

HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT SRINAGAR

Reserved on: 21st December, 2023
Pronounced on: 29th December, 2023

WP(Crl) 793/2022

Mohammad Bariq Magray (Aged: 26 years) ...Petitioner(s)
S/O Mohammad Shafi Magray
R/O Kolipora, Khanyar, Srinagar.
Through their Friend, namely,
Syed Imran Bukhari
S/O Syed Fayaz Ahmad Bukhari
R/O Nund Reshi, Colony, Bemina, Srinagar.

Through: Mr. Wajid Mohammad Haseeb, Advocate.

Vs.

1. Union Territory of Jammu and Kashmir ...Respondent(s)
through Principal Secretary to Government
Home Department, Civil Secretariat.
Srinagar/ Jammu.

2. District Magistrate, Srinagar.

Through: Mr. Sajad Ashraf, GA.

CORAM:

HON'BLE MR. JUSTICE SANJEEV KUMAR, JUDGE.

JUDGMENT

01. The petitioner is aggrieved of and has challenged an Order of his detention bearing No. DMS/PSA/95/22 dated 30th August, 2022, passed by the District Magistrate, Srinagar (the Detaining Authority), whereby the petitioner has been put under preventive detention with a view to prevent him from acting in any manner prejudicial to the maintenance of security of the State.

02. The petitioner claims that he is a peace loving and law-abiding citizen of India and has never indulged in any activity which could be termed as an activity prejudicial to the security of the State. He submits that on 6th March, 2022 some unknown persons hurled a hand grenade at Hari Singh High Street, Srinagar, which claimed the life of two civilians and left thirty-seven other persons injured and FIR No. 18/2022 under Sections 307, 302 IPC, 7/27 Indian Arms Act and 16, 23 of the Unlawful Activities (Prevention) Act, was registered in the Police Station Shaheed Gunj, Srinagar. On the basis of suspicion, the petitioner was picked up and arrested in the aforesaid FIR. It is further submitted that in view of the failure of the police to submit the charge sheet/final report before the competent Court of law within the stipulated time, the petitioner was granted default bail by the Court of TADA/POTA, at Srinagar, vide order dated 26th September, 2023. The Detaining Authority without disclosing any compelling reasons and without there being any incriminating material on record against the petitioner, passed the impugned detention Order. The petitioner, therefore, submits and urges this Court to quash the impugned Order of detention *inter alia* on the following grounds:

- a. That the Detaining Authority did not furnish the relevant material relied upon in the grounds of detention to the petitioner, to enable him to make an effective representation against his detention. The petitioner was not informed of his right to make a representation, which is a fundamental right guaranteed to a detenu under Article 22 of the Constitution of India;

- b. That the petitioner was arrested in FIR No. 18/2022 and was subsequently released on default bail in view of failure of the police to file the final report/challan before the competent Court of law within the stipulated period. The Detaining Authority has not taken into consideration the fact that the police had failed to find out any incriminating material connecting the detenu with the hurling of grenade at Hari Singh High Street, Srinagar on 6th March, 2022 and that the Detaining Authority has not indicated any compelling reasons for placing the petitioner under detention;
- c. That the petitioner was not explained the grounds of detention in the language understood by him, as a result whereof, the petitioner could not make an effective representative before the competent Authority; and
- d. That the impugned order of detention has not been forwarded to the Advisory Board for confirmation within the stipulated period, laid down under law and, therefore, the impugned Order is not in consonance with law.

03. The petition is opposed by the Detaining Authority, who in his reply affidavit has clearly stated that the impugned order of detention was necessitated due to constant involvement of the petitioner in the

subversive activities calculated to undermine the security of the State. It is submitted by the Detaining Authority that while taking the petitioner under preventive detention, all safeguards laid down in Article 22(5) of the Constitution of India and Section 13 of the J&K Public Safety Act, 1978, were adhered to. The petitioner was provided all the relevant material relied upon in the grounds of detention and was also informed of his right to make a representation against his detention to the Detaining Authority or to the Government. The matter was referred to the Advisory Board for its opinion and based upon the opinion rendered by the Advisory Board, the Government confirmed the order of detention of the petitioner.

04. Having heard the learned counsel for the parties and perused the material on record, I am of the considered opinion that the detention of the petitioner ordered by the Detaining Authority in terms impugned Order, is completely in consonance with law. The activities the petitioner has been indulging in, have the definite potential of undermining the Security of the State. The Police of Police Station Shaheed Gunj, Srinagar, where FIR No. 18/2022 under Sections 307, 302 IPC, 7/27 Indian Arms Act and 16,23 of Unlawful Activities (Prevention) Act, has been registered, has *prima facie* found that in the occurrence that happened on 6th March, 2022 at Hari Singh High Street, Srinagar, where suspected militants hurled and exploded a grenade, killing two persons on spot and left thirty-seven persons injured, the involvement of the petitioner is established. It is, however, a different matter that having regard to the prevailing atmosphere of terror and scare, it is a horrendous job for the investigating agencies to collect incriminating material and

oral evidence. It is because of these reasons many a times, the investigating agency is not in a position to submit the final report/challan in the competent Court of law within the prescribed time. The accused against whom exists strong suspicion, takes the benefit of such situation and is/are admitted to default bail by the competent Court of law. These elements when come out of jail, indulge in the same subversive activities, calculated to undermine the security of the State. In the case on hand also, similar situation had emerged before the Detaining Authority. It is not the case of the petitioner that the Detaining Authority was not aware of the arrest of the petitioner and his subsequent release in FIR No. 18/2022. The Detaining Authority has clearly noted that if the petitioner after having been released on bail is allowed to remain at large, there is high probability that the petitioner will again indulge in activities prejudicial to the maintenance of Security of the Union Territory of Jammu & Kashmir.

05. The plea of the petitioner that he was not served with the relevant material is also not borne out from the detention record. The execution report on record indicates that at the time of execution of warrant of detention, the petitioner was supplied with a copy of detention order, notice of detention, grounds of detention, dossier of detention, copies of FIR, statements of witnesses and other relevant documents, so as to enable him to make a representation against his detention to the competent authority. The execution report itself demonstrates that the petitioner was also informed that he can make a representation to the Government as well as to the Detaining Authority against his detention.

06. A perusal of the detention record produced by Mr. Sajad Ashraf, the learned Government Advocate also shows that detention order

of the petitioner along with relevant record was forwarded to the Advisory Board within time and on the basis of the opinion rendered by the Advisory Board, the Government vide Order No. Home/PB-V/2325 of 2022 dated 30th September, 2022, confirmed the Order of detention in the exercise of powers conferred by Section 17(1) of the Jammu and Kashmir, Public Safety Act, 1978, for a period of six months in the first instance, which has been extended by the Government from time to time and last extension has been made in terms of Order No. Home/PB-V/1936 of 2023 dated 29th August, 2023.

07. The argument of the learned counsel for the petitioner that the petitioner was not explained the grounds of detention in the language which he understands, is also not borne out from the record.

08. From the execution report prepared by the Superintendent Central Jail, Kot Bhalwal, Jammu, it clearly transpires that the petitioner was read over and explained the grounds of detention in English, Urdu and Kashmiri, which he fully understood. The petitioner has appended his signatures in acknowledgement thereof, on the execution report itself. Otherwise also, the petitioner has read upto 12th Class and, therefore, is well in a position to understand the grounds of detention in English and Urdu.

09. In view of the aforesaid discussion, it cannot be said that the impugned Order of detention passed by the District Magistrate, Srinagar, suffers from any non-application of mind of the Detaining Authority or that the activities, the petitioner has been allegedly indulging in, are not prejudicial to the security to the State. The Detaining Authority has

ensured adherence to all the safeguards provided under Article 22 of the Constitution of India and various provisions of J&K Public Safety Act, 1978. The satisfaction which is required to be arrived at by the Detaining Authority for placing a citizen under preventive detention is subjective in nature and, therefore, this Court in the exercise of its jurisdiction under Article 226 of the Constitution of India, cannot sit in appeal against such subjective satisfaction. It is not the case of the petitioner that subjective satisfaction arrived at by the Detaining Authority is either based on no material or is based on material which is totally irrelevant and not germane to taking the decision with regard to placing of an individual under preventive detention with a view to preventing him from acting in any manner prejudicial to the security of the State.

10. For the forgoing reasons, I find no merit in this petition and the same is accordingly **dismissed**.

11. The record produced by Mr. Sajad Ashraf, the learned Government Advocate be returned to him.

(SANJEEV KUMAR)
JUDGE

SRINAGAR:

29.12.2023

“Hamid”

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| i. | Whether the Judgement is Reportable? | Yes/No |
| ii. | Whether the Judgment is Speaking? | Yes/No |