HIGH COURT OF JAMMU & KASHMIR AND LADAKH AT SRINAGAR

Reserved on: 18.03.2024
Pronounced on: 03.04.2024

Case:- HCP No. 102/2023

Wasim Ahmad Ganie, Aged 28 Yrs ....Petitioner(s)
S/o Abdul Aziz Ganie
R/o Hardu Latina Beerwah
Tehsil Beerwah, District Budgam

Through His Father
Abdul Aziz Ganie Aged 62 Years

Through: Mr. Wajid Mohammad Haseeb, Advocate.

Vs

1. Union Territory of Jammu and Kashmir
Through Additional Chief Secretary,
Home Department, J&K Govt.,
Civil Secretariat, Srinagar/Jammu.

2. District Magistrate, Budgam.

..... Respondent(s)

Through: Mr. Faheem Shah, GA.

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Coram: HON'BLE MR. JUSTICE RAHUL BHARTI, JUDGE

JUDGMENT

01. Heard learned counsel for the petitioner as well as for the respondents. Perused the writ pleadings and the record therewith.

02. The petitioner, acting through his father, namely, Abdul Aziz Ganie has filed this writ petition under article 226 of the Constitution of India for seeking a writ of certiorari as well as habeas corpus to get preventive order *quashed* and

as a consequence restoration of his personal liberty from the preventive detention confinement.

03. The respondent No. 2 – District Magistrate, Budgam by virtue of an order No. DMB/PSA/12 dated 29.08.2023 came to order the prevention detention of the petitioner and his arrest in order to prevent him from acting in a manner prejudicial to the security of the State. Passing of this detention order resulted in its execution and consequently the petitioner came to be arrested and detained to be kept of District Jail, Kupwara. The detention order came to be passed under Jammu and Kashmir Public Safety Act, 1978.

04. The passing of the detention order against the petitioner rested upon a dossier submitted by the Senior Superintendent of Police (SSP), Budgam who came to report to the respondent No. 2 – District Magistrate, Budgam that the petitioner was a repeat violator of law having no respect for law of land and having developed contacts with various terrorist/secessionist organizations to carry out acts of secessionism and terrorism and for that the petitioner's alleged involvement in FIR no. 59/2016 and FIR no. 62/2016 registered by the Police Station, Beerwah was cited and also the petitioner's latest involvement in criminal case resulting in registration of FIR no. 126/2020 again by Police Station, Beerwah was cited. On the basis of said development relatable to the registration of FIRs, the

petitioner's activities were allegedly reckoned to be prejudicial to the security of the State and, accordingly, the respondent No. 2 – District Magistrate, Budgam formulated the grounds of detention literally copying the dossier and placing the detention order against the petitioner into effect.

05. The petitioner has assailed his preventive detention on number of grounds, one of which being that the true and full picture related in reference to the FIRs as cited in the grounds of detention was not presented before the respondent No. 2 – District Magistrate, Budgam to the extent that in the last FIR no. 126/2020, the petitioner had come to be enlarged on bail in the month of November 2022 by virtue of an order dated 07.11.2022 passed by the court of Additional Sessions Judge TADA/POTA, Srinagar whereas the preventive detention order came to be passed against him on 29.08.2023 meaning thereby the Senior Superintendent of Police (SSP), Budgam had full time to bear full knowledge of the fact that the petitioner was on bail by virtue of a bail order passed by the court of Additional Sessions Judge TADA/POTA, Srinagar and still that vital aspect in its entirety was kept withheld from being apprised to the respondent No. 2 – District Magistrate, Budgam who, in the event of presence of the full disclosure of facts, would have an opportunity of

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evaluating the occasion as to whether to order the preventive detention of the petitioner on the purported material cited by the District Police acting through Senior Superintendent of Police (SSP), Budgam.

06. To this writ petition, the respondent No. 2 – District Magistrate, Budgam came to submit his counter affidavit by reiterating the grounds of detention as an answer to the challenge to the preventive detention order. It is stated in the counter affidavit that the preventive detention order against the petitioner came to be confirmed by the Govt. of UT of Jammu and Kashmir order's No. Home/PB-V/2348 of 2023 dated 11.10.2023 pursuant to the Advisory Board's opinion with respect to sufficiency of the cause for the preventive detention of the petitioner.

07. It is averred in the counter affidavit that the petitioner had made a representation against his preventive detention on 12.09.2023 which came to be forwarded to the Government by the respondent No. 2 – District Magistrate, Budgam vide communication No. DMB/PSA/023/404-08 dated 20.09.2023 for its consideration in response whereto the same was rejected by the Government vide order No. Home/PB-V/502/2023(7278374) dated 04.12.2023, however, it has not been stated in reply by the respondent No. 2 – District Magistrate, Budgam as to whether the petitioner came to apprise of the outcome of the rejection of

his representation or not leaving this Court clueless as to whether the rejection of the representation had taken place just at the end of the respondent without bothering to communicate its outcome to the petitioner leaving him uninformed and keeping him lying in expectation about the fate of his pending representation.

08. When this Court examines the grounds of detention supporting the detention order, this Court finds that the respondent No. 2 – District Magistrate, Budgam was least aware of the fact that the petitioner was on bail granted by the court of Additional Sessions Judge, TADA/POTA, Srinagar in terms of an order dated 07.11.2022. Whether or not the fact of grant of bail had any co-relation with the case of preventive detention passing order by the respondent No. 2 – District Magistrate, Budgam against the petitioner is not the issue but the fact is that the respondent No. 2 – District Magistrate, Budgam was not fully apprised of the situation attending to the petitioner by the Senior Superintendent of Police (SSP), Budgam who is supposed to have been well versed with the fact that in FIR No. 126/2020, the petitioner had come to earn the bail otherwise the recital in the grounds of detention with respect to other two FIR Nos. 59/2016 & 62/2016 are of no relevance to be stated in the grounds of detention on the reason that the same are of stale nature distantly

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connected with the case of subjecting a person to preventive detention.

09. Thus, once this Court takes out reference of FIR No. 59/2016 & 62/2016 out of purview of the grounds of detention what remains as a matter of fact is FIR No. 126/2020 in which the petitioner was in a state of bail and this aspect was kept withheld from being disclosed to the respondent No. 2 – District Magistrate, Budgam and that vitiated the entire decision making process attending the passing of the preventive detention order against the petitioner, thereby rendering the outcome in the form of preventive detention of the petitioner as being illegal and accordingly, ***quashed***.

10. The impugned preventive detention order No. DMB/PSA/12 dated 29.08.2023 read with confirmation/approval order passed by the Govt. of UT of Jammu & Kashmir confirming and approving the detention order of the petitioner are set aside. The petitioner is directed to be restored to his personal liberty forthwith by the Superintendent of the concerned Jail.

(RAHUL BHARTI)
JUDGE

SRINAGAR
03.04.2024
Bunty

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

Bunty Kumar
2024.06.07 17:01
I attest to the accuracy and
integrity of this document