
(2021) 12 J&K CK 0025

In the Jammu And Kashmir High Court

Case No : Writ Petition (Criminal) No. 53 Of 2021, Criminal Miscellaneous Case No. 1588, 1589 Of 2021

Gaggu Din Alias Gaggu

APPELLANT

Vs

Union Territory Of J&K & Others

RESPONDENT

Date of Decision : 17-12-2021

Acts Referred:

Constitution Of India, 1950 — Article 21, 22, 22(5)
Jammu And Kashmir Public Safety Act, 1978 — Section 8, 13
Narcotic Drugs And Psychotropic Substances Act, 1985 — Section 8, 21, 22
Arms Act, 1959 — Section 3, 25, 27
Indian Penal Code, 1860 — Section 148, 149, 188, 323, 365, 379, 411, 458, 506
Jammu And Kashmir State Ranbir Penal Code, 1989 — Section 147, 148, 307, 323, 336, 341

Citation : (2021) 12 J&K CK 0025

Hon'ble Judges : Tashi Rabstan, J

Bench : Single Bench

Advocate : Karman S. Johal, Supreet Singh Johal

Final Decision : Dismissed

Judgement

Tashi Rabstan, J

1. Impugned in this petition is Order No.PSA/08 dated 10.08.2021 issued by the District Magistrate, Kathua, respondent No.2 herein, whereby Gaggu Din alias Gaggu, petitioner herein (for brevity, detenu), has been placed under preventive detention so as to prevent him from acting in any manner prejudicial to the maintenance of the public order, peace and tranquility in the society as also for the safety of common citizens, particularly the younger generation of the district.

2. The case as set up by the petitioner-detenu is that respondent No.2 while slapping preventive detention of detenu has not adhered to the constitutional safeguards available to him under the Constitution of India as well as the J&K Public Safety Act, 1978. It is contended that the detaining authority has issued the detention order without application of mind, arbitrarily and misusing the

power vested with respondent No.2, thus deprived the petitioner of his fundamental right to life and liberty guaranteed to him under Article 21 of the Constitution of India. Further, it is contended that the status of FIRs, which have been made basis for issuing the detention order, have not been disclosed. It is contended that he cannot read or write English, Urdu or Punjabi and only knows Hindi. None of the documents attached with the grounds of detention is in the language which he understands. It is further contended that the petitioner has been deprived of making an effective representation against the order of detention by not informing him that he can make representation to the detaining authority.

3. Respondents in their counter affidavit resisted the contentions of petitioner-detenu averring therein that the aim of preventive detention is to stop the illegal activities of an individual which otherwise cannot be stopped when such an individual creates havoc in the society which leads to public disorder, peace, stability and in certain cases also raises alarm bells regarding the nation's unity and integrity. It is averred that the petitioner-detenu falls under the category of being a threat to the public order, peace and stability in the society, thus, falls under the category of Section 8 of the Public Safety Act. It is further averred that each and every norm has been followed while detaining the detenu under the Public Safety Act. In support of their contentions, respondents have also relied upon a judgment of the Apex Court, titled as, *Union of India vs Simple Happy Dhakad* as well as a judgment of the Division Bench of this Court in *Miyan Abdul Qayoom vs Union Territory of J&K*.

4. Heard learned counsel appearing for the parties, considered their rival contentions and also perused the record.

5. The record so produced reveals that the petitioner-detenu under his signatures received a total of 49 leaves including the copy of detention order, grounds of detention, notice of detention, copy of dossier and other related documents at Central Jail, Kot Bhalwal, Jammu. The petitioner-detenu was also informed that he can make a representation to the Government as well as to the detaining authority against his detention order, if he so desires.

6. Although right of personal liberty is most precious right, guaranteed under the Constitution, which has been held to be transcendental, inalienable and available to a person independent of the Constitution, yet the personal liberty may be curtailed, where a person faces a criminal charge or is convicted of an offence and sentenced to imprisonment. A person is not to be deprived of his personal liberty, except in accordance with procedures established under law, and the procedure as laid down in *Maneka Gandhi v. Union of India*, (1978 AIR SC 597) is to be just and fair. Where a person is facing trial on a criminal charge and is temporarily deprived of his personal liberty owing to criminal charge framed against him, he has an opportunity to defend himself and to be acquitted of the charge in case prosecution fails to bring home his guilt. Where such person is convicted of offence, he still has satisfaction of having been given adequate

opportunity to contest the charge and also adduce evidence in his defence. However, framers of the Constitution have, by incorporating Article 22(5) in the Constitution, left room for detention of a person without a formal charge and trial and without such person held guilty of an offence and sentenced to imprisonment by a competent court. Its aim and object is to save the society from activities that are likely to deprive a large number of people of their right to life and personal liberty. In such a case it would be dangerous for the people at large, to wait and watch as by the time ordinary law is set into motion, the person having dangerous designs, would execute his plans, exposing general public to risk and causing colossal damage to life and property. It is, for that reason, necessary to take preventive measures and prevent the person bent upon to perpetrate mischief from translating his ideas into action. Article 22(5) of the Constitution of India, therefore, leaves scope for enactment of preventive detention law.

7. The essential concept of preventive detention is that the detention of a person is not to punish him for something he has done, but to prevent him from doing it. The basis of detention is the satisfaction of the executive of a reasonable probability of likelihood of detenu acting in a manner similar to his past acts and preventing him by detention from doing the same. The Supreme Court in *Haradhan Saha vs State of W.B.* (1975) 3 SCC 198, points out that a criminal conviction, on the other hand, is for an act already done, which can only be possible by a trial and legal evidence. There is no parallel between prosecution in a Court of law and a detention order under the Act. One is a punitive action and the other is a preventive act. In one case, a person is punished to prove his guilt and the standard is proof, beyond reasonable doubt, whereas in preventive detention a man is prevented from doing something, which it is necessary for reasons mentioned in the Act, to prevent.

8. It is long back that an eminent thinker and author, Sophocles, had to say: "Law can never be enforced unless fear supports them." This statement was made centuries back, but it has its relevance, in a way, with enormous vigour, in today's society. Every right-thinking citizen is duty bound to show esteem to law for having an orderly, civilized and peaceful society. It has to be kept in mind that law is antagonistic to any type of disarray. It is completely intolerant of anarchy. If anyone flouts law, he has to face the ire of law, contingent on the concept of proportionality that the law recognizes. It can never be forgotten that the purpose of criminal law legislated by the competent legislatures, subject to judicial scrutiny within constitutionally established parameters, is to protect the collective interest and save every individual that forms a constituent of the collective from unwarranted hazards. It is sometimes said in an egocentric and uncivilised manner that law cannot bind the individual actions which are perceived as flaws by the large body of people, but, the truth is and has to be that when the law withstands the test of the constitutional scrutiny in a democracy, the individual notions are to be ignored. At times certain activities, wrongdoings, assume more accent and gravity depending on the nature and impact of such deleterious activities on the society. It is neither to be guided by a

sense of sentimentality nor to be governed by prejudices. Acts or activities of individual or a group of individuals, prejudicial to the security of the State, have magnitude of across-the-board disfigurement of societies. No court should tune out such activities, being won over by passion of mercy. It is the obligation of the court to constantly remind itself the right of society is never maltreated or marginalised by the doings an individual or set of individuals propagate and carry out.

9. Article 22(5) of the Constitution of India and Section 13 of the J&K Public Safety Act, 1978, guarantee safeguard to detenu to be informed, as soon as may be, of grounds on which order of detention is made, which led to the subjective satisfaction of detaining authority and also to be afforded earliest opportunity of making representation against order of detention. Detenu is to be furnished with sufficient particulars to enable him to make a representation, which on being considered, may obtain relief to him. Detention record, made available by learned counsel for respondents, reveals that detention order was made on proper application of mind, to the facts of the case and detenu was delivered at the time of execution of detention order, the material and grounds of detention and also informed that he had a right to represent against his preventive detention. Perusal of detention order depicts its execution. It further reveals that the copy of detention warrant, grounds of detention, notice of detention, copy of dossier etc. were receipted by the petitioner-detenu which were read over and explained to detenu in Hindi and Dogri languages, which detenu understood fully in token of which the signatures of detenu had been obtained. It also divulges that detenu was informed that he can make representation to the government and detaining authority. The grounds of detention are definite, proximate and free from any ambiguity. The detenu has been informed with sufficient clarity what actually weighed with Detaining Authority while passing detention order. Detaining Authority has narrated facts and figures that made the authority to exercise its powers under section 8, J&K Public Safety Act 1978 and record subjective satisfaction that detenu was required to be placed under preventive detention in order to prevent him from acting in any manner prejudicial to the security of the State.

10. One of the grounds taken by the detenu is that the detaining authority did not read over and explained to him the grounds of detention, detention order etc. in the language which he understands. In the petition, the detenu has specifically averred that he knows Hindi language. However, a perusal of execution report reveals that all the relevant documents were read over and explained to the detenu in Hindi/Dogri language. Further, the detenu has signed the execution report in English language. Thus, it belies the claim of detenu that the relevant documents were not explained to him in the language which he understands.

11. Further, as regards the claim of petitioner-detenu that the respondents did not disclose him the status of FIRs registered against him, the record reveals

that in the grounds of detention itself the District Magistrate, Kathua had disclosed the status of all six FIRs registered against the detenu.

12. As regards the contention of petitioner-detenu that he was not supplied with the copy of detention order, the execution report signed by the detenu in English clearly reveals that he was provided with the detention order when his custody was taken by the police of Police Station Rajbagh on 11.08.2021.

13. Further, as regards the contention of petitioner-detenu that he was not having the knowledge of his having been bailed out on 10.08.2021 nor he was supplied with the copy of bail order, in the grounds of detention itself the District Magistrate, Kathua has specifically stated that the detenu has been bailed out on 10.08.2021 in case FIR No.42/2021 under Sections 8/21/22 of NDPS Act and 3/25 Arms Act. Therefore, this contention of detenu also fails.

14. Further, a perusal of the record reveals that the grounds of detention cannot be said to be replica of dossier. The District Magistrate has specifically given his views/opinion regarding detaining the detenu under the Public Safety Act. Also, one cannot lose sight of the fact that six FIRs have been lodged against the petitioner-detenu under various sections of the IPC which made basis to book him under the Public Safety Act so as to prevent him from acting in a manner similar to his past acts or engaging in activities prejudicial to security of the State or maintenance of public order. Further, the sponsoring authority has not only supplied the material, viz. dossier, containing gist of the activities of the detenu, but has also supplied the material in the shape of FIRs. All this material was before the detaining authority when it arrived at subjective satisfaction that activities of the detenu were prejudicial to maintenance of public order and requires preventive detention of detenu. Further, if in any given case a single act is found to be not sufficient to sustain the order of detention that may well be quashed, but it cannot be stated as a principle that one single act cannot constitute the basis for detention. On the contrary, it does. In other words, it is not necessary that there should be multiplicity of grounds for making or sustaining an order of detention. The same views and principles were reiterated by the Apex Court in *Goutam Jain vs Union of India*, AIR 2017 SC 230.

15. In the present case, the petitioner-detenu seems to be a hard core criminal and has become a terror figure among the people of the area as against him six FIRs came to be registered in different police stations under various sections of the IPC between the period 2014 to the year 2021. Since the actions taken against the petitioner-detenu under the ordinary law from time to time have not been proved to be deterrent, as such the respondents had no other option but to keep him in preventive detention.

16. The judgments relied upon by the learned counsel for petitioner-detenu are clearly distinguishable on facts and are not applicable to the case in hand.

17. Personal liberty is one of the most cherished freedoms, perhaps more important than the other freedoms guaranteed under the Constitution. It was for

this reason that the founding fathers enacted the safeguards in Article 22 in the Constitution so as to limit the power of the State to detain a person without trial, which may otherwise pass the test of Article 21, by humanising the harsh authority over individual liberty. In a democracy governed by the rule of law, the drastic power to detain a person without trial for security of the State and/or maintenance of public order, must be strictly construed. However, where individual liberty comes into conflict with an interest of the security of the State or public order, then the liberty of the individual must give way to the larger interest of the nation. These observations have been made by the Supreme Court in the Secretary to Government, Public (Law and Order-F) and another v. Nabila and another (2015) 12 SCC 127.

18. The Supreme Court in *Debu Mahato v. State of W.B.* case (supra), observed that while ordinarily-speaking one act may not be sufficient to form the requisite satisfaction, there is no such invariable rule and that in a given case "one act may suffice". That was a case of wagon-breaking and given the nature of the Act, it was held therein that "one act is sufficient". The same principle was reiterated in *Anil Dely v. State of W.B.* case (supra). It was a case of theft of railway signal material. Here too "one act was held to be sufficient". Similarly, in *Israil SK v. District Magistrate of West Dinajpur* (1975) 3 SCC 292 and *DharuaKanu v. State of W.B.* (1975) 3 SCC 527, single act of theft of telegraph copper wires in huge quantity and removal of railway fish-plates respectively, was held sufficient to sustain the order of detention. In short, the principle appears to be this: "Though ordinarily one act may not be held sufficient to sustain an order of detention, one act may sustain an order of detention if the act is of such a nature as to indicate that it is an organised act or a manifestation of organised activity." The gravity and nature of the act is also relevant. The test is whether the act is such that it gives rise to an inference that the person would continue to indulge in similar prejudicial activity. That is the reason why single acts of wagon-breaking, theft of signal material, theft of telegraph copper wires in huge quantity and removal of railway fish-plates were held sufficient by the Supreme Court and, therefore, his detention is necessary to prevent him from indulging in such prejudicial activity.

19. In the present case, the petitioner has been involved in many criminal activities and against him six FIRs have been lodged under various sections of the IPC in different police stations. These are FIR No.27/2014 under Sections 379/411 IPC registered at Police Station Narote Jaimal Singh, District Pathankot (Punjab) regarding recovery of stolen tractor; FIR No.7/2017 under Section 188 IPC, 4/8 Cow Slaughtering Act, 11 PCA Act registered at Police Station Narote Jaimal Singh, District Pathankot (Punjab); FIR No.254/2018 under Section 341/307/336/323/147/148 RPC and 3/27 Arms Act registered at Police Station Rajbagh regarding making attacking the complainants therein and recovery of 12 bore gun; FIR No.171/2019 under Sections 341/147/332/353/307/382 RPC registered at Police Station Rajbagh regarding snatching of motor cycle and attacking the complainants therein; FIR No.10/2020 under Sections

458/365/323/506/148/149 IPC registered at Police Station Sadar, Pathankot (Punjab) regarding attacking the complainants therein with fist and blow, pointing gun towards them, taking away the daughter of complainant-Roshan Din and recovery of 6/7 gram heroin and FIR No.42/2021 under Sections 8/21/22 NDPS Act, 3/25 Arms Act registered at Police Station Rajbagh regarding recovery of 6/7 grams heroin and air pistol. Therefore, it seems the petitioner is a hardcore criminal, has become a terror figure among the people of the area and the actions taken against him under the ordinary law from time to time have not been proved to be deterrent. It seems the petitioner-detenu instead of mending his ways has continuously been indulging in criminal activities and has not shown any respect for the law of the land, as such the petitioner-detenu has created a sense of alarm, scare and a feeling of insecurity in the minds of the public of the area, has become a chronic fear amongst the people of the area. Thus, the activities of the petitioner are of hardcore criminal and habitual of indulging in acts of violence, such as murder, attempt to murder, assault, land grabbing etc. The record so produced reveals that the petitioner-detenu has been indulging in illegal trade in an organized manner, which is a great threat for sustaining the conserving values of the society and that drug trafficking also possess great threat to the society for the reason that the proceeds of the drug sale can be utilized for financing of other criminal activities.

20. For the reasons discussed above, this petition fails and is, accordingly, dismissed along with connected Cr1Ms.

21. Registry to return the record against proper receipt, which is in the form of photocopies.