

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

...

WP(Crl) No.76/2023

*Reserved on: 12.12.2024
Pronounced on: 24.12.2024*

Naveed Mudasir Wani

.....Petitioner(s)

Through: Mr. Wajid Haseeb, Advocate

Versus

Union Territory of J&K and Anr.

.....Respondent(s)

Through: Mr. Syed Musaib, Dy. AG

CORAM:

HON'BLE MR JUSTICE VINOD CHATTERJI KOUL, JUDGE

JUDGEMENT

1. Through the medium of this writ petition, Order No. 1/DMP/PSA/23 dated 12.01.2023, passed by District Magistrate, Pulwama, whereby detenu, namely, Naveed Mudasir Wani S/o Mohammad Ishaq Wani R/o Ugergund Tehsil Pulwama, District Pulwama has been placed under preventive detention with a view to prevent him from acting in any manner prejudicial to the security of the State, is sought to be quashed and the detenu set at liberty on the grounds made mention of therein.

2. Respondents have filed counter affidavit, insisting therein that the detenu along with other likeminded OGW's is involved in providing all the necessary logistic support to the militants like lodging, boarding, guiding their movement through safe passages carrying their weapons from one place to another and providing transport facility etc. He is also involved in anti national/anti-social activities which are highly prejudicial to the security of the State and thus poses a serious threat to the security situation prevailing in the district and his remaining at large would have caused irreparable loss and injury to the peace and security of the District. The activities narrated in the grounds of detention have been reiterated in the reply affidavit filed by respondents. The factual averments that detenu was not supplied with

relevant material relied upon in the grounds of detention have been refuted. It is insisted that all the relevant material, which has been relied upon by the detaining authority, was provided to the detenu at the time of execution of warrant.

3. I have heard learned counsel for the parties and considered the matter. I have gone through the detention record produced by counsel for respondents.

4. The main grounds on which the detention is sought to be quashed are that the detenu was arrested by police in the month of November 2022 and thereafter detained in terms of impugned order. The grounds of detention are said to be vague, indefinite, cryptic, inasmuch as the detaining authority has not attributed any specific allegation against the detenu, not even an iota of connection is given in the grounds of detention connecting the detenu with the allegations. It is also stated in the petition that the detaining authority as per the dossier submitted by police authorities has passed impugned order against *Junaid Ishaq Wani* and thereafter the police authorities vide communication no.ASP/Pul/PSA/2023/36 dated 13.01.2023 requested detaining authority to issue a Corrigendum to the effect that the name of the detenu be read as '*Naveed Mudasir Wani*' instead of '*Junaid Ishaq Wani*' in the impugned order. It is, thus, rightly stated by counsel for petitioner that at the first instance detaining authority has not perused any material independently so as to reach to the conclusion as to against whom detention order is to be passed inasmuch as detaining authority has not prepared grounds of detention by itself, which is a prerequisite for it before passing any detention order. It is stated that detaining authority seems to have worked on the dictates of police authorities and has not enquired about the existence of the facts by perusing the supporting material, as such, the grounds of detention seems to be replica of the police dossier.

5. It is also averred in the petition that the detaining authority has not furnished the material including dossier, relied upon by it, to detenu to enable him to make an effective representation by giving his version of facts attributed to him and make an attempt to dispel the apprehensions nurtured by detaining authority concerning involvement of detenu in alleged

activities; that grounds of detention do not give details or particulars of terrorists to whom detenu is alleged to have met or of those who are alleged to have been given assistance by the detenu. Further, the allegations made in the grounds of detention have no nexus with detenu and detaining authority has not given any reasonable justification to pass impugned order of detention.

6. Taking into account the rival contentions of parties and submissions made by learned counsel for parties, it would be relevant to go through the detention record produced by counsel for respondents. The detention record, inter alia, contains “Execution Report” and “Receipt of Grounds of detention”. It would be advantageous to reproduce relevant portion of “Execution Report ” hereunder:

“.....accordingly copy of detention warrant and copy of grounds of detention and other documents (09) leaves have been provided to him.....”

7. It would also be appropriate to reproduce relevant portion of “Receipt of Grounds of Detention” herein:

“Received grounds of detention issued by District Magistrate, Pulwama vide order 01/DMP/PSA/23 dated 12.01.2023 and Corrigendum issued by District Magistrate Pulwama No. DMP/PA/23/10013 dated 13.01.2023, in English consisting of (09) leaves in all through Superintendent District Jail”

Thus, it is unambiguously clear and evident from perusal of “Execution Report” and “Receipt of grounds of detention” that only nine leaves have been given to detenu.

8. Perusal of impugned detention order reveals that on the basis of dossier placed before detaining authority by Senior Superintendent of Police, Pulwama, vide no.CS/Pros/PSA/DPO/23/01-04 dated 11.01.2023, detaining authority was satisfied that with a view to prevent detenu from acting in any manner prejudicial to the security of the State, it was necessary to detain him under necessary provisions of law. So, it is on the basis of dossier and other connected material/ documents that impugned detention order has been passed by detaining authority. The grounds of detention, when looked into, gives reference to various alleged activities of detenu that appears to have weighed with detaining authority, while making detention order. The

detention record, as noted above, does not indicate copies of dossier and other connected material was ever supplied to detenu, on the basis whereof impugned detention order has been passed. The aforesaid material, thus, assumes importance in the facts and circumstances of the case. It needs no emphasis, that detenu cannot be expected to make a meaningful exercise of his Constitutional and Statutory rights guaranteed under Article 22(5) of the Constitution of India and Section 13 of the J&K Public Safety Act, 1978, unless and until the material on which detention order is based, is supplied to him. It is only after detenu has all the said material available that he can make an effort to convince detaining authority and thereafter the Government that their apprehensions vis-à-vis his activities are baseless and misplaced. If detenu is not supplied the material, on which the detention order is based, he will not be in a position to make an effective representation against his detention order. The failure on the part of the detaining authority to supply the material, relied at the time of making the detention order to the detenu, renders the detention order illegal and unsustainable. In this regard I may draw support from the law laid down in the cases of *Thahira Haris Etc. Etc. v. Government of Karnataka*, AIR 2009 SC 2184; *Union of India v. Ranu Bhandari*, 2008, Cr. L. J. 4567; *Dhannajoy Dass v. District Magistrate*, AIR, 1982 SC 1315; *Sofia Gulam Mohd Bham v. State of Maharashtra and others* AIR 1999 SC 3051; and *Syed Aasiya Indrabi v. State of J&K & ors*, 2009 (I) S.L.J 219.

9. The Supreme Court in *Abdul Latief Abdul Wahab Sheikh v. B.K. Jha*, 1987 (2) SCC 22 has held that it is only the procedural requirements, which are the only safeguards available to the detenu, that is to be followed and complied with as the Court is not expected to go behind the subjective satisfaction of the detaining authority. In the present case, the procedural requirements, as discussed above, have not been followed and complied by the respondents in letter and spirit and resultantly, the impugned detention needs to be quashed.

10. It may be appropriate to mention that perusal of grounds of detention reveals that grounds of detention are vague and ambiguous, and do not refer to any date, month or year of the activities, which have been attributed to detenu. Detention in preventive custody on the basis of such vague and

ambiguous grounds of detention cannot be justified. It may not be out of place to mention here that preventive detention is largely precautionary and is based on suspicion. The Court is ill-equipped to investigate into circumstances of suspicion on which such anticipatory action must be largely based. The nature of the proceeding is incapable of objective assessment. The matters to be considered by the detaining authority are whether the person concerned, having regard to his past conduct judged in the light of surrounding circumstances and other relevant material, is likely to act in a prejudicial manner as contemplated by the provisions of the law and, if so, whether it is necessary to detain him with a view to preventing him from so acting. These are not the matters susceptible of objective determination, and they could not have been intended to be judged by objective standards. They are essentially the matters which have to be administratively determined for the purpose of taking administrative action. Their determination is, therefore, deliberately and advisedly left by the Legislature to the subjective satisfaction of detaining authority which, by reason of its special position, experience and expertise, would be best suited to decide them. Thus, the Constitutional imperatives of Article 22(5) and the dual obligation imposed on the authority making the order of preventive detention, are twofold: (1) The detaining authority must, as soon as may be, i.e. as soon as practicable, after the detention order is passed, communicate to the detenu the grounds on which the order of detention has been made, and (2) the detaining authority must afford the detenu the earliest opportunity of making the representation against the order of detention, i.e. to be furnished with sufficient particulars to enable him to make a representation which, on being considered, may obtain relief to him. The inclusion of an irrelevant or non-existent ground, among other relevant grounds, is an infringement of the first of the rights and the inclusion of an obscure or vague ground, among other clear and definite grounds, is an infringement of the second of the rights. In either case there is an invasion of the constitutional rights of the detenu entitling him to approach the Court for relief. The reason why the inclusion of even a simple irrelevant or obscure ground, among several relevant and clear grounds, is an invasion of the detenu's constitutional right is that the Court is precluded from adjudicating

upon the sufficiency of the grounds, and it cannot substitute its objective decision for the subjective satisfaction of the detaining authority. Even if one of the grounds or reasons, which led to the subjective satisfaction of the detaining authority, is non-existent or misconceived or irrelevant, the order of detention would be invalid. Where the order of detention is founded on distinct and separate grounds, if any one of the grounds is vague or irrelevant the entire order must fall. The satisfaction of detaining authority being subjective, it is impossible to predicate whether the order would have been passed in the absence of vague or irrelevant data. A ground is said to be irrelevant when it has no connection with the satisfaction of the authority making the order of detention. Irrelevant grounds, being taken into consideration for making the order of detention, are sufficient to vitiate it. One irrelevant ground is sufficient to vitiate the order as it is not possible to assess, in what manner and to what extent, that irrelevant ground operated on the mind of the appropriate authority, and contributed to his satisfaction that it was necessary to detain the detenu in order to prevent him from acting in any manner prejudicial to the maintenance of the public order or security of the State. Reference in this regard is made to *Mohd. Yousuf Rather v. State of J&K and others*, AIR 1979 SC 1925; and *Mohd. Yaqoob v. State of J&K &ors*, 2008 (2) JKJ 255 [HC].

11. Based on the above discussion, Detention Order no. 1/DMP/PSA/23 dated 12.01.2023, issued against the detenu is quashed. As a corollary, respondents, including Superintendent Jail concerned, are directed to set the detenu at liberty forthwith provided he is not required in any other case.

Disposed of.

12. Detention record be returned to counsel for respondents

(Vinod Chatterji Koul)
Judge

Srinagar

24.12.2024

(Qazi Amjad Secy.)

Whether approved for reporting?No