
(2020) 08 J&K CK 0090
In the Jammu And Kashmir High Court
Case No : Writ Petition (C) No. 652 Of 2019

Muhammad Ahsan Untoo

APPELLANT

Vs

State Of J&K And Others

RESPONDENT

Date of Decision : 11-08-2020

Acts Referred:

Jammu And Kashmir Public Safety Act, 1978 — Section 8
Jammu And Kashmir State Ranbir Penal Code, 1989 — Section 148, 332, 336, 341, 376, 427, 511
Unlawful Activities (Prevention) Act, 1967 — Section 13
Constitution Of India, 1950 — Article 22(5)

Citation : (2020) 08 J&K CK 0090

Hon'ble Judges : Sindhu Sharma, J

Bench : Single Bench

Advocate : Z. A. Qureshi, Rehana, B. A. Dar

Final Decision : Dismissed

Judgement

Sindhu Sharma, J

1. The detenu- Muhammad Ahsan Untoo has filed this petition seeking quashing of District Magistrate, Srinagar's order No. DMS/PSA/59/2019 dated 09.08.2019, directing his detention under Section 8 of the Jammu and Kashmir Public Safety Act, 1978.
2. The order of detention is questioned on the grounds of it being arbitrary and having been passed by the Detaining Authority without any application of mind. Learned counsel for the petitioner submits that the grounds of detention are vague and the detenu has not been supplied all the material relied upon by the Detaining Authority while passing the order of detention and has, thus, prevented the detenu from making an effective representation.
3. Learned counsel for the respondents has produced the detention record to justify the detention of the detenu. It is submitted that the detenu was detained as his activities were prejudicial to the maintenance of public order, as such, the

detention of the detenu was warranted.

4. The detenu was involved in FIR No. 10/2019 for offences under Sections 376/511 RPC registered at Police Station Raj Bagh, FIR No. 64/2017 for offences under Section 13 ULAP Act registered with Police Station Lalpora, Kupwara and FIR No. 162/2004 for offences under Sections 341, 336, 148, 427, 332 RPC at Police Station, Handwara.

5. Some of the grounds of detention relied upon while passing the impugned order of detention are as under;

".....Whereas, you having secessionist ideology and inclination towards secessionism, during present unrests you have remained instrumental in instigating disgruntled elements to resort to violence by indulging in stone pelting upon security personals which in turn disrupts public order. You wield a considerable clout in secessionist circles devised strategy wherein programmes are formulated in such a manner to disrupt to law and order besides instigating youth to resort to large scale violence so as to keep the pot boiling. You have been found supporting programmes/calendars of secessionist elements on the ground by giving sermons to innocent youth to resort to unlawful activities which have resulted in casualties and destruction of public property and create an atmosphere of chaos, anarchy in the valley.

Whereas, you are not only involved in illegal/unlawful activities, prejudicial to maintenance of public order but are also involved in exploiting widows and orphan girls of killed terrorists for sexual abuse in the meek interest of money as a financial support to them. In this regard case FIR No. 10/2019 U/S 376, 511 RPC stands registered against you in Police Station Rajbagh.

Whereas, you have found involved as accused in below mentioned cases which are as under:-

I. Case FIR No. 162/2004 u/s 341, 336, 148, 427, 332-RPC P/S Handwara

II. Case FIR No. 64/2017 u/s 13 ULAP Act P/s Lalpora Kupwara

III. Case FIR No. 10/2019 u/s 376, 511 RPC P/S Rajbagh. Whereas, looking at situation from a broader perspective, it appears that under a well-knit conspiracy, you and your other associates are intentionally resorting to such activities which disturb peace, tranquility and public order and these elements challenges sovereignty and integrity of Country by following aims and objectives of secessionist nature. The activities of you and your likeminded elements in fact contribute to overall surcharged atmosphere, created by secessionist elements in ongoing unrest, who have been sponsoring strikes and anybody who dears to defy their dictations is being harassed/attacked by elements like you leaving them with no option but to follow their illegal dictates."

6. The detenu was thus placed under detention to prevent him from indulging in such activities as the normal law was not found sufficient to stop him from

indulging in above activities. The detenu was placed under detention vide the order impugned.

7. The Constitution guarantees us right of personal liberty which is one of the most precious rights. However, in terms of Article-22(5) of the constitution, person can be placed under preventive detention without formal charges or being held guilty of an offence and sentenced to imprisonment by the competent Court. The object is to protect the society from these activities which are likely to affect life and liberty of others. It is, therefore, necessary to take preventive measures to prevent such people in acting such manner.

8. In *Khudiram Das V. State of West Bengal and others*, (1975) 2 SCR 832, It is held that:

"..... The power of detention is clearly a preventive measure. It does not partake in any manner of the nature of punishment. It is taken by way of precaution to prevent mischief to the community. Since every preventive measure is based on the principle that a person should be prevented from doing something which, if left free and unfettered, it is reasonably probable he would do, it must necessarily proceed in all cases, to some extent, on suspicion or anticipation as distinct from proof....."

9. It is settled law that the preventive detention is precautionary power exercised in reasonable anticipation. Hon'ble the Supreme Court in *Haradhan Saha and another V. State of West Bengal and others*, (1975) 3 SCC 198 has held that:

"32. The power of preventive detention is qualitatively different from punitive detention. The power of preventive detention is a precautionary power exercised in reasonable anticipation. It may or may not relate to an offence. It is not a parallel proceeding. It does not overlap with prosecution even if it relies on certain facts for which prosecution may be launched or may have been launched. An order of preventive detention, may be made before or during prosecution. An order of preventive detention may be made with or without prosecution and in anticipation or after discharge or even acquittal. The pendency of prosecution is no bar to an order of preventive detention. An order of preventive detention is also not a bar to prosecution.

33. Article 14 is inapplicable because preventive detention and prosecution are not synonymous. The purposes are different. The authorities are different. The nature of proceedings is different. In a prosecution an accused is sought to be punished for a past act. In preventive detention, the past act is merely the material for inference about the future course of probable conduct on the part of the detenu.

10. Hon'ble the Supreme Court in *State of Maharashtra and others V. Bhaurao Punjabrao Gawande*, (2008) 2 SCC 128, has held that:

"36. Liberty of an individual has to be subordinated within reasonable bounds, to the good of the people. The framers of the Constitution were conscious of the

practical need of preventive detention with a view to striking a just and delicate balance between need and necessity to preserve individual liberty and personal freedom on the one hand and security and safety of the country and interest of the society on the other hand. Security of State, maintenance of public order and services essential to the community, prevention of smuggling and black marketing activities, etc. demand effective safeguards in the larger interests of sustenance of a peaceful democratic way of life."

11. The order of detention has been passed by the detaining authority on a reasonable consideration of future behavior of the detenu based on his conduct. The grounds of detention are definite, proximate and free from any ambiguity. The detenu was informed of what weighed with the Detaining Authority, while passing the detention order, the Detaining Authority has recorded its subjective satisfaction required to place the detenu in preventive detention. The detenu has been informed of his right to make representation against the order of detention to both, the Government as well as Detaining Authority but he has not chosen to do so. Thus, none of the statutory and Constitutional rights of the detenu have been infringed. The detaining authority has passed order of detention after arriving at its subjective satisfaction and considering all the materials before it.

12. In view of the above, there is no merit in this petition and the same is, accordingly, dismissed.

13. Let the detention record be handed over to learned counsel for the respondents.