language which the detainee understands. Under the circumstances, it has been submitted that the detention order cannot be sustained and is liable to be quashed and set aside.

10. In response, Mr. Jahangir Ahmad Dar, learned Government Advocate appearing for the respondents has strenuously argued that the conduct of the petitioner is such that there was a need for detaining him under Section 8(a) of the Public Safety Act. It has been submitted that because of his behavior in the past, it provides a reasonable prognosis of the future behavior of the person. The detainee is a resident of Uri, a border town near the LoC which is known to be a trade route for smuggling of drugs. The petitioner himself was an SPO and, subsequently, was disengaged because of his questionable conduct and the fact remains that he has been engaging in the smuggling of the timber and drugs which has also mention in the grounds of detention. His activities thus pose great threat not only to the health and welfare of the people but to the economy of the nation. The detaining authority has also observed that he has also been providing money obtained by him through illegal means to the anti-national and anti-social elements for strengthening his network which may become a potent threat for maintenance of peace and security of the State in future. It has also been mentioned that petitioner got more opulent in a short span of time by indulging in illegal sale and purchase of illicit psychotropic substances to the youth in the area and has spread tentacles into all walks of life and in every nook and corner of the area and, thus, his activities would warrant invoking the preventive detention order to prevent the petitioner from further causing any harm to the security of the State. It has been submitted that even one single instance would be suffice for the subjective satisfaction of the detaining authority to come to the conclusion that the preventive detention of the person is necessary.

11. In this regard, learned counsel for the respondents has relied upon the decision rendered in case titled **Haradhan Saha vs State of West Bengal**, (1975) 3 SCC 198 and has also relied upon the decision of this Court in case

titled as **Muntazir Ahmad Bhat vs. Union Territory of JK and Another** passed in LPA No. 164/2021 decided on 27.04.2023. This Court has in the said case observed that the purpose of invoking law of preventive detention to detain a person is not to punish for any alleged illegal act but to prevent him from engaging in any act prejudicial to the security of the State or public order and if such subjective satisfaction is based on the past conduct and relevant materials, detention of such person will be permissible.

12. Further relying on the decision of the Hon'ble Supreme Court in case titled **Ashok Kumar vs. Delhi Administration and Others**, AIR 1982 SC 1143, it has been submitted by learned counsel for the respondents that the Executive can take recourse to its power of preventive detention where the court is genuinely satisfied that no prosecution will deter the detainee because he is a dangerous person. It has been contended that in fact he could manage and influence the witnesses in the aforesaid FIR case in which he was acquitted, and as such, being a dangerous person being engaged in illicit trade and narcotics and smuggling of timber and who has amassed large fortune, and who has been found to be engaged in anti-national and anti-social activities, his detention does not warrant any interference from this Court.

It has also been submitted that the appellant has not been able to show how the order passed by the learned Single Judge suffers from any illegality which would warrant interference from this Court.

13. We have heard learned counsel for the parties and perused the material on record and also the detention order.

The relevant part of the grounds of detention reads as follows:

“You were reportedly born at your native place Gubdar, Trikanjan and is about 37 years of age. You have obtained education upto 8th class from Govt. High School Trikanjan, Boniyar. After dropping out from studies, the subject stated working as a Driver. In the year 2000 you were engaged as SPO in J&K Police and has subsequently been disengaged from your job. You have reportedly, developed your

contacts with anti national elements and was found instigating the people against the Government established by law by way of spreading anti national feelings and sentiments. Your aim and objective is to disturb the peace and security of the state. You are reportedly carrying out social activities with the help of anti national elements for achieving a nefarious designs that would weaken the social fabric of the country and may turn fatal for peace and tranquility.

You were, reportedly, also found habitual of smuggling/supplying of narcotic and psychotropic substances to the youth of the society, thereby posing great threat not only to health and welfare of the people, but also economy of the nation as well. You were reportedly providing money obtained by you through illegal means to the anti-national and anti-social elements for strengthening your network which may become a potent threat for maintenance of peace and security of the state in future. You have gathered more opulence in short span of time by indulging in illegal sale and purchase of illicit psychotropic substances to the youth in the area. You have spread your tentacles into all walks of life in the nook and corner of the area. You have reportedly committed number of offences punishable under various laws within U.T of J&K.

1. Case FIR No. 52/2016 U/S 379 RPC, 6. F Act of PS Boniyar.
2. Case FIR No. 58/2020 U/S 323, 148, 149, 452, 354 IPC of PS Boniyar.
3. Case FIR No. 134/2016 under section 8/21 NDPS of PS Gangyal, Jammu.

Your activities itself are testimony to the fact that you by resorting to exploitative and manipulative methods has been harbouring deep anti national sentiments. Your behavior and activities has not shown any decline despite being involved in several criminal cases, as you are still nurturing the anti national ideology and is motivating others to carry forward the anti national activities which has violent contours and direct bearing upon maintenance of security of the state.

14. Before we examine the various grounds of detention and the basis on which the detaining authority arrived at the subjective satisfaction that the detinue requires to be detained by invoking Section 8(a) of the Public Safety Act, it should be ascertained whether there are some materials to indicate the basis on which the aforesaid subjective satisfaction was arrived at by the detaining authority. While serious allegations have been made that he had developed contacts with the anti-national elements and was found instigating the people against the Government established by law by way of spreading

anti national feelings and sentiments, on going through the records, we do not find any material on the basis of which the detaining authority had arrived at such a conclusion.

15. The detaining authority had made observations that he was found to be a habitual smuggler/supplier of narcotic and psychotropic substances to the youth of the society, thereby posing great threat not only to health and welfare of the people, but also economy of the nation as well and has been providing money through illegal means to the anti-national and anti-social elements for strengthening his network and has gathered more opulence in short span of time by indulging in illegal sale and purchase of illicit psychotropic substances to the youth in the area. Before coming to the aforesaid conclusion, the detaining authority has relied upon three FIRs. However, as far as the first FIR is concerned, it appears that the petitioner had been acquitted in that case. In other words, once he has been acquitted and proved innocent in the case after a trial, the past charge relating to said trial shall be deemed to be legally non-existent any longer and hence it cannot be invoked to cast any doubt on his character.

16. The two FIRs, one FIR No. 58/2020 relates to trespass and outraging of modesty etc and another FIR No. 134/2016 relates to possession of narcotic drugs.

Since the FIR that relates to trespass and outrage of modesty, we fail to understand how it can be connected to the security of the State inasmuch as in absence of the detailed contents of the FIRs which are not available on record, we are not able to understand how the said FIR No. 58/2020 can be connected to the threat to the security of the State at the instance of the petitioner.

17. Coming to the third FIR No. 134/2016, the same was registered in the year 2016. In that regard we are of the view that if the authorities come to conclusion that he had been engaged in illicit smuggling and supplying of narcotic drugs to the youth of society and also that he had acquired wealth by engaging in illegal acts, the said satisfaction based on the said FIR cannot be said to be reasonable, inasmuch as it is well-settled that the Court in a judicial review of detention orders cannot look into the sufficiency or correctness of the allegations made, if there are some materials to show nexus with the allegations and the materials on which basis the allegations are based. However, it is also to be noted that even if it is accepted that the petitioner was found to be engaged in smuggling of narcotic drugs and also had made money out of it and also had influence on the youth, we fail to understand how such an act can directly cause threat to the security of the State unless there is specific allegation in the FIR or any such material on record which is also not forthcoming in the present case.

18. Under the circumstances, we are of the view that while the detaining authority came to the satisfaction that he had developed contact with anti-national elements and by instigating the youth is a security risk, there is no material on record with which such subjective satisfaction can be based. As discussed above, the allegations against him contained in the three FIRs do not relate to any such activities. Consideration of the three FIRs would show that he had been engaged in the criminal acts but not necessarily which relates to the security of the State. In other words, we do not see any proximate nexus of the criminal acts of the petitioner with the threat to the security of the State leading to the subjective satisfaction arrived at by the detaining authority that his engagement with such activities poses a threat to the security of the State.

19. Viewed thus, we are of the opinion that the allegations made that petitioner/appellant has been engaging in acts prejudicial to the security of the State are not supported by materials provided to him. It only indicates engagement of certain illegal acts of smuggling and also engaging in acts of house trespassing and outraging the modesty of women etc which cannot be said to pose a threat to the security of the State.

20. For the above reasons, we are of the opinion that the subjective satisfaction arrived at by the detaining authority for detaining the petitioner under Section 8(a) of the Public Safety Act, suffers from fatal legal deficiency and hence the detention order is not sustainable in law. In view of the above conclusion arrived at, we do not feel any need to examine the other grounds taken in this appeal.

21. The appeal is allowed and the detention order bearing No. 17/DMB/PSA/2023 dated 10.03.2023 issued by the District Magistrate, Baramulla is quashed and set aside. Consequently, the respondents shall release the detainee from the preventive custody forthwith, if not required in any other case.

22. Disposed of along with pending application(s).

(M. A. CHOWDHARY)
JUDGE

(N. KOTISWAR SINGH)
CHIEF JUSTICE

SRINAGAR
28.12.2023
Aamir

Whether approved for reporting Yes/No