

(2022) 11 J&K CK 0013
In the Jammu And Kashmir High Court
Case No : Writ Petition (Criminal) No. 82 Of 2021

Gulzar Ahmad Wani

APPELLANT

Vs

Union Territory Of J&K & Others

RESPONDENT

Date of Decision : 09-11-2022

Acts Referred:

Constitution Of India, 1950 — Article 22
Jammu And Kashmir Public Safety Act, 1978 — Section 13

Citation : (2022) 11 J&K CK 0013

Hon'ble Judges : Moksha Khajuria Kazmi, J

Bench : Single Bench

Advocate : S. Riyaz Khawar, Asif Maqbool

Final Decision : Disposed Of

Judgement

Moksha Khajuria Kazmi, J

1. District Magistrate, Pulwama-respondent no. 2 herein, by order No. 26/DMP/PSA/DPO/21/17-20 dated 03.06.2021, has placed Gulzar Ahmad Wani S/o Mohammad Ismail Wani R/o Chowgam Chutergul Tehsil Shangus District, Anantnag, (for short "detenue") under preventive detention to prevent him from acting in any manner prejudicial to the security of the state and directed his lodgment in Central Jail Kotbhalwal, Jammu. It is this order of which petitioner is aggrieved of and seeks its quashment.

2. The detenue through his wife has filed the instant petition stating therein that the detenue is a peace loving citizen, has never indulged in any subversive or unlawful activity which would cause prejudice to the security of the state. The concerned police station wants the detenue to act as their informer which the detenue refused and as a matter of revenge the police manipulated a false case against the detenue and got detention order against the detenue. The detention order is replica of the dossier, however, the Detaining Authority has failed to prepare the grounds of detention itself which is a pre-requisite for passing any

detention order. The relevant material on which the detention order has been passed has also not been supplied to the detainee which has prevented the detainee to make an effective representation. It is further urged that the detainee was not informed that within how much time he can make a representation against his detention to the Detaining Authority or to the Government, which violates the rights of the detainee as guaranteed under Article 22 of the Constitution and Section 13 of the Public Safety Act. The grounds of the detention were never read over and explained to the detainee in his local Kashmiri or Urdu language which he could have understood as the detainee has read only up to 8th class.

3. The detainee has raised several other grounds to challenge the detention order. The counsel for the detainee, however mainly laid emphasis on the ground that the detention order has been issued without application of mind as the detaining authority was not certain as to whether the detention order is to be passed either on the ground of Security of the State or maintenance of public order.

4. The respondents, in their counter affidavit, 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 has been averred in the reply that the Detaining Authority has followed the provisions of J&K Public Safety Act and the detainee has been detained after following due procedure. It is pleaded that the detention order and grounds of detention along with relevant material were handed over to the detainee and same were read over and explained to him. The grounds taken by the petitioner are legally misconceived, factually untenable and without any merit. The learned counsel for the respondents also produced the detention record to lend support to the stand taken in the counter affidavit

5. Having heard learned counsel for the for the parties and perused the material on record, I am of the considered view that the impugned order of detention does not sustain in the eye of law, as the grounds of detention are nothing but the verbatim reproduction of the dossier as forwarded by the police to the Detaining Authority. The Detaining Authority has only tried to change the shape of the paragraphs of the dossier.

6. It is the legal duty of the Detaining Authority to find out that the allegations leveled by the police against the detainee in the dossier was really going to disturb the security of the State. The learned District Magistrate-respondent No. 2-Detaining Authority, appears to have passed the impugned detention order in a routine manner. Thus the present case is in fact a case of non-application of mind.

7. The detention record, produced by Mr. Asif Maqbool, learned Dy. AG reveals that impugned detention order, has been passed while considering the fact that activities of detainee are prejudicial to the security of the State while as, on the other hand the grounds of detention reflect the activities of the detainee are prejudicial to the maintenance of public order, which shows total non-application

of mind on the part of Detaining authority because detention order is to be passed either for public order or for security of the State and not on both counts. Detenue is said to studied up to 8th class and grounds of detention, served upon detenue, are based on hyper technical language, which could not have been understood by the detenue. It was incumbent upon the respondents to explain and make understand the detenue the grounds of detention in the language he understands.

8. As already noted, it has been contended by the petitioner that the Detaining Authority while passing the impugned detention order was not certain on which ground the impugned detention order is to be passed as it has made reference to both the expressions, namely, "activities prejudicial to the security of the State" and "activities prejudicial to the maintenance of public order" in the impugned order as well as in the grounds of detention.

9. According to the learned counsel for the petitioner, the aforesaid course adopted by the Detaining Authority exhibits lack of application of mind and lack of certainty in making the decision. To support his contention, the learned counsel has placed reliance on the judgment of the Supreme Court in *G. M. Shah v. State of J&K*, 1980 AIR 494.

10. Before determining the issue raised by learned counsel for the petitioner in this case, it would be appropriate to notice the legal position on the subject. The Supreme Court in *Dr. Ram Manohar Lohia v. State of Bihar and others*, 1966 AIR SC 740, while discussing the distinction between the expressions "law and order", "public order" and "security of the State" has observed as under:-

One has to imagine three concentric circles, in order to understand the meaning and import of the above expressions. 'Law and order' represents the largest circle within which is the next circle representing "public order" and the smallest circle represents "security of State". It is then easy to see that an act may affect law and order but not public order just as an act may affect public order but not security of State. It is in view of the above distinction, the Act defines the expressions "acting in any manner prejudicial to the security of the State" and "acting in any manner prejudicial to the maintenance of public order" separately. An order of detention made either on the basis that the detaining authority is satisfied that the person against whom the order is being made is acting in any manner prejudicial to the security of the State or on the basis that he is satisfied that such person is acting in any manner prejudicial to the maintenance of public order but which is attempted to be supported by placing reliance on both the bases in the grounds furnished to the detenue has to be held to be an illegal one vide decisions of this Court in *Bhupal Chandra Ghosh v. Arif Ali & Ors.*(2) and *Satya Brata Ghose v. Arif Ali & Ors.*(3)."

11. From the ratio laid down by the Supreme Court in the above referred judgment, it is clear that there is a clear distinction between "security of the State" and "maintenance of public order". An act prejudicial to maintenance of

public order has to be of graver nature than an act prejudicial to the security of the state. The Supreme Court in the aforesaid judgment has made it clear that if an order of detention is made on both grounds i.e. on the ground of "security of the State" as well as on the ground of "maintenance of public order", such an order has to be held illegal. The aforesaid ratio has been reiterated and reaffirmed by the Supreme Court in the case of G. M. Shah v. State of J&K, 1980 AIR 494.

12. In the instant case, the Detaining Authority has mentioned in the grounds of detention that the petitioner is a constant threat to the maintenance of public order and thereafter the authority has come to the conclusion that the petitioner is a threat to the security of the State, While passing the impugned detention order, the Detaining Authority has noted that the activities of the petitioner are highly prejudicial for the maintenance of public order. Thus, it is clear that the Detaining Authority is unsure as to whether the activities of the detainee are prejudicial to the security of the State or the same are prejudicial to the maintenance of public order. The Detaining Authority while passing an order of detention has to be satisfied and sure about the exact nature of the activities of the detainee.

13. In the instant case, the manner in which the grounds of detention and the impugned order of detention have been framed clearly reflects a state of uncertainty on the part of the Detaining Authority while recoding its satisfaction. This renders the impugned order of detention unsustainable in law.

14. For the foregoing reasons, this petition is allowed and detention Order No. 26/ DMP/PSA/21 dated 03.06.2021, passed by District Magistrate, Pulwama, is quashed. Respondents are directed to release the detainee namely, Gulzar Ahmad Wani S/O Mohammad Ismail Wani R/O Chowgam Chutergul Teshil Shangus District, Anantnag forthwith, provided he is not required in any other case. Disposed of.

15. Detention record be returned to Mr. Asif Maqbool, learned counsel for respondents forthwith.