

HIGH COURT OF JAMMU AND KASHMIR AND LADAKH
AT SRINAGAR

HCP No.124/2024

Reserved on: 19.12.2024

Pronounced on: 24.12.2024

Waqar Bashir Bhat, aged 33 S/o Late Bashir Ahmad Bhat R/o Mohalla New Colony Kreeri, Tehsil Kreeri District Baramulla R/o Heffkuri, Tehsil Zanipora District Shopian.

..... Petitioner(s)

Through: Mr. B. A. Tak, Advocate

V/s

1. Union Territory of J&K through Principal Secretary to Home Department, Civil Secretariat, Srinagar/ Jammu
2. District Magistrate, Baramulla
3. Sr. Superintendent of Police, Baramulla

Through: Mr. Syed Musaib, Dy.AG

.....Respondent(s)

CORAM:

HON'BLE MR JUSTICE VINOD CHATTERJI KOUL, JUDGE

JUDGEMENT

1. Through the medium of this writ petition, petitioner prays for quashment of detention Order No.26/DMB/PSA/2024 dated 12.04.2024, passed by District Magistrate, Baramulla – respondent no.2, whereby detenu, namely, *Waqar Bashir Bhat, S/o Late Bashir Ahmad Bhat R/o Mohalla New Colony Kreeri, Tehsil Kreeri, District Baramulla*, has been placed under preventive detention with a view to prevent him from acting in any manner prejudicial to the maintenance of Public Order in the UT of J&K, on the grounds made mention of therein.

2. Respondents have filed reply affidavit, insisting therein that the activities indulged in by detenu are anti-national and anti-social and his activities pose a great threat to the peace and tranquillity in Tehsil Kreeri as he is involved in the activities prejudicial to the maintenance of public Order of UT of J&K. The activities narrated in the grounds of detention have been reiterated in the reply/counter 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 parties and considered the matter. I have gone through the detention record produced by counsel for respondents.

4. Learned counsel for petitioner has stated that the detenu has been shown involved in FIR Nos. 72/2010, 78/2010, 61/2016, 56/2016 & 66/2016 registered in Police Station Kreeri with respect whereof he is facing trial; that the material with regard to above FIRs have not been provided to detenu to enable him to make a representation against his detention inasmuch as allegations made in the grounds of detention are vague and indefinite and no prudent man can make an effective representation against these allegations and that allegations mentioned in grounds of detention have no nexus with detenu and detaining authority has passed impugned order of detention in a mechanical and casual manner without application of mind. It is also stated that detaining authority in impugned detention order has mentioned that detenu is being placed under preventive detention as his activities are prejudicial to the maintenance of Public Order in the UT of J&K, whereas in the grounds of detention, at one place it is mentioned that *the activities of the detenu are prejudicial to maintenance of public order* and at another place it is mentioned that *activities of the detenu are highly prejudicial to the maintenance of Security of UT of J&K* which reflects non-application of mind on the part of detaining authority because detention order is to be issued either for 'public order' or 'Security of the UT of J&K' but not under both the heads and, therefore, impugned order of detention is liable to be quashed.

5. Learned counsel for petitioner has also vehemently argued that a representation was made by wife of detenu to respondents for releasing the detenu, but the record reveals that the same was neither considered nor decided by respondents nor detenu was produced before Advisory Board for providing him an opportunity of being heard so that he could explain to the members of the Board that detenu is innocent and his order of detention deserves to be revoked and he be set at liberty. It is also stated that it appears that grounds of detention are replica of dossier and unequivocally reflect and show non-application of mind on the part of detaining authority.

6. As already noted, learned counsel for detenu contends that detaining authority, while passing impugned detention order, was not certain as to on which ground impugned order was to be passed because it has made reference to both the expressions, namely, "*activities prejudicial to the maintenance of public order*" in the impugned detention order and in grounds of detention at one place it is

mentioned that “*activities are highly prejudicial to the maintenance of public order*” and at another place “*activities of the detenu are highly prejudicial to the maintenance of security of UT of J&K*”.

7. Taking into account the submissions made by learned counsel for parties, it would be appropriate to say that the Government may, if satisfied with respect to any person that with a view to prevent him from acting in any manner prejudicial to the maintenance of the public order or the security of the State, make an order directing that the person be detained. When the law providing for preventive detention permits detention of a person whose activities are prejudicial to defence, security of India or security of the State, it will be lawful to detain such person if any of his activities is considered by detaining authority affecting security of the State. Reliance is made to **A. K. Roy v. Union of India, AIR 1982 SC 710**. The security of the State can be put to danger by crimes of violence intended to overthrow the government. The expression “security of the State” includes economic security also. Those who commit economic offences do harm to the national interest and economy of the State and can be detained under preventive detention. Counterfeiting of currency and putting the same in circulation destabilize the economy of the State as it affects the security of the State. Reference is made to **Santokh Singh v. Delhi Administration, 1973 SC 1091**; **A.G. v. Amritlal(1994) 5 SCC 54**; **Safiya v. Government of Kerala, AIR 2003 SC 3562**; **Bashir Ahmad v. State 2004 (ii) SLJ 550**. The question to ask is: “*does it lead to disturbance of the public order or does it affect merely an individual leaving the tranquillity of the society undisturbed*”? This question has to be faced in every case on its facts. “Public order”, “Law and order”, and “security of the State”, draw three concentric circles, the largest representing law and order, the next representing public order and the smallest representing security of the State. Every infraction of law must necessarily affect order, but an affecting law and order may not necessarily also affect the public order. Likewise, an act may affect public order, but not necessarily the security of the State. The true test is not the kind, but the potentiality of the act in question. One act may affect only individuals while the other, though of a similar kind, may have such an impact that it would disturb the even tempo of the life of the community. This does not mean that there can be no overlapping in the same that an act cannot fall under two concepts at the same time. An act, for instance, affecting public order may have an impact that it would affect both public order and security of the State.

8. Perusal of relevant case law, thus, would show that “*public order*” specifies something more than “law and order”. The breach of public order involves a degree of disturbance and it affects upon the life of the community in a locality, which determines whether the disturbance amounts only to breach of law and order and not a public order. The difference between two concepts is in only one degree. An act affecting law and order may not necessarily also affect the public order and an act which might be prejudicial to public order may not affect the security of the State. Public order is synonymous with public safety and tranquillity and it is the absence of any disorder involving breaches of local significance in contradiction to national upheavals, such as revolution, civil strife, war, affecting the security of the State.

9. In *Dr Ram Manohar Lohia v. State of Bihar and others*, 1966 AIR SC 740, it has been held by the Supreme Court that any contravention of law always affects order but before it can be said to affect public order, it must affect the community or the public at large. It was observed that offences against “*law and order*”, “*public order*” and “*security of the State*” are demarcated on the basis of the gravity. It is the degree of disturbance and its affect upon the life of the community in a locality which determines whether the disturbance amounts only to breach of law and order though in the grounds of detention, the detaining authority had stated that by committing this offence in public, the detenu created a sense of alarm, scare and a feeling of insecurity in the minds of the public of the area and thereby acted in a manner prejudicial to the maintenance of public order which affected the even tempo of life of the community. It was held that mere citation of these words in the order of detention was more in the nature of a ritual rather than with any significance to the content of the matter.

10. The determining test in all such cases is “the act leads to disturbance of the current of life of the community so as to amount to a disturbance of the public order or does it affect merely an individual leaving the tranquillity of society undisturbed”. The expression “*law and order*”, “*public order*” and “*security of the State*” are distinct concepts though always not separate. Every public order if disturbed, must lead to public disorder but every breach of the peace does not lead to public disorder. For example, when two drunkards quarrel and fight there is disorder but not public disorder. They can be dealt with under the powers to maintain law and order but cannot be detained on the ground that they were disturbing public order. Disorder is no doubt prevented by the maintenance of law

and order also but disorder is a broad spectrum which includes at one end small disturbances and at the other the most serious and cataclysmic happenings.

11. As has been held by the Supreme Court in ***G.M. Shah v. State of J&K, 1980 (AIR) SC 494***, the expressions “*law and order*”, “*public order*” and “*security of the State*” are distinct concepts, though not always separate. While every breach of peace may amount to disturbance of law and order, every such breach does not amount to disturbance of public order and every public disorder may not prejudicially affect the “*security of the State*”.

12. The distinction between “*Law and order*” and “*Public order*” has been pointed out in ***Arun Ghosh v. State of West Bengal, AIR 1970 SC 1228***. According to that decision, the true distinction between the areas of “*law and order*” and “*public order*” is “one of degree and extent of the reach of the act in question upon society”. The Supreme Court pointed out that “the act by itself is not determinant of its own gravity. In its quality it may not differ but in its potentiality it may be very different”.

13. In the present case, detaining authority has made use of both expressions “*prejudicial to maintenance of public order*” as well as “*prejudicial to security of the State*”. Impugned detention order, made on the basis of grounds of detention using both expressions by the detaining authority to place detenu under preventive detention, in view of above discussion and well settled law, is held illegal and consequently impugned order is vitiated.

14. The submission urged by learned counsel for detenu and is also made mention of in the petition, is that representation made by detenu through her wife has not been considered by the respondents. Perusal of detention record does not reveal or indicate anything about receipt or consideration of representation. It is thus, evident from the pleadings of the respondents as well as detention record that the representation submitted on behalf of the detenu has not been considered by respondents so far. Admittedly, a copy of representation, placed on record by petitioner as Annexure II, has been filed by detenu through her wife, against detention on 20.04.2024 and the same has not been considered till date inasmuch as respondents in their reply to ground 3 (i) have submitted that order of detention alongwith the material and representation, if any, filed by the detenu is examined thoroughly by the Advisory Board, but what has been done to it is not coming forth from the reply. The record also does not show that the representation so filed has been forwarded to the Advisory Board for consideration; even if, it could have

been forwarded to the Government/Advisory Board, which is missing from the reply filed by respondents. Thus, there is a force in the submission of learned counsel for detenu that non-consideration of representation of detenu vitiates impugned order of detention.

Law in this regard is settled as the Supreme Court in *Tara Chand v. State of Rajasthan and others*, 1980 (2) SCC 321 and *Raghavendra Singh v. Superintendent, District Jail, Kanpur and others* (1986) 1 SCC 650, has held that if there is inordinate delay in considering the representation that would clearly amount to violation of the provisions of Article 22(5) as to render the detention unconstitutional and void.

15. In *Rajammal v. State of Tamil Nadu and others*, 1999(1) SCC 417, it has been held as follows:

“It is a constitutional obligation of the Government to consider the representation forwarded by the detenu without any delay. Though no period is prescribed by Article 22 of the Constitution for the decision to be taken on the representation, the words "as soon as may be" in clause (5) of Article 22 convey the message that the representation should be considered and disposed of at the earliest.”

16. In *K. M. Abdulla Kunhi v. Union of India* (1991) 1 SCC 476, it has been held as follows:

“... it is settled law that there should not be supine indifference, slackness or callous attitude in considering the representation. Any unexplained delay in the disposal of the representation would be breach of the constitutional imperative and it would render the continued detention impermissible and illegal.”

17. For the reasons discussed above, detention Order no.26/DMB/PSA/2024 dated 12.04.2024, passed by District Magistrate, Baramulla, is quashed. Respondents, including Jail Superintendent concerned, are directed to release the detenu forthwith, provided he is not required in any other case.

18. **Disposed of.**

19. Detention record be returned to counsel for respondents.

(Vinod Chatterji Koul)
Judge

SRINAGAR
24.12.2024
(Qazi Amjad, Secy)

Whether the order is reportable: No.