

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

...
WP (Crl) No. 175/2023

Reserved on: 12.12.2024

Pronounced on: 24.12.2024

Gowhar Mohi ud Din Dar, aged 18 years S/o Gh. Mohi ud Din Dar R/o Drubgam
Tehsil Rajpora, District Pulwama

..... Petitioner(s)

Through: Mr. S. R. Khawar, Advocate with
Mr. Aabid Hussain & Mr. Altamash Rashid, Advs.

Versus

1. Union Territory of J&K through Principal Secretary, Home Department , J&K
Govt. Civil Sectt. Srinagar/Jammu
2. District Magistrate, Pulwama
3. Superintendent Central Jail , Kotbhalwal, Jammu.

....Respondent(s)

Through: Mr. Syed Musaib, Dy AG

CORAM:

HON'BLE MR JUSTICE VINOD CHATTERJI KOUL, JUDGE

JUDGEMENT

1. Through the medium of this petition, Order no. DMP/PSA/23/21 dated 19.04.2023 (*impugned detention order*) passed by District Magistrate, Pulwama – respondent no. 2, (for short 'detailing authority') whereby detenu, namely, Gowhar Mohi ud Din Dar, S/o Gh. Mohi ud Din Dar R/o Drubgam Tehsil Rajpora, 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. The case set up by the petitioner in the petition is that the detenu was called to Police Station Pulwama and thereafter taken to Jammu for further lodgement in Central Jail, Kotbhalwal, Jammu, without intimating his relatives about his detention. The respondent No. 2 has passed the impugned detention order against the detenu mechanically without application of mind as he had hardly crossed the age of 18 years as his date of birth is 16th February, 2005; inasmuch as the detaining authority has not applied its mind to the facts of the case but has acted to the report submitted by Sr. Superintendent of Police,

Pulwama, as the grounds of detention do not indicate any criminal case being registered against the detenu at any point of time till his lodgement except proceedings allegedly initiated under Section 107/151 Cr. PC, for which he has been bound down for keeping peace and tranquillity. It is alleged in the grounds of detention that the detenu with other terrorist cadres are bent upon to revive terrorist activities to create panic amongst the general masses; inasmuch as the detenu is in close touch with terrorists in District Pulwama and providing them food, shelter, information about their movements and also transportation of arms etc., however, he has no connection with any terrorist organization or with terrorist cadres, being vague, imaginary and without basis. It is also averred that detaining authority has passed the impugned detention order mechanically without application of mind, The detenu is neither associated with any organization nor involved in any such activity which are prejudicial to the security of the State.

It is also contended that detaining authority has mentioned in grounds of detention involvement of detenu in the proceedings allegedly initiated under Section 107/151 Cr. PC, but has not furnished the material, 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. It is further contended that the Constitutional and Statutory procedural safeguards have not been complied with in the instant case and unequivocally reflects and shows non-application of mind on the part of detaining authority.

3. Respondents have filed reply affidavit, insisting therein that the activities indulged in by detenu are highly prejudicial to the security of the State and, therefore, his remaining at large is a threat to the security of State. 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.

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

5. Learned counsel for petitioner states that the detaining authority in the grounds of detention has shown its awareness about the booking of the detenu under Section 107/151 of the Criminal Procedure Code for having been allegedly involved in the activities prejudicial to the peace and tranquillity and on the said basis of some discreet reports claimed to have been received by the detaining authority from some sister agencies, ordered the detention of the detenu and that neither on account of his booking under Section 107/151 Cr. PC, nor the detenu could have been detained under preventive detention, if at all, the petitioner was involved in the activities prejudicial to the peace and tranquillity nor on the basis of the so-called discreet report referred in the grounds of detention having formed the basis for detention of the detenu as same were not furnished to him to enable him to make an effective representation against his detention. It is also stated by counsel for detenu that the grounds of detention are vague, indefinite and cryptic, inasmuch as grounds of detention does not disclose any activity on the basis whereof detention can be passed and that detaining authority has not attributed any specific allegation against detenu.

6. On the contrary, Mr. Syed Musaib, Dy.AG, while opposing the submission of Mr. Khawar, would vehemently contend that the order under challenge has been passed by the detaining authority validly and legally owing to the activities the detenu being prejudicial to the Security of the State.

7. Taking into account the rival contentions of parties and submissions made by learned counsel for parties vis-à-vis furnishing of the material relied upon by detaining authority, 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:

“....The detention order (01 leaf), Notice of detention (01 leaf) grounds of detention (03 leaves), Dossier of detention (03 Laves) Copies of FIR, Statements of witnesses and other related relevant documents (Nil), (Total 08 Leaves) have been handed over to the above said detenu....”

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

“Received copies of detention order (01 leaf), Notice of detention (01 leaf) grounds of detention (03 leaves) Dossier of detention (03 Leaves) Copies of FIR, Statements of witnesses and other related relevant documents (Nil) (Total 08 leaves) through executing officer.....”

Thus, it is evident from perusal of Execution Report and Receipt of grounds of detention that only 08 leaves have been given to detenu and rest of the documents upon which subjective satisfaction has been arrived at by detaining authority has not been furnished to detenu.

9. 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/Dossier-PSA/23/4018-21 dated 15.04.2023; 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 that copies of related relevant documents/material were 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.

10. 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 with by the respondents in letter and spirit and resultantly, the impugned detention needs to be quashed.

11. 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 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 subjective satisfaction of detaining authority, is non-existent or misconceived or irrelevant, the order of detention would be invalid. Where 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 and ors, 2008 (2) JKJ 255 [HC]***.

12. Grounds of detention must lay down the charge against detenu and it must be precise, unequivocal and unambiguous. The detenu must be in a

position to give a specific reply/rebuttal to the charge and that is only possible where charge is specific and precise. Else, the detenu is only able to give a bare denial by stating that the allegations are false. If the grounds of detention are based on unsubstantiated allegations, the same along with the order of detention can be quashed as the detenu has not been given opportunity to make a viable representation either to detaining authority or to advisory board. The opportunity to represent to the authorities concerned is not a hollow formality. To detain a person only based on allegations without there being any material to substantiate those allegations would imperil the fundamental rights of an individual enshrined under Article 21 of the Constitution. These observations have been made by the Division Bench of this Court in LPA no.19/2024 titled as *Showkat Ali v. Union Territory of J&K and others*, vide judgement dated 26.07.2024.

13. For the reasons discussed above, the detention Order no. DMP/PSA/23/21 dated 19.04.2023, passed by District Magistrate, Pulwama, is quashed. Respondents, including Superintendent Jail concerned, are directed to release the detenu forthwith, provided he is not required in any other case.

14. **Disposed of.**

15. Registry to return detention record to learned counsel for respondents.

(Vinod Chatterji Koul)
Judge

Srinagar

24.12.2024

(Qazi Amjad, Secy)