HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT SRINAGAR
…
WP(Crl) No. 515/2022

Reserved on: 31.01.2024
Pronounced on: 23.02.2024

Gowhar Ahmad Bhat …….Petitioner(s)
Through: Mr. G. N. Shaheen, Advocate with
Mr. Asif Ali, Advocate

Versus

Union Territory of J&K and Ors. ……Respondent(s)
Through: Ms. Reekha Wangnoo, GA.

CORAM:
HON'BLE MR JUSTICE VINOD CHATTERJI KOUL, JUDGE

JUDGEMENT

1. Through the medium of this writ petition, Order No.137/DMS/ PSA/ 2022 dated 28.06.2022, passed by District Magistrate, Shopian whereby detenu, namely, *Ghowhar Ahmad Bhat S/o Abdul Salam Bhat R/o Cheermarg Zainapora, Tehsil Zainapora, District Shopian* has been placed under preventive detention with a view to prevent him from acting in any manner prejudicial to the security of the UT/Country, is sought to be quashed and the detenu set at liberty on the grounds made mention of therein.

2. The main grounds on which the detention is sought to be quashed are that the grounds of detention are vague, indefinite, cryptic, and do not mention any activity or name of any person with whom the detenu would have caused the disruption of the public order resulting in threat to the security of the UT/country. It is stated that detenu was arrested on 02.03.2022 by police station Zainapora Shopian and booked in FIR no.15/2022 under section 307 IPC, 7/27 I.A.Act, 16, 19, 20, 38, ULA(P) Act and in view of offences alleged therein, there was no likelihood of detenu getting out of custody on bail in near future as the offence alleged against detenu are non-bailable offence and neither the detenu had applied for bail nor there was any occasion for respondent no.2 to pass impugned order of detention. The detenu has not been provided the material, such as copy of dossier, copy of FIRs, statements under Section 161 Cr.P.C. of the cases mentioned in grounds of detention, seizure memos, disclosure statements etc. to enable him to make an effective representation against his detention.

3. Respondents have filed reply affidavit, insisting therein that the detenu is a hardcore OGW and facilitator of terrorist activities of LeT Outfit in District Shopian and his activities are highly prejudicial to the sovereignty and integrity of the security of the UT/Country and, therefore, his remaining at large is a threat to the security situation prevailing in the District. 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 the parties and considered the matter. I have gone through the detention record produced by the counsel for respondents.

5. Taking into account the rival contentions of parties and submissions made by learned counsel for parties, 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 detention Papers"*. It would be advantageous to reproduce relevant portion of "*Execution Report"* hereunder:

> "In compliance to District Magistrate Shopian vide order No. 137/DMS/PSA/2022 dated 28.06.2022, I ASI Mohammad Ashraf No. 88/GRPK of DPL Shopian have took the custody of detenue namely Gowhar Ahmad Bhat S/o Abdul Salam R/o Cheermarg Zainpora Tehsil Zainpora District Shopian today on 02.07.2022 for execution of PSA warrant at District Jail Baramulla, contents over leaf have been read over and explained to Detenue in Urdu/English and Kashmiri languages which he understood fully. The detenue has also been informed that he can make representation to the Govt. against his detention, if he so desires and in lieu of which his signature has been obtained below at mark 'A'.
>
> The detenue along with relevant documents i.e. detention warrant & grounds of detention have been handed over to jail authorities of District jail Baramulla for further lodgement today on 02.07.2022 against proper receipt."

6. It would also be appropriate to reproduce relevant portion of "*Receipt* of Grounds of Detention" herein:

> "Received the detention order from District Shopian vide No.. 137/DMS/PSA/2022 dated 28.06.2022 consisting of (03) leaves through Suplerintendent District Jail Baramulla today on 02.07.2022. The contents of the grounds of detention were read over and explained to me in languages Urdu, English/Kashmiri which I understand fully.……"

Thus, it is unambiguously clear and evident from perusal of Execution Report and Receipt of grounds of detention that only three leaves have been given to detenu.

7. Perusal of impugned detention order reveals that on the basis of dossier placed before detaining authority by Senior Superintendent of Police, Shopian vide no. CS/D-1/2022/4649 dated 27.06.2022, detaining authority was satisfied that there are sufficient grounds to prevent detenu from acting in any manner prejudicial to the security of the UT/Country, it was necessary to detain him under necessary provisions of law. So, it is on the basis of the 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, including FIR no.15/2022 that appears to have weighed with detaining authority, while making detention order. The detention record, as noted above, does not indicate that copies of aforesaid First Information Report, Statements recorded under Section 161 Cr. PC and other material collected in connection with investigation of aforesaid case was ever supplied to the 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.

8. 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***.

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

10. Based on the above discussion, the petition is disposed of and Detention Order no. 137/DMS/PSA/2022 dated 28.06.2022, issued against the detenu, is quashed. As a corollary, respondents are directed to set the detenu at liberty forthwith provided he is not required in any other case. **Disposed of**.

(Vinod Chatterji Koul)
Judge

Srinagar
23.02.2023
(Qazi Amjad, Secy.)

Whether approved for reporting? Yes/No

HIGH COURT
JAMMU & KASHMIR AND LADAKH