

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

LPA No. 132/2023
CM No. 4803/2023

Reserved on: 31.01.2024

Pronounced on:06.02.2024.

Saqib Hussain Mir, Age 22 years
S/O Mohabat Hussain Mir
R/O Village Banola Tehsil Chiralla
District Doda
Through his Mother
Bagma Begum W/O Mohabat Hussain Mir
R/O Village Banola Tehsil Chiralla
District Doda

...Appellant(s)

Through:- Mr. I H Bhat, Advocate &
Mr. Akeel Wani, Advocate.

Versus

1. Union Territory of Jammu & Kashmir
Through Commissioner/Secretary (Home),
Civil Secretariat, Jammu/Srinagar.
2. The District Magistrate, Doda
3. The Senior Superintendent of Police, Doda.
4. The Superintendent District Jail Bhaderwah.

...Respondent(s)

Through:- Mr. Adarsh Bhagat, GA.

**Coram:- HON'BLE MR. JUSTICE TASHI RABSTAN, JUDGE
HON'BLE MR. JUSTICE PUNEET GUPTA, JUDGE**

JUDGMENT

Tashi Rabstan, J:-

1. This Letters Patent Appeal is directed against the judgment dated 25.05.2023 passed by the learned Single Judge, whereby the appellant's Writ Petition being WP(Crl) No.59/2022 titled '*Saqib Hussain Mir v. Union Territory of J&K and Ors*' seeking quashment of detention order No. 97/DM/Doda/PSA/2022 dated 07.07.2022, issued by Respondent No.2-the

District Magistrate, Doda (hereinafter to be referred to as the Detaining Authority), was dismissed.

2. Learned counsel for the appellant/writ petitioner has assailed the judgment impugned dated 25.05.2023, passed by the learned Single Judge, inter alia, on the following grounds:

- “
- a. *That the impugned judgment is bad in the eyes of law and hence, deserves to be set-aside.*
 - b. *That the judgment passed by the Hon’ble Single Bench is against the facts and record, hence, deserves to be set aside.*
 - c. *That the appellant has challenged the impugned detention on the ground that the detention order is illegal, arbitrary and contrary to the provisions of the law and facts of the case.*
 - d. *That the appellant is also taking ground that the detaining authority has not applied its mind while passing the order of detention.*
 - e. *That from the perusal of the ground of detention as well as dossier submitted by the SSP Doda it is explicit that the same are verbatim to each other which shows that the detaining authority has not applied its mind and the detention order is required to be set aside. However, the Hon’ble Single Bench has held that the grounds of detention and the dossier submitted by the SSP are not verbatim of each other, which finding is against the record, hence, the impugned judgment and the detention order deserves to be set aside.*
 - f. *That the grounds taken by the appellant in the habeas corpus petition before the Hon’ble Single Judge has not been dealt in accordance with law and the record, hence, the impugned judgment deserves to be set aside.*
 - g. *That the appellant reserves their right to raise any other additional ground at the time of arguments.”*

3. The appellant/writ petitioner has challenged detention order No. 97/DM/Doda/PSA/2022 dated 07.07.2022, foisted upon him by respondent No.2-the District Magistrate, Doda before the writ Court by filing petition bearing WP(Crl.) No.59/2022 being the same in breach of the provisions of Article 22(5) of the Constitution of India read with Section 13(1) of the J&K Public Safety Act, 1978 and also the same is alleged to have been passed arbitrarily and in a *mala fide* manner without application of mind.

4. Learned counsel for the appellant/writ petitioner submitted that the detaining authority has passed the detention order in a very rush manner which can be reflected from the order itself; that the dossier is the replica of grounds of detention. Moreover, the detune has been prevented in making an effective representation against the impugned order of detention within time as the detaining authority has not supplied the detenue the whole material relied upon by it. Furthermore, it is stated that the appellant/writ petitioner has not committed any offence nor is he involved in the commission of any offence under the Public Safety Act, which pose a serious threat to the health and welfare of the people, but the respondents without the application of mind and without considering the material on record had issued and passed the impugned detention order which is illegal, unjustified, unwarranted under law and as such the same is liable to be quashed. It is also the submission of learned counsel for the detenue that the order of detention and the connected documents annexed with the petition clearly show violation of right of the detenue guaranteed in terms of Article 22(5) of the Constitution of India and the provisions of Public Safety Act. It is submitted that the petitioner has been provided only the grounds of detention and Dossier along with the order of respondent No.2

which were not understood by the appellant as he is only 9th pass and does not understand English. It is also being stated that neither the appellant is threat to the public order or he has committed any such crime which has disturbed the society at large. It is being pleaded in the appeal that the detaining authority-respondent no.2 has not attributed any specific allegation against the detainee. It is lastly pleaded that since the grounds of detention are replica of dossier, the impugned detention order as well as impugned judgment of the learned Single Judge be set aside.

5. Learned counsel for the appellant/writ petitioner in support of his submissions has relied upon the judgment of Supreme Court in the case of *'Jai Singh and others v. State of Jammu and Kashmir'* reported at 1985 (1) SCC 561; and judgment of this court in the case of *'Mubashir Ishrat v. State of J&K and others'* reported at 2019 Legal Eagle (J&K) 801.

6. On the other hand, learned GA, Mr. Adarsh Bhagat, has defended the passing of impugned detention order and has sought the outright rejection and dismissal of the appeal by vehemently articulating arguments, that all the documents/materials basing the passing of detention order have been supplied to the detainee, there has been subjective satisfaction of the detaining authority while passing the order of detention, it is argued that the activities of the detainee are highly prejudicial to the security of the State. It is submitted that the detainee is a potential trouble maker and a strong motivator of jihad/terrorism and uses his good oratory skills to attract a large number of people especially in anti-national activities. It is further contended that the detainee is a sympathizer of militants and his activities have the potential of creating serious threat to the security of the Union Territory. He further

submitted that in order to save the young people of the area from joining the path of militancy, detention of the detinue becomes imperative, as such, after through the dossier submitted by the Senior Superintendent of Police, Doda, the detaining authority, after recording subjective satisfaction, issued the impugned order of detention. It is argued that the High Court in its writ jurisdiction under Article 226 of the Constitution of India is to see whether the order of detention has been based on no material, the satisfaction maintained in Section 3 of the Act is satisfaction of the detaining authority and not of the Court, the court can only examine whether grounds disclosed in the detention order are relevant to the object of preventive detention Act. To support his arguments, learned GA has relied upon the judgments in the case of *Ashok Kumar versus Delhi Administration and others* reported at 1982 Legal Eagle (SC) 108 and in the case of *Secretary to Government Public (Law and Order) and another versus Nabila and another* reported at 2014 Legal Eagle SC 4801.

7. Heard learned counsel for both the sides at length, perused the impugned judgment and considered the detention record (photo-copy) attached with the appeal.

8. The star argument canvassed by learned counsel for the appellant/writ petitioner are, that the grounds of detention mentioned in the detention order are replica/verbatim copy of the dossier with interplay of some words here and there, which exhibits that the respondent No.2 have not applied his mind properly at the time of passing of the order and as such on this count the order impugned is bad and the same deserves to be set aside.

9. In '*Mubashir Ishrat v. State of J&K and others*' reported at 2019 Legal Eagle (J&K) 801, and *Sajad Ahmad Bhat v. UT of J&K and another*, reported

at 2022 LiveLaw (JKL) 208, relied by learned counsel for the appellant/writ petitioner, the court quashed the detention orders for the reasons that the grounds of detention were nothing but verbatim reproduction of dossiers forwarded by the police to the detaining authority which in fact showed non-application of mind by the detaining authority making the detention order illegal, we have meticulously scanned the detention record produced by the respondents. The dossier submitted by respondent No.3 deals with the criminal activities of the petitioner and it contains as many as 04 pages. The grounds of detention which lay its foundation from the dossier consist of 03 pages delineating the entire criminal activity of the detainee. But to say that grounds of detention are ditto copy/verbatim of the dossier is untrue and far from reality. In the grounds of detention the criminal activities of the appellant have been highlighted which reveal that on 21.06.2022, the appellant incited the youth of a particular community asking them to join Jihad as his father who has been booked by Peer Mitha Police Jammu in case FIR No.42/2019 U/S 17, 18, 20, 38, 40 UA(P) Act, 7/25 Arms Act registered against him as he has joined militancy and he too is going to join Jihad. This create insecurity in the minds of particular community and other peace loving people of the area. This act of the detainee was reported vide DDR No.12 dated 21.06.2022 of Police Post Karara. It is noted in the dossier that the appellant again on 22.06.2022 provoked the locals of the town to join Jihad. A Report in this regard was registered vide DDR No.08 dated 22.06.2022, at Police Station Premnagar. Also mentioned in the dossier is that on 24.06.2022, the appellant started persuaded the local of the town to join Jihad with the object of to avenge for his father's arrest in connection with his anti-national activities. The activities

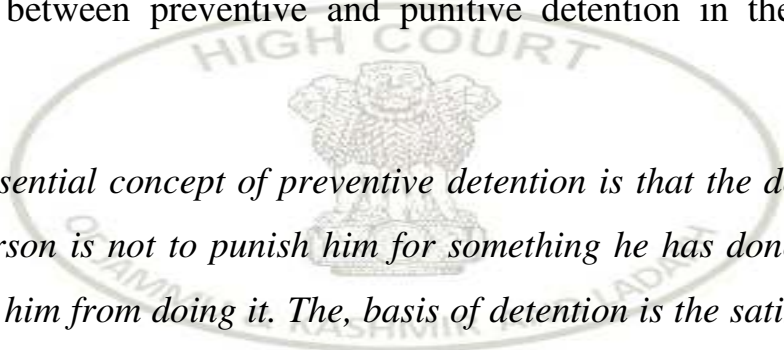
of appellant/detenué are highly prejudicial to the security and sovereignty of the country. Arguments of learned counsel for the appellant/writ petitioner that the grounds of detention are ditto copy/verbatim/replica of the dossier are legally misplaced, discarded and rejected.

10. The right of personal liberty is most precious right guaranteed under the Constitution. It has been held to be transcendental, inalienable and available to a person. A person is not to be deprived of his/her personal liberty except in accordance with procedures established under law and the procedure as laid down in [Maneka Gandhi v. Union of India \(1978 AIR SC 597\)](#), is to be just and fair. The personal liberty may be curtailed, where a person faces a criminal charge or has been convicted of an offence and sentenced to imprisonment. Where a person is facing trial on a criminal charge and is temporarily deprived of his/her personal liberty because of the criminal charge framed against him/her, has an opportunity to defend himself/herself and to be acquitted of the charges in case the prosecution fails to bring home his/her guilt. Where such a person is convicted of the offence, he/she still has the satisfaction of having been given adequate opportunity to contest the charge and also adduce evidence in his/her defence.

11. Nevertheless, framers of the Constitution have, by incorporating [Article 22 \(5\)](#) in the Constitution, left room for detention of a person without a formal charge and trial and without such person having been held guilty of an offence and sentenced to imprisonment by a competent court. The object is to save the society from activities that are likely to deprive a large number of people of their right to life and personal liberty. In such a case it would be dangerous for the people at large, to wait and watch as, by the time ordinary law is set into

motion, the person having dangerous designs, would execute his/her plans, exposing the general public to risk and cause colossal damage to life and property. It is, therefore, necessary to take preventive measures and prevent the person bent upon perpetrating mischief from translating his/her ideas into action. [Article 22\(5\)](#) Constitution of India therefore leaves scope for enactment of preventive detention law.

12. The Hon'ble Apex Court in the judgment rendered in the case of "[Hardhan Saha v. State of W.B](#)" [(1975) 3 SCC 198], has succinctly pointed out difference between preventive and punitive detention in the following words:



"The essential concept of preventive detention is that the detention of a person is not to punish him for something he has done but to prevent him from doing it. The, basis of detention is the satisfaction of the executive of a reasonable probability of the likelihood of the detenu acting in a manner similar to his past acts and preventing him by detention from doing the same. A criminal conviction on the other hand is for an act already done which can only be possible by a trial and legal evidence. There is no parallel between prosecution in a Court of law and a detention order under the Act. One is a punitive action and the other is a preventive act. In one, case a person is punished to prove his guilt and the standard is proof beyond reasonable doubt whereas in preventive detention a man is prevented from doing something which it is necessary for reasons mentioned in section 3 of the Act to prevent."

13. The conceptual framework of preventive detention has been reiterated in "[Khudiram Das v. State of W.B](#)", [(1975) 2 SCR 832], as under:

"The power of detention is clearly a preventive measure. It does not partake in any manner of the nature of punishment. It is taken by

way of precaution to prevent mischief to the community. Since every preventive measure is based on the principle that a person should be prevented from doing something which, if left free and unfettered, it is reasonably probable he would do, it must necessarily proceed in all cases, to some extent, on suspicion or anticipation as distinct from proof."

14. [In “Naresh Kumar Goyal v. Union of India”](#), [(2005) 8 SCC 276], the Court observed:

"It is trite law that an order of detention is not a curative or reformatory or punitive action, but a preventive action, avowed object of which being to prevent the anti-social and subversive elements from imperiling the welfare of the country or the security of the nation or from disturbing the public tranquility or from indulging in smuggling activities or from engaging in illicit traffic in narcotic drugs and psychotropic substances etc. Preventive detention is devised to afford protection to society. The authorities on the subject have consistently taken the view that preventive detention is devised to afford protection to society. The object is not to punish a man for having done something but to intercept before he does it, and to prevent him from doing so."

15. The detention record, reveals that the detainee was involved in following cases registered at various police stations vide:-

- (i) Daily Diary Report No.12 dated 21.06.2022, P/S Karara
- (ii) Daily Diary Report No.08/2022 dated 22.06.2022, P/S Premnagar.
- (iii) Daily Diary Report No.04 dated 24.06.2022, P/S Thathri

Involvement of the detainee in the aforementioned reports appears to have heavily weighed with the detaining authority while passing detention order. Detention record would further show that detainee was arrested in pursuance of the three Daily Diary Reports entered at various police

stations on various dates. Detention record further reveals that the impugned detention order stands confirmed/approved vide government Order No. Home/PB-V/643/2022 dated 08.07.2022.

16. Perusal of Annexure-II (copy of Execution Report) attached with the Counter Affidavit filed on behalf of respondent no.2 would show that detenue at the time of execution of detention warrant was provided with grounds of detention (03 leaves), PSA Warrant (01) leaf, dossier along with letter of SSP, Doda (05) leaves, Copies of FIRs, statement and other documents (03) leaves. Further perusal of the Execution Report reveals that the grounds of detention have been read over and explained to him in Urdu/Kashmiri language and that the detenue has been informed that he may make representation to the Government/Detaining Authority against his detention, if so desires. Therefore, the appellant has been supplied the material by the detaining authority on the basis of which the detention order is passed.

17. It is settled proposition of law that this Court while exercising jurisdiction under Article 226 of the Constitution has a limited scope to scrutinize whether detention order has been passed on the material placed before it, and it cannot go further and examine the sufficiency of material. This Court does not sit in appeal over the decision of the Detaining Authority and cannot substitute its opinion over that of detaining authority when the grounds of detention are precise, pertinent, proximate and relevant as laid down by the Apex Court in case titled **State of Punjab v. Sukhpal Singh, (1990) 1 SCC 35.**

18. In view of the preceding analysis, we are of the view that the impugned order of detention does not call for any interference by this Court. And the appeal is found without any merits and is dismissed accordingly. The judgment passed by the learned Single Judge, being a reasoned and detailed judgment, is accordingly upheld and so is the preventive detention order of the detainee.

19. The appeal is dismissed.

20. No order as to costs.

(Puneet Gupta)
Judge

(Tashi Rabstan)
Judge

Jammu
06.02.2024
Raj Kumar

Whether the order is speaking? Yes
Whether the order is reportable? Yes

