Sr. No.35
Regular List

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

LPA No.183/2023

Imran Nabi Wani. … Appellant(s)

Through: Mr. Wajid Haseeb, Advocate.

Vs.

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

Through: Mr. Mubeen Wani, Dy.AG.

CORAM:

HON'BLE MR. JUSTICE ATUL SREEDHARAN, JUDGE
HON'BLE MS. JUSTICE MOKSHA KHAJURIA KAZMI, JUDGE

JUDGEMENT
12.03.2024

Per Atul Sreedharan-J (Oral)

1. The present appeal has been filed by the appellant who is aggrieved by the judgment and order dated 01.08.2023 by which his petition praying for a writ of Habeas Corpus was dismissed by the learned Single Judge. The reasoning given by the learned Singly Judge is in paragraph-10 where the learned Single Judge has observed that the appellant was given an opportunity to make a representation to the detaining authority as also to the Government against his detention order. Earlier the learned Single Judge while recording the grounds of the Habeas Corpus petition has in paragraph 2(VI) taken cognizance of the fact that the detenu has submitted a representation before respondent no. 2 but the same was never considered. The learned Single Judge has not given any finding on this aspect which we shall refer to later in this order.

2. Learned counsel appearing for the UT of J&K while supporting the order passed by the learned Single Judge has drawn the attention of this Court to paragraph-13 of the judgment passed by the learned Single Judge where the learned Single Judge has observed "that Court do not even go into the question as to whether the facts mentioned in the grounds of detention are false. The reason for the rule is that to decide the 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 the Advisory Board". In other words, learned counsel for the UT of J&K has argued that irrespective of whether the grounds of detention are vague or precise or correct or false, the High Court must have a hands off approach in a writ of Habeas Corpus filed by a detenu under the *Public Safety Act* where the High Court is satisfied that the procedure provided under the law has been complied with. He has also referred to paragraph-12 of the order passed by the learned Single Judge where there is a reference to a six judge constitution Bench judgement of the Supreme Court in the year 1951 which held that the scope of looking into the manner in which the subjective satisfaction is arrived at by the detaining authority is limited and that the Court while examining the material which is the main basis of subjective satisfaction of the detaining authority, would not act as a Court of appeal and find satisfaction on the ground that on the basis of the material before the detaining authority, another view was possible. Thus learned counsel appearing for the UT of J&K has argued that this Court is bound by the law laid down by the six judge Constitution Bench of the Supreme Court way back in the year 1951 and that the

scope for judicial review in an order of preventive detention is limited to the extent of assessing whether the statutory and constitutional safeguards of procedure were adhered to.

3. We have gone through the grounds of detention which have been filed as an annexure along with the appeal. It would be necessary to briefly elucidate the sum and substance of the grounds of detention. The grounds of detention inform the appellant/detenu that based upon the dossier set by the Senior Superintendent of Police, Srinagar dated 07.09.2022, the appellant is a person who is "*deeply influenced by radical ideology*" and was associated with Over Ground Workers, thereby sharing sensitive information relating to the movement of Police and Security Forces in the area where he stayed and he had significant potential to motivate more youth towards terrorism in the valley. It further intimated the appellant that he has an "*evil ideology*" which would foment trouble and was a threat to the security of the Union Territory of Jammu & Kashmir creating a fear psychosis in the minds of the people in that area and that he along with other members of the gang of anti national elements was stoking secessionist sentiments in the valley.

4. The grounds of detention also refer to four cases in all against the appellant which are of the year 2011, 2015, 2016 & 2017. The *causa sine qua non* appears to have been the grant of bail to the appellant in a case of 2017, in which a Dy.SP was lynched. The grounds of detention refer to the appellant as the "main accused" in that case. Here we would like to record our displeasure with regard to the language used in the grounds of detention in paragraph-2 on the

second page, where the detaining authority informs the appellant that he is presently under the judicial custody in the 2017 case and it is expected that the appellant would "*manage bail*" and his release from prison would result in the execution of some major act of terror within the district of Srinagar and that he would start providing logistic support to terrorist which opinion was allegedly based upon "credible reports and compelling reasons". Likewise, the detaining authority in the grounds had referred to the dossier prepared by the SSP, Srinagar according to which the Police has reliably learned from "technical inputs" that there is a likelihood and impression that the appellant would indulge in the activities prejudicial to the security of the Union Territory of J&K, if he is allowed to move freely. We take umbrage to the phrase "manage bail" used in the grounds of detention. Bail is granted or denied by a Court of competent jurisdiction on the material on record before the Court concerned. We hope the executive is more cautious in future while describing proceedings before a Court and desist from using words and phrases that indicate, though not directly, but by necessary implication, that extraneous considerations may have weighed or may weigh in the mind of a Court while granting bail.

5. The bare reading of the grounds of detention discloses that the same does not disclose specific reasons, facts and circumstances, datelines, time and place in order to give a reasonable opportunity to the appellant to prefer a representation that is comprehensible and explanatory. In view of the vagueness and loose ended nature of the grounds of detention, the only probable answer that can be given by the detenu is a bald denial and that he has been held in detention

without there being any material against him. We have also considered the submission put forth by the learned counsel for the Union Territory of J&K that reliance upon the cases of the year 2011, 2015, & 2016 by the detaining authority cannot be questioned if the same was sufficient for him to form a subjective opinion relating to the detention of the appellant. In this regard, learned counsel for the respondent- Union Territory of J&K has drawn our attention to paragraph-13 of the order under challenge passed by the learned Single Judge which reads as herein:

> **"The Courts do not even go into the question as to whether the facts mentioned in the 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 it is not the policy of the law of preventive detention. This matter lies within the competence of the advisory board".**

This according to the learned counsel for the Union Territory of J&K, is the correct exposition of law as on date. He submits that the learned Single Judge has rightly assessed that the constitution Courts do not have to go into the assessment of the facts given in the grounds of detention and arrive at a finding whether the same are correct or false.

6. We respectfully disagree with the submission put forth by the learned counsel appearing for the Union Territory of J&K, that this Court cannot go into the question with regard to the facts mentioned in the grounds of detention and whether the same are true or false. If this argument is accepted as the correct proposition of the law on preventive detention, it would reduce the constitutional Court to the level of being the Bench clerks of the executive or its hatchet man to

silently give approval to the orders of detention even if they are not based upon sound reasoning, only because the procedure required under the constitution and the statute have been adhered to. If such be the law, the constitution, the constitution Courts would lose all relevance, their existence would be an unfortunate and unnecessary expenditure on the exchequer. Fortunately, it is not so. The reasons why we have said so have already been dealt with us extensively in case "***Mohammad Younis Mir vs. UT of J&K" (LPA No. 141/2023)*** and for the sake of brevity we are not reproducing our discussion and findings in that Judgement. Suffice it to say, we are of the firm opinion that this Court while exercising its preliminary powers under article 226 does not suffer any impediment with regard to the extent to which we can exercise those powers. However, as already observed by us in the Judgement aforementioned, care shall be taken by the High Court that it does not behave like the knight errant and instead uses that plenary power with a sense of responsibility and circumspection while at the same time does not suffer from judicial paralysis.

7. While examining the legality of a detention order, it is trite law that the High Court does not have to carry out a rowing enquiry or appreciate material to the extent a trial court would while trying a criminal case. But nonetheless, it must satisfy itself that the reasons given by the detaining authority in the grounds of detention are precise and verifiable on the material on the basis of which the order of detention is passed. The High Court would have to bear in mind always that the constitutionality of the laws of detention based upon

article 22 of the Constitution of India, are supplemental to the fountainhead of that right which is article 21. Under the circumstances, all detention orders must be examined for their legality in the backdrop of article 21. In this regard, as held by the Supreme Court in ***"Rekha vs. State of Tamil Nadu"2011 5 SCC 244***and recently in ***"Amina Begum vs. State of Telangana" 2023 9 SCC 587***whereinthe Supreme Court observed in paragraph66, that preventive detention was concealed as an extra-ordinary measure by the framers of our constitution has been rendered ordinary with its reckless invocation over the years as if it were available for use even in ordinary course of proceedings. If further held that to unchain the shackles of the preventive detention it is important that the safeguards enshrined in our constitution particularly under the "*Golden Triangle*" formed by articles 14, 19 & 21 are diligently enforced.

8. Thus we hold in the facts and circumstances of the present case that the grounds of detention provided to the appellant are perfunctory and grossly vague giving no details when it accuses of appellant of being an Over Ground Worker without mentioning the proscribed organisation for which he is working as OGW and phrases like "credible reports" and "compelling reasons" and "technical inputs", goes no further to elucidate as to what those credible reports or compelling reasons or technical inputs were in order to give a reasonable and fair opportunity to the appellant to represent against his order of detention. The same notwithstanding, a representation was indeed made by the appellant through his brother which was received by the office of the District Commissioner, Srinagar, but

which was never considered by the respondent. The same would also render the detention bad on the grounds of non-adherence to procedure which required that there must be an order passed after considering the representation of the appellant. The order under challenge is conspicuously silent on this aspect also.

9. Therefore, in view of what has been argued, considered and held by us hereinabove, the impugned order of detention bearing no. DMS/PSA/112/2022 dated 08.09.2022 is quashed. The appellant shall be set forth at liberty.

10. The appeal is ***disposed of.***

(MOKSHA KHAJURIA KAZMI)
JUDGE

(ATUL SREEDHARAN)
JUDGE

SRINAGAR:
12.03.2024
SHAISTA

Whether the order is speaking: Yes/No
Whether the order is reportable: Yes/No