Sr. No. 1

HIGH COURT OF JAMMU & KASHMIR AND LADAKH AT JAMMU

Pronounced on : 25.09.2024

Case No: **HCP No. 78/2024**

Sourav Gupta, Age 32 years,
S/o Sh. Om Parkash Gupta,
Through his father
Sh. Om Parkash Gupta,
Aged 68 years,
S/o Sh. Munshi Ram,
R/o Ward No. 9, Vijaypur, Samba. ...Petitioner(s)..

Through :- Mr. Himanshu Beotra, Advocate.

Vs

1. Union Territory of Jammu and Kashmir through its Principal Secretary, Department of Home, Civil Secretariat, Jammu/Srinagar.
2. The District Magistrate, Samba.
3. The Senior Superintendent of Police, Samba.
4. The Superintendent, District Jail, Kathua. .....Respondent(s)..

Through :- Mr. Bhanu Jasrotia, GA.

Coram: HON'BLE MR. JUSTICE PUNEET GUPTA, JUDGE

JUDGMENT

1. The petitioner has challenged the Detention Order No. 13/PSA of 2024 dated 01.05.2024 passed by respondent No.2 on the ground that the detention is verbatim production of the dossier provided by respondent No.3-SSP, Samba; that there is no live and proximate link between the grounds of detention and the purpose of detention; that the consideration for passing the detention order is unrelated to public order; that the grounds of detention were not communicated to the detenu and thus the detenu could not make effective representation before the authorities; that

the subjective satisfaction is not made out from the impugned detention order; that the detention order was passed when the detenu was already in custody and the requirement as mandated by law while the accused is in custody has not been followed while passing the detention order. The detention order has been confirmed subsequently by the government. The petitioner is presently lodged in District Jail, Rajouri as per the record.

2. The petition is filed by the father of detenue, namely, Sourav Gupta.

3. The counter stands filed by respondent Nos. 2 & 3. It is submitted by the respondents that the detenu is of criminal mind and the action taken against the petitioner under substantive laws has not proved deterrent for the petitioner. The dossier submitted by respondent No. 3 has mentioned of the criminal activities of the detenu. The petitioner as well as his father was informed of the grounds of the detention order. Three FIRs stand registered against the petitioner which shows the threat to the life and liberty of the people. The petitioner was also informed that he can make representation to the government, if he so desires. It is further stated that all the documents have been provided to the petitioner and the contents of the detention order and the other documents have been explained to the detenue. The compliance was done as per the provisions of J&K Public Safety Act. The subjective satisfaction cannot be challenged by the petitioner in the case in hand. It is in the light of the submissions made in the counter that the respondents pray for dismissal of the petition.

4. Heard Mr. Himanshu Beotra, learned counsel for the petitioner and Mr. Bhanu Jasrotia, learned Government Advocate for the respondents. The record has also been produced by the counsel for the respondents.

5. The learned counsel for the petitioner has argued that the petitioner was not provided all the material which was required to be provided to him and includes the dossier submitted by respondent No.3 to respondent

No.2. The execution report is on the file as well as the receipt of grounds of detention from the detenue. As per the same 48 leaves have been provided to the petitioner on 10.05.2024 in District Jail, Kathua. The documents provided to the petitioner in District Jail include contents of detention warrant and grounds of detention. What other documents have been provided to the petitioner is not specifically made out from the execution report. It cannot be specifically made out from the execution report that the dossier provided by respondent No.3 to respondent No.2 was infact provided to the petitioner. As the dossier was the basis for passing the detention order against the petitioner, it was imperative upon the authorities to provide the copy of the same to the petitioner. In order to make effective representation before the authorities concerned, the detenu or his representative has to be armed with all the relevant material which made the basis for detention order. It requires no reiteration that in the absence of all relevant material which was required to be provided to the detenu but not provided, the detenu cannot make effective representation before the authorities in terms of the provisions of the Public Safety Act.

6. The very fact that the petitioner has been deprived the benefit of perusing the dossier and prevented him from making effective and meaningful representation before the authorities, the detention order passed against the petitioner suffers from illegality which cannot be condoned by the court. It cannot be said that the providing of the all relevant material to the petitioner is not a mere formality which can be dispensed with by the respondents conveniently. What is required to be done under law has to be done without fail. Article 22 (5) of the Constitution of India in unmistakable terms provides that as and when person is put under preventive detention the authority making the order has to communicate

the grounds on which the order is passed and also to provide earliest opportunity to make representation against the order. The very constitutional guarantee provided to the detenu is sacred one in order to provide full opportunity to the detenu to seek redressal of grievance if he has any against the detention order and the grounds which became the basis for passing detention order. Undoubtedly, the respondents have failed to fulfil the obligation cast upon them as per Article 22 (5) of the Constitution of India as he has been prevented from making effective and meaningful representation to the authorities. The petition is required to be allowed for the aforesaid reason.

7. Admittedly, the detenu was under custody in FIR No. 52/2024 registered with Police Station, Vijaypur under the provisions of Penal Code and Arms Act. This fact is recorded in the detention order itself. The contention is raised by the petitioner that though the petitioner was already in custody in FIR No. 52/2024 no reason has been provided by the detaining authority for passing detention order in such circumstance. It is not mentioned in the order that the petitioner is likely to get bail order and in case he gets the same, the public order is likely to be threatened due to the activities of the petitioner.

8. The counsel for the respondents has argued that the activities of the petitioner can be traced from the very first FIR registered in the year 2017 and the activities have continued as lately as registration of FIR No. 52/2024 with Police Station, Vijaypur. The unstoppable criminal activities of the petitioner forced the respondent No.3 to pass the detention order.

9. It is apt to mention that the detention order refers to registration of three FIRs against the detenu, the first being registered in the year 2017, second in 2019 and lastly FIR No. 52/2024 registered on 13.04.2024. The

petitioner stands bailed out in FIR No. 15/2017 and FIR No. 17/2019, both of them having been registered with Police Station, Vijaypur.

10. No plausible reason is specified in the detention order to the effect that the petitioner despite being in custody in FIR No. 52/2024, there is every likelihood of the detenu being released from custody in the said FIR or even any bail application is pending disposal in the court of law. No compelling reason can be said to have been shown in the detention order in the light of the fact that the detenu was in custody in a case registered before Police Station Vijaypur. It is a different matter that the petitioner was bailed out subsequent to the passing of the detention order.

11. In **Dharmendra Suganchand Chelawat and another Vs. Union of India and others** reported in **(1990) AIR (SC) 1196** the Hon'ble Supreme Court in a case like the present one where the detention order did not reveal that the detenu is likely to be released in the case which has been registered against the detenu, the court quashed the detention order. The judgment applies on all fours in the case in hand. The detention order is liable to be quashed as well for the aforesaid reason.

12. In **Union of India Vs. Dimple Happy Dhakad** reported as **AIR 2019 SC 3428**, the Hon'ble Supreme Court has held that the subjective satisfaction of the detaining authority is not immune from judicial reviewability.

13. The subjective satisfaction of the detaining authority is not made out from the detention order as the impugned order failed to record its any satisfaction of the consequences of the activities to which the petitioner may indulge in case the petitioner is likely to get bail in the FIR registered in the year 2024.

14. The liberty cannot be snatched away from an individual as the same is sacrosanct and guaranteed under the Constitution. The detention order has

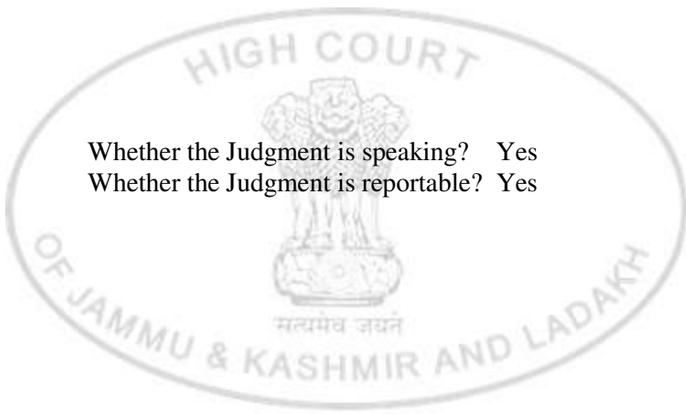
to be passed in accordance with the provisions of law and any significant aberration from the same cannot be ignored by the court.

15. The court need not go into other grounds pleaded for quashment of detention order in view of what has been held above. The detention order stands quashed. The petitioner-Sourav Gupta shall stand released forthwith, if not required in any other case.

16. The record produced by the respondents be returned to the counsel for the respondents.

(PUNEET GUPTA)
JUDGE

Jammu:
25.09.2024
Pawan Chopra



Whether the Judgment is speaking? Yes
Whether the Judgment is reportable? Yes

Pawan Chopra
2024.09.25 14:25
I attest to the accuracy and
integrity of this document