HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT SRINAGAR

WP(Crl) No. 79/2023

Reserved on: 02.09.2024

Pronounced on: 05.09.2024

Mohd. Qasim Mangnoo
S/O Late Ab. Qayoom Mangnoo
R/O Bonbazar Shopian District Shopian.

…Petitioner(s)

Through: Ms. Insha Rashid, Advocate.

Vs.

1. Union Territory of Jammu & Kashmir, through Financial Commissioner (Addl. Chief Secy.) to Govt., Home Department. Civil Secretariat, Srinagar/Jammu.

2. District Magistrate, Shopian.

…Respondent(s)

Through: Ms. Rekha Wangnoo, GA.

CORAM: HON'BLE MR. JUSTICE M. A. CHOWDHARY, JUDGE

JUDGMENT

1. The petitioner, in terms of the Detention Order No. 160/DMS/PSA/2023 dated 07.02.2023 (for short 'impugned order'), has been detained in the interest of security of the UT/Country by respondent No.2 -District Magistrate Shopian- (for short 'Detaining Authority') in exercise of powers conferred on him under the provisions of Section 8(a) of the J&K Public Safety Act, 1978. The said detention order has been challenged through the medium of the present petition, allegedly being in breach of the provisions of Article 21 as well as Article 22(5) of the Constitution of India.

2. The petitioner has pleaded in the petition that he along-with his relatives (cousins) was arrested on 17.11.2022 by the personnel of SOG Camp Shopian headed by Dy.S.P Operations, without any charges or allegations and detained the detenue for months without producing him before any Judicial or Executive Magistrate or following the procedure as provided under Section 41-A of the Cr.PC and the guidelines issued by Hon'ble Apex Court in this regard. It has been pleaded that the detenue was placed in illegal and wrongful confinement of SOG Police Shopian. It is being contended that the allegations/grounds of detention are vague and mere assertions of the detaining authority and no prudent man can make an effective and meaningful representation against these allegations. Furthermore, it is stated that the allegations whose mention is made in the grounds of detention have no nexus with the detenue and have been fabricated by the police in order to justify illegal action of detaining the detenue.

3. In addition, it is stated that the Detaining Authority has not prepared the grounds of detention by itself whileas, relied the impugned detention order upon dossier only. Also, it is being pleaded that the Detaining Authority has not furnished the material and other connected documents, relied upon, to the detenue to enable him to make an effective representation. Detenue has also not been informed that within what time-frame he can make representation against his detention, which clearly shows violation of the right of the detenue guaranteed in terms of the Article 22(5) of the Constitution of India.

4. Respondents, in their reply affidavit, have stated that the grounds of detention are precise, proximate, pertinent and relevant. There is no vagueness or staleness in the grounds coupled with definite indications as to the impact thereof, which has been precisely stated in the grounds of detention. Further it is contended that the grounds of detention give complete account of the activities of the detenue which on the face of it are highly prejudicial for maintenance of security of the UT/Country, as such, there was no option left but to order detention of the detenue under Public Safety Act.

5. The main plea of learned counsel for the detenue is that the allegations made in the grounds of detention are vague, non-existent and no prudent man can make a representation against such allegations and passing of detention on such grounds is unjustified and unreasonable. All the allegations levelled against the detenue are far from reality and that the detenue is not involved in any unlawful activity, so as to justify his preventive detention.

6. Learned GA, ex-adverso, submits that the record reveals that there is no vagueness in the grounds of detention. The procedural safeguards prescribed under the provisions of Public Safety Act and the rights guaranteed to the detenue under the Constitution have strictly been followed in the instant case. The detenue has been furnished all the material, as was required, and was also made aware of his right to make representation to the Detaining Authority against his detention. He further argued that the pleas of the grounds of detention being vague, non-existent, non-relevant, not proximate or invalid, shall not invalidate the detention order as statutorily provided in Section 10-A of the J&K PSA, in terms whereof petitioner has been detained. He

finally submits that the impugned detention order, having been passed perfectly in consonance with law, grounds of detention explained / communicated to the detenue, as is disclosed from his receipt of the material, all safeguards complied with the subjective satisfaction of Detaining Authority, cannot be gone into, to substantiate its own opinion by the Court. It was prayed to uphold the impugned detention order.

7. Heard, perused the detention record and considered.

8. On perusal of the record it reveals that the detenue has not been furnished all the documents pursuant to the order impugned in terms of which he was taken into custody. He has not been provided copy of the communication of the sponsoring agency referred to in the impugned order which is stated to have been received from the said agency, on which the Detaining Authority has stemmed its subjective satisfaction.

9. The Hon'ble Apex Court in the judgment rendered in the case '***Sophia Gulam Mohd. Bham V. State of Maharashtra & Ors. (AIR 1999 SC 3051)',*** has held as under:-

> *"The right to be communicated the grounds of detention flows from Article 22(5) while the right to be supplied all the material on which the grounds are based flows from the right given to the detenue to make a representation against the order of detention. A representation can be made and the order of detention can be assailed only when all the grounds on which the order is based are communicated to the detenue and the material on which those grounds are based are also disclosed and copies thereof are supplied to the person detained, in his own language."*

10. It needs no emphasis that the detenue cannot be expected to make a meaningful exercise of his constitutional and statutory rights

guaranteed under **Article 22(5) of the Constitution of India** unless and until the material on which the detention is based, is supplied to the detenue. If the detenue is not supplied the material on which detention order is based, the detenue cannot be in a position to make an effective and meaningful representation against his detention.

11. It is also a fact that time frame within which representation was required to be filed has not been conveyed to the detenue. This too has to be treated as a breach of right of the detenue under Section 13 of Public Safety Act and Article 22 of the Constitution of India. Allahabad High Court has rendered the judgment in the case '***Jitendra Vs. District Magistrate (2004 CriLJ 2967)*** in this regard and has observed that:

> *"...There is another reason as to why in our judgment the impugned detention order would be vitiated. Since the detenue's right to make a representation to the detaining authority was only available to him till the approval of the detention order by the Government, it follows as logical imperative that the detaining authority should have communicated to the detenue* ***in the grounds of detention the time limit, in which, he could make a representation to him*** *i.e. till the approval of the detention order by the State Government."*

12. Grounds of detention reveal that the detenue has been working as active OGW (over ground worker) for terrorist organisations LeT/HM, providing support like guiding the militant movements through safe passages, carrying their weapons from one place to another, providing of transport facility as and when required by these terrorists, arranging boarding and lodging facility, medicines, clothing etc. With no specific allegations on these counts, his involvement has been shown in the commission of offences in a case registered vide FIR Nos. 23/2013, 84/2014, 122/2014, 247/2016,

259/2016 and 261/2016 at Police Station Shopian, with no details as to his trial or their outcome. This too is a stale ground to base the detention of the detenue in the month of February 2023, of an incident lastly in the year 2016, after a period of more than six years. The afore-stated grounds of detention, as such, are general allegations against the detenue, with no specific instances/incidents. The detention order based on such vague and stale grounds is not sustainable, for the reason that the Detaining Authority before passing the order has not applied its mind to draw subjective satisfaction to order detention of the detenue by curtailing his liberty which is a valuable and cherishable right guaranteed under Article 21 of the Constitution of India. In this regard reliance can be placed on the judgments of Supreme Court in the cases **(i) Jahangirkhan Fazal Khan Pathan Vs. Police Commissioner Ahmadabad (1989) 3 SCC 590 and, (ii) Abdul Razak Nanekhan Pathan Vs. Police Commissioner Ahmadabad AIR 1989 SC 2265.**

13. The detenue, as discussed hereinabove, was ordered to be detained vide impugned detention order on vague and general grounds. The detenue in absence of specific grounds was not able to make an effective and meaningful representation, either to the detaining authority or to the Government of J&K within statutory period. Therefore, the detenue has been denied the legal, statutory and constitutional safeguards against his detention, rendering his detention unconstitutional.

14. In terms of the law laid down above and the submissions made on behalf of both the parties, the order of detention, impugned in the instant petition, does not sustain on the aforesaid grounds. In the

afore-stated backdrop, this petition is allowed. Order of detention 160/DMS/PSA/2023 dated 07.02.2023 passed by District Magistrate Shopian is, as such, quashed. The detenue namely Mohd. Qasim Mangnoo S/O Late Ab. Qayoom Mangnoo R/O Bonbazar Shopian, is ordered to be released from the preventive custody forthwith provided he is not required in connection with any other case(s).

15. Detention record is directed to be returned back to the learned counsel for the respondents.

16. Petition is **disposed of**, as above.

(M. A. CHOWDHARY)
JUDGE

Srinagar
05.09.2024
Muzammil. Q

Whether the judgment/order is reportable: Yes / No

Muzamil Qadir
2024.09.05 14:18
I attest to the accuracy and
integrity of this document