

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

Reserved on: 28.02.2025

Pronounced on: 02.04.2025

WP(Crl) No. 204/2023

UMER KABIR MIR

...PETITIONER(S)

*Through: - Mr. Z. A. Qureshi, Sr. Advocate, with
Ms. Moonisa, Advocate.*

Vs.

UT OF J&K & ORS.

...RESPONDENT(S)

Through: - Mr. Zahid Qais Noor, GA

CORAM: HON'BLE MR. JUSTICE SANJAY DHAR, JUDGE

JUDGMENT

1) By the instant petition, veracity and legality of the detention order No.23/DMB/PSA/23 dated 12.05.2023, issued by District Magistrate, Pulwama (for brevity "*detaining authority*") has been challenged. In terms of the aforesaid order, *Umer Kabir Mir* (for short "*detenue*") has been placed under preventive detention and lodged in Central Jail, Kothbalwal, Jammu.

2) The petitioner has contended that the Detaining Authority has passed the impugned detention order mechanically without application of mind, inasmuch as the allegations mentioned in the grounds of detention have no nexus with the detenue and that the same have been fabricated by the police in order to justify its illegal action of detaining the detenue. It has been contended that the grounds

of detention are vague, non-existent on which no prudent man can make a representation against such allegations. It has been further contended that the procedural safeguards have not been complied with in the instant case, inasmuch as whole of the material which formed basis of the impugned detention order has not been supplied to the petitioner.

3) Upon being put to notice, the respondents appeared through their counsel and filed their reply affidavit, wherein they have disputed the averments made in the petition and insisted that the activities of detainee are highly prejudicial to the security of the State. It is pleaded that the detention order and grounds of detention along with the material relied upon by the detaining authority were handed over to the detainee and the same were read over and explained to him. That the grounds urged by the petitioner are legally misconceived, factually untenable and without any merit. It has been further contended that the detainee was informed that he can make a representation to the government as well as to the detaining authority against his detention. It is further claimed in the reply affidavit that all statutory requirements and constitutional guarantees have been fulfilled and complied with by the detaining authority. That the order has been issued validly and legally. The respondents have placed reliance on the judgment of the Supreme Court in **Hardhan Saha v. State of W.B (1975) 3 SCC 198**. The respondents have produced the

detention record to lend support to the stand taken in the counter affidavit.

4) I have heard learned counsel for parties and perused the record.

5) Learned counsel for the petitioner, while seeking quashment of the impugned order, projected various grounds but his main thrust during the course of arguments was on the following grounds:

(I) *That the detainee was not furnished the translated version of the material which formed the basis of the grounds of detention to enable him to make an effective representation against his detention*

(II) *That the grounds of detention are vague, on the basis of which it was not possible for the petitioner to make an effective representation.*

6) So far as the first ground of challenge is concerned, a perusal of the record produced by the learned counsel for the respondents reveals that the detainee is a semi-literate person. Thus, he would not be in a position to understand the contents of the grounds of detention. The record also suggests that the translated copies of grounds of detention have not been supplied to the detainee. Therefore, right of making an effective representation against the detention order has been rendered nugatory in this case, resulting in infringement of Constitutional right of the petitioner guaranteed under Article 22(5) of the Constitution.

7) The service of the grounds of detention on the detainee is a very precious constitutional right and the object behind the same is to enable the detainee to file an effective representation. It will be an

empty formality to supply the grounds of detention to the detenu unless he is in a position to understand the same. In my aforesaid view I am fortified by the judgments rendered by the Supreme Court in the case of *Chaju Ram vs. The State of Jammu & Kashmir*, AIR 1971 SC 263 and *Smt. Raziya Umar Bakshi Vs. Union of India*, AIR 1980 SC1751.

8) The detention record produced by the learned counsel for the respondents contains a copy of Execution Report, perusal of which shows that the grounds of detention have been read over and explained to the detenu by one Inspector Latief Shabnum of DPL, Pulwama. It is the case of the respondents that the said executing official has read over and explained the grounds of detention to the detenu. For supporting this contention, it was incumbent on the respondents to place on record a duly sworn affidavit of the said official, but no such affidavit is available in detention record. To eradicate all the doubts, it was incumbent on the part of the person, who did the exercise of handing over the documents and conveying the contents thereof to the detenu, to file an affidavit in order to attach a semblance of fairness to his actions. Support, in this behalf, can be taken from the law laid down by the Supreme Court in the cases of *State Legal Aid Committee, J&K vs. State of J&K & others*, AIR 2005 SC 1270, *Lallubhai Jogibhai Patel vs. Union Of India & Ors*, AIR 1981 SC 728 and the law laid down by this Court

in the case of **Mohammad Shaban Chopan vs. State and another, 2003 (II) S.L.J 455.**

9) Next it has been contended by learned counsel for the petitioner that the grounds of detention are vague, inasmuch as there is no mention of the particulars of alleged terrorists, whom he was allegedly harbouring and transporting from one location to other.

10) On perusal of the detention record produced by learned counsel for the respondents, the ground projected regarding vagueness of the averments made in the grounds of detention, appears to be forceful. In the grounds of detention, there is no mention of the particulars of the places and the identity of the terrorists, whom the petitioner was allegedly harbouring and transporting from one place to other. The particulars of the period when the detainee is alleged to have harboured and transported the alleged terrorists are also not mentioned in the grounds of detention. Thus, the grounds, being vague and lacking in material particulars, the detainee could not have made an effective representation against his detention.

11) A Division Bench of this Court in the recent case titled “**Imran Rashid Rather vs. UT of J&K**” 2024 LiveLaw (JKL) 351 has, while deliberating upon the effect of vagueness of the grounds of detention on the subjective satisfaction of the detaining authority, observed as under:-

“Therefore, this Court holds that vague and non-specific grounds of detention firstly, violates the fundamental right to life and personal liberty of the detenu under article 21 of the constitution as it summarily curtails the liberty of the citizen based on the subjective satisfaction of the executive which is an exceptional power as against the general law relating to arrest and detention. Secondly, it deprives the detenu of giving a specific rebuttal to the grounds of detention which may satisfy the detaining authority or the Government that his detention is unlawful and compels him to answer the grounds of detention as "it is incorrect" or "it is false" etc. Thirdly, vague and generalised grounds in the order of detention, smacks of arbitrariness on the part of the detaining authority rendering the subjective satisfaction arrived at as violative of article 14 of the constitution and fourthly, vague and non-specific grounds raise the impression that the same has been done deliberately in order to deprive the detenu of giving a precise rebuttal. Mala fide in fact may be difficult to establish as they must be pleaded with specific facts, but the lack of bonafides ¹State of Bihar Vs. P.P. Sharma, 1992 Supp(1) SCC 222, paragraph 49 - State of Punjab Vs. Gurdial Singh, (1980) 2 SCC 471, paragraph 9 -Pooja Batra Vs. Union of India and others, (2009) 5 SCC 296, paragraphs 18, 40 and 41 may be presumed where the executive act results in the deprivation of personal liberty from a detention order based on vague grounds. In such cases, the lack of bonafides is to be presumed due to a cavalier or casual exercise of the authority to detain the citizen without any specific ill will or personal animosity. The lack of bonafides is on account of failure to take due care and act without introspection, blindly on the report of the SP without insisting on supporting material which justifies the deprivation of liberty.”

12) From the above analysis of the law, it is manifest that vagueness of grounds of detention strikes at the root of the subjective satisfaction of the detaining authority thereby vitiating the order of detention. On this ground alone, the impugned order of detention is liable to be set aside.

13) Viewed thus, the petition is allowed and the impugned order of detention is quashed. The detenue is directed to be released from the preventive custody forthwith provided he is not required in connection with any other case.

14) The detention record be returned to the learned counsel for the respondents.

(Sanjay Dhar)
Judge

SRINAGAR
02.04.2025
“Bhat Altaf-Secy”

Whether the order is reportable: Yes/No

