S. No. 2

IN THE HIGH COURT OF JAMMU & KASHMIR AND LADAKH AT SRINAGAR

HCP No. 26/2023

Shahid Shafi Sheikh …Petitioner(s)

Through: Mr. G. N. Shaheen, Advocate.

Vs.

Union Territory of J&K and Others ...Respondent(s)

Through: Mr. Bikramdeep Singh, Dy.AG

CORAM:

HON'BLE MR JUSTICE JAVED IQBAL WANI, JUDGE

O R D E R

28.11.2024

(ORAL)

1. Impugned in the instant petition filed under Article 226 of the Constitution is detention order No.167/DMS/PSA/2023 dated 17.07.2023 (for short the impugned order) passed by respondent 2 herein (for short the detaining authority) against the petitioner herein under and in terms of the provisions of the J&K Public Safety Act, 1978, (for short the Act of 1978).
2. The petitioner has challenged the impugned order in the instant petition on multiple grounds.
3. **Reply** to the petition has been filed by respondent 2 wherein it is being admitted that the petitioner came to be detained under the provisions of the Act of 1978. It is being also stated that the said order of detention came to be passed against the petitioner validly and legally, and in the process all statutory requirements and Constitutional guarantees came to be fulfilled and complied with by the detaining authority. It is being further stated that the detaining authority passed the detention order against the petitioner herein after deriving its subjective satisfaction, while stating further that the grounds of detention, order of detention, as well as entire material referred and relied upon by the detaining authority came to be furnished to the petitioner well within the statutory period enshrined under Section 13 of the Act, and upon execution of the said order of

detention, the contents of the detention order, warrant, and grounds of detention were read over and explained to the petitioner herein in the language which he fully understood and in lieu whereof the petitioner subscribed his signatures on the execution report. It is being next stated that the petitioner herein came to be informed as well that he can make a representation against his detention either to the detaining authority or to the Government. It is being further stated that the plea of the petitioner that he submitted a representation against his detention, the said representation, as has been submitted before the District Magistrate on 7th of August, 2023, post issuance of order of detention dated 17th of July, 2023, when the District Magistrate had become *functus-officio* and his representation as such, could not be considered by the District Magistrate.

Heard counsel for the parties and perused the record.

4. Perusal of the record available on the file in general and grounds of detention in particular manifestly reveal that the petitioner, as per material furnished by the sponsoring agency to the detaining authority, has been alleged to be a close associate belonging to the militant organization working an OGW and had boarded two militants, namely Marifat Maqbool of Chaigund, Keegam, and Sameer Ahmed Sheikh of Check Cholan Shopian, and kept them at his home for two days. The grounds of detention, however, do not detail out the date and time the said terrorists stayed in the house of the petitioner herein as also the day, date and time they boarded the car of the petitioner bearing registration number JK01S-2627, grounds of detention also tends to show that the detaining authority, while drawing and framing the grounds of detention, has used abbreviations and acronyms such as LET, OGW in the grounds of detention.

In view of the aforesaid position, it can safely be concluded that the grounds of detention drawn and framed by the detaining authority are vague in conflict with the provisions of Section 13 of the Act of 1978 inasmuch as violating the principles of law laid down in this regard. A reference in this behalf to the judgment of this court passed in case titled as "**Tanveer Ahmad v. State of J&K and others"**

reported in **2012(1) JKJ HC 90,** would be relevant wherein it has been held that the grounds of detention cannot be drawn and formulated by the detaining authority in a shorthand form, inasmuch as abbreviations and acronyms cannot be used therein the grounds, in that, the use of abbreviations and acronyms in the grounds of detention, inasmuch as failure of the detaining authority to give complete details of the activities of the detenue found to be prejudicial to either the security of the State or Public Order, would be vague grounds and can said to be causing prejudice to the rights and interests of a detenue besides rendering him incapable to make an effective representation against his detention.

5. It is pertinent and significant to mention here that the alleged activities attributed to the petitioner herein in the grounds of detention on the basis of material furnished by the sponsoring agency to the detaining authority *per-se* constitute serious criminal activities on the part of the petitioner herein warranting initiation of appropriate action under law against the petitioner herein which action indisputably has not been taken recourse to and instead, respondents herein have chosen to take recourse to preventive detention in terms of the impugned order and though there was no bar in taking recourse to preventive detention against the petitioner herein involved in serious criminal activities, yet law is settled that a detaining authority under such situation has to record compelling reasons thereof, which recording of compelling reasons is missing in the instant case. A reference to the judgment of the Apex Court passed in case titled as "**Surya Prakash Sharma v. State of U.P and others",** reported in **1994 (3) SCC 195,** would be appropriate.

6. Insofar as the plea of the petitioner that he was not furnished with the entire material referred to and relied upon by the detaining authority in terms of the impugned order is concerned, perusal of the detention record produced by counsel for the respondents became imperative and a perusal of the same would reveal that the executing officer, namely Jameel Ahmed ASI No. 38/SPN EXK-983258 of Police Station Zainpora, claims to have furnished only the grounds of detention to the petitioner herein consisting of five leaves. However, a bare perusal of the grounds of detention available on the detention

record as also annexed with the petition by the petitioner herein manifestly tends to show that the grounds of detention consist of only four leaves. The said state of affairs thus, manifestly reveals that the respondents have failed to fulfill and comply with the statutory requirements provided under the Act of 1978.

7. Insofar as the next plea urged by the petitioner herein that a representation came to be submitted by him against his detention, is concerned, though the respondents do not dispute the submission of such a representation, yet the respondents herein in their reply affidavit have ironically stated that said representation had been submitted to the detaining authority on the date when the detaining authority had become *functus-officio*, when in fact a bare perusal of the representation annexed with the petition manifestly tends to show that said representation has been addressed to the Government respondent 1, herein and the said representation indisputably has not either been considered or decided by the respondents having thus, in the process, failed to follow the Constitutional mandate enshrined under Article 22(5) of the Constitution.

8. Viewed thus, for the aforesaid reasons the instant petition deserves to be allowed and as such is allowed, as a consequence whereof the impugned order No.167/DMS/PSA/2023 dated 17.07.2023 is quashed with a direction to the respondents including the concerned jail authority to release the petitioner from the preventive detention forthwith unless he is not required in any other case.

9. The detention record produced by counsel for the respondents is returned back in the open court.

10. Disposed of.

(JAVED IQBAL WANI)
JUDGE

SRINAGAR
28.11.2024
Ishaq

Whether the order is speaking? Yes/No
Whether approved for reporting ? Yes/No