

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

...
HCP No. 308/2024

Reserved on: 11.12.2024

Pronounced on: 24.12.2024

Junaid Zahoor Bangroo, age 30 years, S/o Zahoor Ahmad Bangroo R/o Malik Angan Fateh Kadal, Srinagar through his brother Sameer Zahoor Bangroo, aged 33 years

..... Petitioner(s)

Through: Mr. Wajid Haseeb, Adv.

Versus

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

.....Respondent(s)

Through: Mr. Bikramdeep Singh, Dy. AG.

CORAM:

HON'BLE MR JUSTICE VINOD CHATTERJI KOUL, JUDGE

JUDGEMENT

1. Through the medium of this petition, Order no. DMS/PSA/24/2024 dated 05.09.2024 (*impugned detention order*) passed by District Magistrate, Srinagar – respondent no. 2, (for short 'detailing authority') whereby detenu, namely, Junaid Zahoor Bangroo, S/o Zahoor Ahmad Bangroo R/o Malik Angan Fatch Kadal, Srinagar 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 arrested in the first week of August 2024 by the Police Station Safa Kadal and while being in illegal custody was shifted to Central Jail, Srinagar, to be detained in terms of the impugned detention order. The allegations made in the grounds of detention are vague, non-existent as the detaining authority has mentioned various allegations but no specific allegations has been shown 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 that the detention order has been passed primarily in view of ensuing parliamentary elections, however said object is alien

to the object as laid in Section 8 of PSA; 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, Srinagar 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. P.C and 126/170 BNS for which he has been bound down for keeping peace and tranquillity; inasmuch as the detaining authority has not prepared the grounds of detention itself which is a pre requisite for it before passing any detention order and detaining authority has relied only on the police dossier and seems to have worked on the dictates of police authorities, as such, the grounds seems to be replica of the police dossier; inasmuch as the representation submitted by the detenu has not been considered nor relevant material as requested has been furnished to the detenu when the detaining authority is constitutionally duty bound to furnish the same. However, in the instant case, whatever material has been furnished to the detenu, same is vague, imaginary, non –existent and without basis.

3. It is also contended by petitioner that detaining authority has mentioned in grounds of detention involvement of detenu in the proceedings allegedly initiated under Section 107/151 Cr. PC and 126/170 BNS 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.

4. 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.

5. 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.

6. 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 and 126/170 BNS 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 police agencies, ordered the detention of the detenu and that neither on account of his booking under Section 107/151 Cr. PC and 126/170 BNS 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.

7. On the contrary, Mr. Bikramdeep Singh, Dy.AG, while opposing the submission of Mr. Wajid, would vehemently contend that the order under challenge has been passed by the detaining authority validly and legally owing to the activities of the detenu being prejudicial to the security of the State.

8. The submission that has been strenuously urged by learned counsel for detenu and is also made mention of in the petition, is that representation having been filed by detenu through his brother has not been considered by the respondents. Perusal of the detention record does not reveal or indicate anything with regard to receipt or consideration of the representation. It is also evident from the pleadings of the respondents as contained in reply affidavit as well as detention record that the representation submitted on behalf of the detenu has not been considered by the respondents so far. Admittedly, a copy of representation, placed on record by petitioner as Annexure IV to writ petition, has been filed by detenu through his brother, against detention on 10.09.2024 and the same has not been considered till date; inasmuch as respondents in their reply have remained silent about filing of representation. Thus, there is a substance 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.

9. 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.”

10. 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.”

11. In *Ummu Sabeena v. State of Kerala*, (2011) 10 SCC 781, the Supreme Court has held that the history of personal liberty, as is well known, is a history of insistence on procedural safeguards. The expression ‘as soon as may be’, in Article 22 (5) of the Constitution of India, clearly shows the concern of the makers of the Constitution that the representation, made on behalf of detenu, should be considered and disposed of with a sense of urgency and without any avoidable delay.

12. 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 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 and ors*, 2008 (2) JKJ 255 [HC].

13. 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.

14. It is pertinent to mention here as has been vehemently stated by counsel for petitioner that perusal of grounds of detention reveals that the same are replica of dossier with interplay of some words here and there. This, thus, reflects non-application of mind and in the process of deriving of subjective satisfaction has become causality. While formulating grounds of detention, detaining authority has to apply its own mind. It cannot simply reiterate whatever is written in the dossier. Here it will be apt to notice the observations of the Supreme Court in the case of *“Jai Singh and ors vs. State of J&K”* (AIR 1985 SC 764), which are reproduced hereunder:

“First taking up the case of Jai Singh, the first of the petitioners before us, a perusal of the grounds of detention shows that it is a verbatim reproduction of the dossier submitted by the Senior

Superintendent of Police, Udampur, to the District Magistrate requesting that a detention order may kindly be issued. At the top of the dossier, the name is mentioned as Sardar Jai Singh, father's name is mentioned as Sardar Ram Singh and the address is given as village Bharakh, Tehsil Reasi. Thereafter it is recited "The subject is an important member of"

Thereafter follow various allegations against Jai Singh, paragraph by paragraph. In the grounds of detention, all that the District Magistrate has done is to change the first three words "the subject is" into "you Jai Singh, S/o Ram Singh, resident of village Bharakh, Tehsil Reasi". Thereafter word for word the police dossier is repeated and the word "he" wherever it occurs referring to Jai Singh in the dossier is changed into "you" in the grounds of detention. We are afraid it is difficult to find proof of non-application of mind. The liberty of a subject is a serious matter and is not to be trifled with in this casual, indifferent and routine manner."

15. From perusal of above quoted observations of the Supreme Court, it is crystal clear that grounds of detention and dossier, if in similar language, go on to show that there has been non-application of mind on the part of detaining authority. As already noted, in the instant case, it is clear from the record that the dossier and the grounds of detention contain almost similar wording which shows that there has been non-application of mind on the part of the detaining authority. The impugned order of detention is, therefore, unsustainable in law on this ground alone.

16. For the reasons discussed above, the detention Order no. DMS/PSA/24/2024 dated 05.09.2024, passed by District Magistrate, Srinagar, is quashed. Respondents, including Superintendent Jail concerned, are directed to release the detenu forthwith, provided he is not required in any other case.

17. **Disposed of.**

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

(Vinod Chatterji Koul)
Judge

Srinagar
24.12.2024
(Qazi Amjad, Secy)