

**HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT JAMMU**

Reserved on : 17.10.2024

Pronounced on : 11.11.2024

Case No. :- HCP No. 22/2024

Nizam Din, Age 53 years,
Through his brother
Mohd. Hussain, Age 58 years,
S/o Ghulab Din,
R/o Village Bagyal Dara,
Tehsil Haveli, District Poonch.

..... Petitioner(s)

Through: Mr. N.D.Qazi, Advocate.

Vs

1. Union Territory of Jammu and Kashmir through its Principal Secretary to Govt., Home Department, Civil Secretariat, Jammu.
2. Union Territory of Jammu and Kashmir, Through its Financial Commissioner (ACS Home) to Govt., Civil Secretariat, Jammu.
3. District Magistrate, Poonch.
4. Senior Superintendent or Police, Poonch.
5. Superintendent, District Jail, Poonch

..... Respondent(s)

Through: Mr. Pawan Dev Singh, Dy.A.G.

Coram: HON'BLE MR. JUSTICE MOHD. YOUSUF WANI, JUDGE

JUDGMENT

1. Impugned in the instant petition, filed under the provisions of Article 226 of the Constitution of India, is the order of Detention bearing No. 04/DMP/PSA of 2023 dated 09.05.2023 passed by the respondent No.3 i.e. District Magistrate, Poonch, while invoking his powers under Section

8(1) (a) (i) of the Jammu and Kashmir Public Safety Act, 1978 (hereinafter referred to as the PSA, for short), whereby the petitioner/detenu has been ordered to be detained and lodged in District Jail, Poonch. The impugned order came to be subsequently extended by the Government vide its Order Nos. Home/PB-V/2560 of 2023 dated 08.11.2023 and Home/PB-V/980 of 2024 dated 09.05.2024.

2. The impugned order has been assailed on the grounds *inter alia* that same is bereft of any subjective satisfaction and application of mind on the part of the detaining authority i.e. respondent No.3, who appears to have acted merely as a Post Office by giving effect to the mail received from the respondent No.4; that the detaining authority while acting merely on the dossier submitted to him by respondent No.5 has made the FIR bearing Nos. 484 of 2020 of Police Station, Rajouri and FIR No. 114 of 2009 of Police Station, Poonch as the basis for the impugned detention order while being unmindful of the fact that the petitioner stood already acquitted in case FIR No. 114 of 2009 of Police Station, Poonch for his charges under Sections 489 B-C, 109 RPC and 2/3 E & IM Co and bailed out in the other case FIR bearing No. 484 of 2020 under Sections 8/21, 29, 60 NDPS Act of Police Station, Rajouri; that the petitioner was not furnished with the main documents especially the grounds of detention and dossier; that the grounds of detention have also not been read over and explained to him for his understanding in his own language; that the detaining authority has not exhibited his satisfaction as to how the preventive detention of the petitioner was imperative notwithstanding his acquittal in one of the case FIRs and for his being already bailed out in

another; that the detention order is the verbatim of the dossier, thus, suffers from the non-application of mind; that the order impugned has deprived the petitioner of his fundamental right to life and personal liberty guaranteed under Article 21 of the Constitution and that he has no other efficacious remedy except to approach this Court through the instant petition seeking the redressal of his grievance.

3. In his reply affidavit filed by the respondent No.3-District Magistrate, Poonch, he has refuted the allegations made in the petition and has stated on oath that petitioner has no cause of action to file the writ petition as none of his fundamental, constitutional, statutory or any other legal rights stand violated/infringed by the respondents. That the subjective satisfaction drawn by the detaining authority cannot be questioned on the ground of insufficiency of incriminating material against the detenu. That the preventive detention of the petitioner/detenu has been ordered so as to deter him from acting and indulging in any manner prejudicial to the interests of the security of the State/social order. That the petitioner has approached this Court with unclean hands by suppression of the material facts. That the writ petition filed by the petitioner raises pure disputed question of facts which cannot be adjudicated upon in a writ petition before this Court. That petitioner/detenu has not availed alternate remedy by filing representation despite being already informed of his liberty to do so. That all the procedural safeguards enshrined under Article 22 (5) of the Constitution as well as the provisions of the PSA have been complied with while ordering the detention of the petitioner. That the liberty of the detenu is subservient to the welfare, safety and interest of the society at

large and the detention of the petitioner has been ordered while observing all the procedural safeguards mandated by the Constitution.

4. I have heard the learned counsel for the parties and also perused the detention record.
5. The perusal of the impugned detention order dated 09.05.2023 reveals that the detaining authority i.e. respondent No.3 has been satisfied on the basis of the material i.e. copies of FIRs, dossier and other connecting documents, regarding the possibility of the petitioner/detenu indulging again in the activities prejudicial to the interests of the Society and the security of the State. The learned detaining authority has passed the order impugned in the petition on the basis of two case FIR(s) bearing Nos. 114 of 2009 under Sections 489 B-C, 109 RPC of Police Station, Poonch and case FIR No. 484 of 2020 under Sections 8/20, 29, 60 NDPS Act of Police Station Rajouri, proceedings of the concerned Executive Magistrates initiated against the petitioner/detenu in terms of the provisions of Sections 107, 110 and 151 of the Code of Criminal Procedure, 1973 (now repealed & hereinafter referred to as “the Code”, for short) and some daily diary reports bearing Nos. 19 dated 15.02.2023, No. 22 dated 28.02.2023, No. 18 dated 11.03.2023 and No. 22 dated 30.04.2023.
6. The learned detaining authority has made a mention of case FIR No.114 of 2009 of Police Station, Poonch in his detention order dated 09.05.2023 as a basis for the same when the petitioner along with co-accused therein had already been acquitted in the said case by the learned trial court i.e. court of learned Sessions Judge, Poonch vide judgment of acquittal dated

28.02.2017 passed on the criminal file No. 30/41 Sessions, date of institution 31.10.2009/05.02.2010, CNR No. 0111010001782010. The allegation against the petitioner/detenu in the said case FIR was that his involvement in the case was also found during investigation and as per the contents of the dossier and the grounds of detention, he was not arrested in the said case on the incident day i.e. 23.08.2009.

7. The learned detaining authority while making mention of another case FIR No 484/2020 of Police Station, Rajouri stated that said case FIR was registered upon the apprehension of one Tariq Ganai on 14.09.2020 from whom the narcotic substance i.e. heroine like substance came to be recovered. The petitioner is alleged to have been found involved in the said case FIR during investigation of the case. As per the other proceedings initiated under the provisions of the Code and the daily diary reports referred to in the impugned detention order, the learned detaining authority has expressed the probability and possibility of the petitioner indulging in the activities prejudicial to the interests of the security of the State and the order of the society. In the said proceedings/reports, reference has again been made to the earlier mentioned case FIRs against the petitioner. Allegations of being involved in the activities prejudicial to the security of the State and the order of the society have been also levelled against the petitioner, however, without any specific allegation of *actus reus* i.e. physical act.
8. The learned detaining authority has not on the basis of any specific allegations of illegal physical activities expressed his satisfaction and made up his mind for passing of the impugned detention order.

9. As rightly pleaded by the learned counsel for the petitioner, the grounds of detention appear to be the verbatim and replica of the dossier.
10. The grounds of detention and the dossier while being placed and perused in juxtaposition clearly reveal the former as the ditto of the later.
11. As per the printed receipt regarding furnishing of documents to the petitioner/detenu, six leaves consisting of detention warrant (one leave), grounds of detention (four leaves) and notice of detention (one leave) appear to have been furnished to the detenu. However, as per the detention order dated 09.05.2023 the same has been passed on the basis of the material also consisting of copies of FIRs, dossier and other connecting documents. Thus, it is clear that the copies of the FIRs, dossier and the other material i.e. proceedings initiated under the provisions of Sections 107, 117, 151 of the Code and also copies of the daily diary reports have not been furnished to the petitioner/detenu. The plea of learned counsel for the petitioner to the effect that the petitioner/detenu by furnishing to him the insufficient documents has been prevented to make an effective and early representation to the detaining authority or the government appears to have substance. The learned detaining authority has not further expressed his satisfaction as to how the normal law is inadequate to deal with the petitioner in case of any apprehended illegal activity.
12. In the facts and circumstances of the case, this Court is of the opinion that learned detaining authority has not applied its mind and attained satisfaction for passing the impugned order which is ditto of the dossier. The learned detaining authority was required to apply its own independent

mind while detaining a person under the preventive detention and to draw subjective satisfaction on the basis of material furnished to it by the sponsoring agency and in the process had to draw and frame the grounds of detention itself.

13. In its opinion, this Court feels fortified with law already laid down by this Court in cases titled **“Naba Lone Vs. District Magistrate, 1988 SLJ 300”** and **“Mohd. Farooq through Mohd. Yousuf Vs. UT of J&K and others, WP (Crl) No. 17/2023”**, decided on 03.09.2024 to the effect, “the grounds of detention supplied to the detenu is a copy of dossier, which was placed before the District Magistrate for his subjective satisfaction in order to detain the detenu. This shows total non-application of mind on the part of the Detaining Authority as he has dittoed the Police directions without applying his mind to the facts of the case.”
14. This Court in its opinion is also fortified with the authoritative judgment of the Hon’ble Apex Court passed in case titled **“Rameshwar Shaw Vs. District Magistrate, Burdwan and another”**, AIR 1964 SC, 334, the relevant portion whereof is reproduced as hereunder:

“In deciding the question as to whether it is necessary to detain a person, the authority has to be satisfied that the said person if not detained may act in a prejudicial manner and this conclusion can be reasonably reached by the authority generally in light of evidence about past prejudicial activities of the said person. When evidence is placed, the Detaining Authority has to examine the said evidence and decide whether it is necessary to detain the said person in order to prevent him from acting in a prejudicial manner. Thus, it was held that the past conduct or antecedent history of a person can be taken into account in making the detention order and it is largely from prior events showing tendencies or inclinations of a man that an inference could be drawn whether he is likely even in the future to act in a manner prejudicial to the maintenance of public order.

Further the past conduct or history of the person on which the authority purports to act should ordinarily be proximate in point of time and should have the rational connection with the conclusion that the detention of the person is necessary it was pointed out, that it would be irrational to take into account the conduct of a person which took the place years before the date of detention”.

15. As hereinbefore mentioned, the material relied upon by the detaining authority and mentioned in the grounds of detention has not been furnished in its entirety to the detenu. The copies of the FIRs, dossier and other material, daily diary reports etc. have not been admittedly furnished to the detenu. It needs no emphasis that not only the grounds of detention but the entire record that was with the detaining authority while making the detention order is to be handed over to the detenu at the time of execution of the detention order enabling him to make an effective and meaningful exercise of constitutional and statutory safeguards. The respondents by withholding important record from detenu have infringed the constitutional and statutory safeguards guaranteed to him.
16. Mere mention of the words that, “detenu has liberty to make representation to the detaining authority or to the government” in the previously printed/cyclostyled receipts does not amount to the compliance of the provisions of Article 22 (5) of the Constitution.
17. **The preventive detentions need to be passed with great care and caution keeping in mind that a citizens most valuable and inherent human right is being curtailed. The arrests in general and the preventive detentions in particular are an exception to the most cherished fundamental right guaranteed under Article 21 of the Constitution of India. The preventive detentions are made on the**

basis of subjective satisfaction of the detaining authority without being backed by an immediate complaint as in the case of the registration of the FIR and, as such, is a valuable trust in the hands of the trustees. The provisions of Clauses (1) and (2) of Article 22 of our Constitution are not applicable in the case of preventive detentions. So, the provisions of Clause (5) of the Article 22 of our Constitution requiring for application of mind, subjective satisfaction, inevitability of the detention order, proper communication of the grounds of detention and the information of liberty to make a representation against the detention order are the imperative and inevitable conditions rather requirements for passing of a detention order.

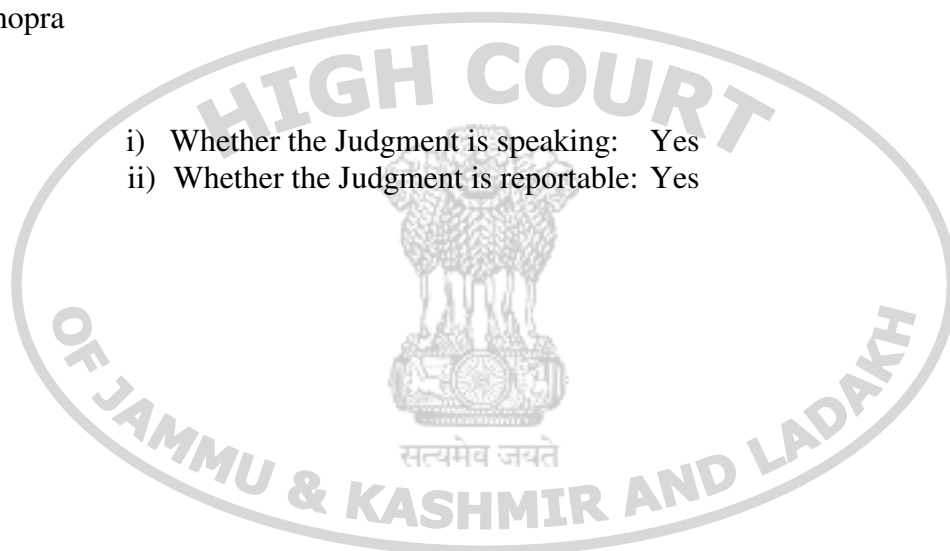
18. The Hon'ble Supreme Court in case of **"Rekha Vs. State of Tamil Nadu through Secretary to Government and another"**, reported in (2011) 5 SCC 244 has laid emphasis on the fundamental right to life and personal liberty of a citizen of India guaranteed under Article 21 of our Constitution and has, accordingly, stressed for taking great care and caution while passing any preventive detention orders so that same are passed in case of genuine and inevitable need only without any misuse or abuse of the powers.
19. The petitioner/detenu has already suffered the detention period of 18 months.
20. For the foregoing discussion, this petition is allowed and the impugned detention order bearing 04/DMP/PSA of 2023 dated 09.05.2023 issued by respondent No.3 i.e. District Magistrate, Poonch is quashed and the

detenu is directed to be released from his preventive detention under the aforesaid order.

21. The detention record as also the record pertaining to the proceedings initiated by the concerned Executive Magistrates under the Code is directed to be returned back to the office of the learned Deputy Advocate General concerned against proper acknowledgment.
22. Disposed off.

(Mohd. Yousuf Wani)
Judge

JAMMU :
11.11.2024
Pawan Chopra



- i) Whether the Judgment is speaking: Yes
ii) Whether the Judgment is reportable: Yes