

HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT SRINAGAR

HCP no.167/2024

Reserved on: 03.03.2025

Pronounced on: 20.03.2025

Ghulam-u-Din War

..... Petitioner (s)

Through: Mr. Aabid Hamid Pandith, Advocate

V/s

Union Territory of J&K and ors.

.....Respondent(s)

Through: Mr Jahingeer Ahmad Dar, GA

CORAM:

HON'BLE MR. JUSTICE TASHI RABSTAN, JUDGE

JUDGEMENT

1. Through the medium of this petition, petitioner is seeking quashing of Order No.13/DMB/PSA of 2024 dated 19.04.2024, passed by District Magistrate, Bandipora – respondent no.2 (detaining authority), whereby the detenu, namely, Ghulam u Din War S/o Late Habibulla War R/o Tengpora Naidkhai Tehsil Hajin District Bnadipora, has been placed under preventive detention to prevent him from acting in any manner prejudicial to the maintenance of public order.
2. Reply has been filed by the respondents.
3. I have heard learned counsel for parties. I gone through the detention record produced by the counsel for the respondents and considered the matter.
4. Assailing the impugned order, counsel appearing for petitioner has stated that detenu has been falsely implicated by police station Sumbal in a number of FIRs in the year 2010, 2014 and 2016 on the basis of ill will, mala fide and extraneous consideration and police manipulated false charges against detenu, but detenu got bailed out from every false

charges. The grounds of detention have been concocted and fabricated and impugned order of detention has been passed only on apprehension. The material relied upon by detaining authority has not been furnished to detenu to make an effective representation. Detenu was not told about his right to whom representation was to be made against his detention.

5. The above contentions of counsel for petitioner are misconceived. The reason being that perusal of communication no.DMB/PSA/2024/228-30 dated 19.04.2024, addressed to detenu, in unequivocal terms mentions that detenu has been informed to make representation to the Government and Detaining Authority against detention order. Therefore, he cannot be heard saying that he was informed to whom representation was to be made against his detention.
6. Perusal of grounds of detention reveals that exclusive subjective satisfaction has not been reached on the basis of nine FIRs, but there had been inputs, reports and material before the detaining authority which suggested that detenu even after bailed out in the FIRs, had been indulging in antinational activities. It is also mentioned in grounds of detention that beat officer of concerned area along with report of concerned Chowkidar and Lumberdar revealed about detenu's involvement in antinational activities and if kept free detenu may again indulge in antinational activities.
7. The Supreme Court in the case of *Debu Mahato v. State of W.B. (1974) 4 SCC 135*, has categorically observed and said that while ordinarily-speaking one act may not be sufficient to form requisite satisfaction, there is no such invariable rule and that in a given case "*one act may suffice*". That was a case of wagon-breaking and given the nature of the Act, it was held therein that "*one act is sufficient*". The same principle was reiterated in the case of *Anil Dely v. State of W.B. (1974) 4 SCC 514*. It was only a case of theft of railway signal material. Here too "*one act was held to be sufficient*".
8. Similarly, in *Israil S K v. District Magistrate of West Dinajpur (1975) 3 SCC 292* and *Dharua Kanu v. State of W.B. (1975) 3 SCC 527*, single act of theft of telegraph copper wires in huge quantity and removal of

railway fish-plates respectively, was held *sufficient to sustain the order of detention*. In *Saraswathi Seshagiri v. State of Kerala (1982) 2 SCC 310*, a case arising under a single act, viz. attempt to export a huge amount of Indian currency was held sufficient. In short, the principle appears to be this: “*Though ordinarily one act may not be held sufficient to sustain an order of detention, one act may sustain an order of detention if the act is of such a nature as to indicate that it is an organised act or a manifestation of organised activity.*”

9. The gravity and nature of the act is also relevant. The test is whether the act is such that it gives rise to an inference that the person would continue to indulge in similar prejudicial activity. That is the reason why single acts of wagon-breaking, theft of signal material, theft of telegraph copper wires in huge quantity and removal of railway fish-plates were held sufficient by the Supreme Court. Similarly, where a person tried to export huge amount of Indian currency to a foreign country in a planned and premeditated manner, as in the present case detenu has been found continuously indulging in prejudicial activities since 2018, it was held that such single act warrants an inference that he will repeat his activity in future and, therefore, his detention is necessary to prevent him from indulging in such prejudicial activity.
10. Another contention of counsel for petitioner is that grounds of detention are verbatim copy of police dossier which clearly shows that detaining authority has not applied its mind to the available material but has made detention order mechanically. This contention of counsel for petitioner is specious. The detaining authority has given made grounds of detention on the basis of material produced before it by sponsoring agency and deriving subjective satisfaction has passed order impugned.
11. It may be further added here that the responsibility for the security of State, or maintenance of public order, or essential services and supplies, rests on the Executive and it must, therefore, have necessary powers to order the preventive detention. Thus, the subjective satisfaction of a detaining authority to detain a person or not, is not open to objective assessment by a Court. The Court is not a proper forum to scrutinise merits of administrative decision to detain a person. The Court cannot

substitute its own satisfaction for that of the authority concerned and decide whether its satisfaction was reasonable or proper, or whether in the circumstances of the matter, the person concerned should have been detained or not. It is often said and held that the Courts do not even go into the question whether the facts mentioned in grounds of detention are correct or false. The reason for the rule is that to decide this, evidence may have to be taken by the Courts and that is not the policy of law of preventive detention. This matter lies within the competence of Advisory Board.

12. Further contention of counsel for petitioner is that detenu was not provided the material record and non-supply of such important material prevented detenu from making an effective representation. This contention of counsel for petitioner is misconceived. The detention record produced by Mr. Jahingeer Ahmad Dar, learned GA, on its perusal shows that it *inter alia*, contains '*Execution Report*' and '*Receipt of Ground of detention & other relevant record*'. Perusal whereof reveals that as many as 189 leaves have been given to detenu. So, the procedural safeguard has been followed and complied with by respondents. Resultantly, the contention of counsel for petitioner that the material has not been supplied to detenu is not sustainable.

13. It is being also stated detention order has been passed against detenu on the basis of unwarranted and unsubstantiated assertion that the detenu is a habitual offender and despite being arrested in various FIRs under relevant provisions of law, he has indulged in various prejudicial activities, more particularly when detenu has been bailed out in all those FIRs which have been mentioned by detaining authority in grounds of detention.

14. The above contentions of counsel for petitioner are misconceived. If the Government/detaining authority is able to satisfy that a person by himself or in association with other members habitually commits or attempts or abets such commission of offences punishable under Penal Laws, he can be detained in terms of the Act of 1978. The essential concept of preventive detention is that detention of a person is not to

punish him for something he has done but to prevent him from doing it.

15. It is pertinent to mention here that in view of the activities of the detenu mentioned in the grounds of detention, violating various provisions of RPC, UAPA, continuity and habituality in indulging in the same type of offences and prejudicial activities and taking note of the abundant factual details available in the grounds of detention and also of the fact that all the procedures and statutory safeguards have been fully complied with by the detaining authority, I am of the view that the decisions 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 & others*, 2009 (1) S.L.J 219; *Abdul Latief Abdul Wahab Sheikh v. B.K. Jha*, 1987 (2) SCC 22; *Ramesh Yadav v. District Magistrate Etah & ors*, 1985 (4) SCC 232; *Banka Sneha Sheela v. State of Telangana*, 2021 SCC Online SC 530; *Mohammad Rafiq Mir v. UT of J&K and anr* WP(Crl) no.107/2020 *Mujeeb Shafi Ganie v. UT of J&K and anr* (WP(Crl) no.202/2022, are not applicable to the present case as being distinguishable in facts and circumstances of the instant case.

16. Section 8 (1) of the J&K Public Safety Act, 1978, provides that the Government may, if it is satisfied with respect to any person that with a view to prevent him from acting in any manner prejudicial to the security of the State or the maintenance of public order, it is necessary so to do, make an order directing that such a person be detained. Subsection (3) of Section 8 of the Act gives various prejudicial activities which fall within the meaning of “*acting in any manner prejudicial to the maintenance of public order*”. It covers in its fold prejudicial activities in the nature of promoting, propagating or attempting to create, feelings of enmity or hatred or disharmony on the ground of religion, race, community or region. It also includes activities of making preparations for using or attempting to use or using or instigating inciting, provoking or otherwise abetting the use of force

where such preparation, using, attempting, instigating, inciting, provoking or abetting, disturbs or is likely to disturb public order. The attempting to commit, or committing, or instigating, provoking or otherwise abetting commission of mischief where the commission of such mischief disturbs or is likely to disturb public order, comes within the meaning of activities in any manner prejudicial to the maintenance of public order. Acting in any manner prejudicial to maintenance of public order, also consists of attempting to commit or committing or instigating, inciting, provoking or otherwise abetting the commission of an offence punishable with death or imprisonment for life or imprisonment of a term extending to seven years or more where the commission of such offence disturbs, or is likely to disturb public order. Subsection (4) of Section 4 of the Act provides that when an order of detention is made, detaining shall report the fact to the Government together with the grounds on which the order has been made and such other particulars as in his opinion have a bearing on the matter, and no such order shall remain in force for more than twelve days after making thereof unless in the interregnum, it has been approved by the Government.

17. In the present case, detaining authority has reported the fact about making of order of detention to the Government. I have gone through the detention record produced by Mr. Jahingeer Ahmad Dar, learned GA, counsel appearing for respondents which has been approved and confirmed by the competent authority.
18. In such circumstances, detaining authority had, immediately upon issuance of impugned detention order, reported the said fact to the Government and the Government approved impugned detention order. Thus, there is no hindrance in saying that provisions of Subsection (4) of Section 8 of the Act of 1978, have been strictly complied with by respondents.
19. Section 9 of the Act provides that a detention order may be executed at any place in the manner provided for executing the warrants of arrest. Section 10 of the Act provides that any person in respect of whom a detention order has been made under Section 8 of the Act shall be liable

to be detained in such a place and under such conditions including the conditions as to the maintenance of the discipline and punishment for the breaches of the discipline as the Government may specify and that any person placed under preventive detention shall be liable to be removed from one place of detention to another place of detention. Where a person has been detained in pursuance of an the detention order under Section 8 of the Act, made on the two or more grounds, such order of detention, as envisaged under Section 10-A of the Act, shall be deemed to have been made separately on each of such grounds and as a consequence whereof, such an order shall not be deemed to be invalid or inoperative merely because one or some of the grounds is or are vague, non-existent, not relevant, not connected or not proximately connected with such person.

20. Section 13 of the Act provides that when a person is detained in pursuance of a detention order, the authority making the order shall, as soon as may be, but ordinarily not later than five days and in exceptional circumstances and for reasons to be recorded in writing, not later than ten days from the date of detention, communicate to him, in the language which is understandable to him, the grounds on which the order has been made and shall afford him the earliest opportunity of making a representation against the order of detention. However, Subsection (2) of Section 13 provides that nothing in subsection (1) of Section 13 shall require the authority to disclose facts which it considers to be against the public interest to disclose.

21. In view of the Statutory and the Constitutional requirements to be followed by the respondents in the present case, as has also been noticed above, I have gone through the detention record produced by the counsel for the respondents. All the material relied upon by the detaining authority had been furnished to the detenu. He had been intimated to make a representation to both the Government and the detaining authority.

22. Article 22 (5) of the Constitution of India casts a dual obligation on the detaining authority, namely.:

- (i) To communicate grounds of detention to the detenu at the earliest;
- (ii) To afford him the earliest opportunity of making a representation against the detention order which implies the duty to consider and decide the representation when made, as soon as possible.

23. The Supreme Court has iterated that the communication means bringing home to the detenu the effective knowledge of the facts and the grounds on which the detention order is based. To a person who is not conversant with the English language, in order to satisfy the requirement of the Constitution, must be given the grounds in a language which he understands and in a script that he can read, if he is a literate person. If a detained person is conversant with English language, he will naturally be in a position to understand gravamen of the charge against him and the facts and circumstances on which order of detention is based. So is the position in the present case.

24. The Constitution has guaranteed the freedom of movement throughout the territory of India and has laid down the detailed rules about the arrest and the detention. It has also, by way of the limitations upon the freedom of the personal liberty, recognised right of the State to legislate for preventive detention, subject to certain safeguards in favour of detained person, as laid down in Clauses (4) & (5) of Article 22. One of those safeguards is that detained person has a right to be communicated the grounds on which order of detention has been made against him, in order that he may be able to make his representation against the order of detention. In the circumstances of instant case, it has been shown that detenu had opportunity, which the law contemplates in his favour, for making an effective representation against his detention. He, however, did not avail of said opportunity.

25. In the present case detention record, on its perusal, reveals that Advisory Board has conveyed that grounds of detention formulated by detaining authority were sufficiently supported by dossier/material and that grounds of detention and other relevant material were furnished to detenu at the time of taking him into detention and that detenu was also informed about his right of making representation against his detention. However, no representation had been made by detenu and, therefore,

there was no rebuttal to the grounds of detention formulated by detaining authority. The report of Advisory Board also reveals that all the requirements contemplated under the Act, have been complied with and no error of law or procedure, which would invalidate the detention, have been committed by detaining authority and as an outcome thereof, the detention is in conformity with the principles as enshrined under Article 22(5) of the Constitution of India and the provisions of the Act. The Advisory Board has opined that there is sufficient cause for detention of detenu with a view to preventing him from acting in any manner prejudicial to the maintenance of public order.

26. For the reasons discussed above, instant writ petition is dismissed.

27. Detention record be returned to counsel for respondents.

(Vinod Chatterji Koul)
Judge

Srinagar
20.03.2025
(Qazi Amjad, Secy)

Whether approved for reporting? Yes/No.

