

(2024) 05 J&K CK 0011

In the Jammu And Kashmir High Court

Case No : Writ Petition (Criminal) No. 503 Of 2023

Shoaib Akhter

APPELLANT

Vs

Union Territory Of J&K & Anr

RESPONDENT

Date of Decision : 02-05-2024

Acts Referred:

Constitution Of India, 1950 — Article 22(5)
Jammu And Kashmir Public Safety Act, 1978 — Section 3, 8(a)
Indian Penal Code, 1860 — Section 147, 148, 149, 302, 332, 336, 427

Citation : (2024) 05 J&K CK 0011

Hon'ble Judges : M.A. Chowdhary, J

Bench : Single Bench

Advocate : R.A.Khan, Mubeen Wani

Final Decision : Dismissed

Judgement

M. A. Chowdhary, J

1. In terms of Detention Order No. 52/DMK/PSA/2022 dated 25.06.2022 (for short 'impugned order') passed by District Magistrate, Kulgam-respondent No.2, the petitioner namely Shoaib Akhter S/O Farooq Ahmad Wani R/O Nillow Kulgam (for short 'detenue') was ordered to be detained under preventive custody in terms of Section-8(a) of Jammu & Kashmir Public Safety Act, 1978 (for short 'Act') with a view to prevent him from acting in any manner prejudicial to the security of the State.

2. The impugned order has been challenged on the grounds taken in the instant petition by the detenue through his father. The plea of the petitioner is that the detenue, in terms of the impugned order, has been detained under the Act without any justification and the allegations leveled in terms of the grounds of detention have no nexus with the detenue and have been fabricated by the police in order to justify its illegal action of detaining the detenue. It is pleaded that the order of detention had not been executed in tune with the Act and the directions of the Detaining authority, which in turn had deprived the detenue from making

an effective and meaningful representation against his detention. Another plea of the detainee is that he has not been provided the relevant material/documents relied upon by the Detaining authority. The detainee, post execution, has not been informed that he can make a representation before the Detaining authority, therefore, a valuable right of the detainee stands defeated. Non-supply of translated copies of relevant documents as well as non-explanation of the documents/material in the language known to the detainee also vitiates the detention as illegal and unconstitutional.

3. Pursuant to notice, respondents have filed their reply affidavit, vehemently, resisting assertions made in the petition. It is contended that detaining a person under the provisions of Public Safety Act is always preventive in nature and its sole aim is to prevent a person from pursuing anti-national/anti-social activities, which are prejudicial to the maintenance of security of State, etc. In the instant case there is enough material against the detainee which is highly suggestive of the fact that the normal law of the land is not sufficient to prevent him from continuing with his anti-national activities and, it is evident that the detainee is highly motivated and is not likely to desist from anti-national and unlawful activities.

4. Heard learned counsel for the parties, perused the detention record produced by learned counsel for the respondents and considered the matter.

5. Perusal of the detention record indicates that the detainee was working as OGW/associate of banned terrorist outfit 'LeT'. The record further reveals that the detainee always remains in search of an opportunity to exploit any situation and indulge in anti-national/subversive activities and the involvement of the detainee in anti-national activities indicates that he is hell bent to continue such type of activities. Furthermore, there is every possibility that the detainee will again indulge in anti-national activities if not detained under the preventive laws. The grounds of detention reveals that from the clandestine sources it has been learnt that the detainee has been actively propagating the ideology of targeting minority communities, whose complicity in the recent civilian killings cannot be ruled out as the main aim of the detainee is to disturb the communal harmony within the UT of J&K and also the peaceful atmosphere, with the intention to generate fear/terror among the general masses. If the detainee is allowed to remain at large at this juncture, he will provoke more and more youth to indulge in anti-national, criminal and subversive activities and there is every possibility that the presence of detainee will endanger the life and liberty of peace loving citizens especially the minority community/non-locals. Further, the grounds of detention indicates that the unfettered logistic support, transportation vis-a-vis the members of the terrorist organizations and their illegal arms ammunition extended by the detainee, reinforce the fact that the detainee has become highly detrimental to the maintenance of security, sovereignty and integrity of the UT of J&K and the Union of India. There exists every likelihood that the detainee will continue to indulge in acts prejudicial the security of UT of J&K and will also flame terrorist

activities within the area. The liberty of the detainee will amount to making the lives of the peace loving citizens vulnerable and also will endanger the general security of the society at large, therefore, in order to stop the detainee from indulging in such activities and to safeguard the life and property of innocent persons, detention of the detainee under the provisions of J&K Public Safety Act at this stage has become exigent/imperative.

6. Narrating the factual background, it has been asserted that on 03.09.2021, Police Station Kulgam received a written docket from a Police Party of P/S Kulgam, from Astan Gali Kulgam to the effect that the police personnel including Nafri of IRP 17th Bn and contingent of G Coy 18 Bn CRPF deployed on law and order duty from Ganta Ghar to Astan Gali, found a mob of unknown miscreants armed with stones, lathies and iron rods raising anti-national/pro-freedom slogans as well as in favour of Hurriyat (G) Chief Late Syed Ali Shah Geelani and against integrity and sovereignty of the Country. The mob was asked to pacify but they pelted stones with intention to kill deployed Nafri due to which one CRPF personnel Havaladar S.Sunil Kumar No. 1492083 sustained injuries. Battery of departmental vehicle Bunker bearing registration No. BR09GA/3859 got damaged due to stone pelting. The CRPF resorted to aerial firing of 04 rounds of PAG to disperse the mob, causing no civilian injuries. An FIR No. 204/2021 under Sections 147, 148, 149, 336, 427, 332, 307 IPC, 13 of Unlawful Activities (Prevention) Act, came to be registered in Police Station Kulgam and investigation was set into motion. During the course of investigation, the detainee was found involved in the instant case. The credible inputs have unequivocally suggested that the detainee was playing vital part in keeping the pot of terrorism boiling by providing logistic support to the terrorists in the jurisdiction of Police Station Kulgam and its adjoining area. Furthermore, the record reveals that the chances of the detainee to shun the path of the violence and acting as supporter of terrorism are bleak and in such circumstances there is no option left except to curb the criminal/anti-national activities of the detainee under the provisions of Public Safety Act.

7. It would be apt to say that right of personal liberty is most precious right, guaranteed under the Constitution. A person is not to be deprived of his personal liberty, except in accordance with procedures established under law. The personal liberty may be curtailed where a person faces a criminal charge or is convicted of an offence and sentenced to imprisonment. 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 defense.

8. 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 are to save 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 a 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.

9. Having glance of the grounds of detention, it is clear that the detainee is involved in subversive/anti-national activities and did not desist himself from indulging in such activities. His inclination towards secessionist elements gave him a place in the banned organization (LeT), of which he was an active member. The detainee did not shun the path of his nefarious and anti-national activities and was continuously indulging in anti-national activities. The detaining authority after keeping in view the activities of the detainee highly prejudicial and detrimental to the maintenance of the security of the State, detained him under preventive custody, in terms of the impugned order, which is under challenge in the present petition.

10. It would be apt to refer to the observations made by the Constitution Bench of the Supreme Court in the case of 'The State of Bombay v. Atma Ram Shridhar Vaidya AIR 1951 SC 157'. Para- 5 of the said judgment lays law on the point, which is profitable to be reproduced hereunder:

"5. It has to be borne in mind that the legislation in question is not an emergency legislation. The powers of preventive detention under this Act of 1950 are in addition to those contained in the Criminal Procedure Code, where preventive detention is followed by an inquiry or trial. By its very nature, preventive detention is aimed at preventing the commission of an offence or preventing the detained person from achieving a certain end. The authority making the order therefore cannot always be in possession of full detailed information when it passes the order and the information in its possession may fall far short of legal proof of any specific offence, although it may be indicative of a strong probability of the impending commission of a prejudicial act. Section a of the Preventive Detention Act therefore requires that the Central Government or the State Government must be satisfied with respect to any person that with a view to preventing him from acting in any manner prejudicial to (1) the defence of India, the relations of India with foreign powers, or the security of India, or (2) the security of the State or (3) the maintenance of public order, maintenance of supplies and services essential to the community it is necessary So to do, make an order directing that such person be detained. According to the wording of section 3, therefore, before the Government can pass an order of

preventive detention it must be satisfied with respect to the individual person that his activities are directed against one or other of the three objects mentioned in the section, and that the detaining authority was satisfied that it was necessary to prevent him from acting in such a manner. The wording of the section thus clearly shows that it is the satisfaction of the Central Government or the State Government on the point which alone is necessary to be established. It is significant that while the objects intended to be defeated are mentioned, the different methods, acts or omissions by which that can be done are not mentioned, as it is not humanly possible to give such an exhaustive list. The satisfaction of the Government however must be based on some grounds. There can be no satisfaction if there are no grounds for the same. There may be a divergence of opinion as to whether certain grounds are sufficient to bring about the satisfaction required by the section. One person may think one way, another the other way. If, therefore, the grounds on which it is stated that the Central Government or the State Government was satisfied are such as a rational human being can consider connected in some manner with the objects which were to be prevented from being attained, the question of satisfaction except on the ground of mala fides cannot be challenged in a court. Whether in a particular case the grounds are sufficient or not, according to the opinion of any person or body other than the Central Government or the State Government, is ruled out by the wording of the section. It is not for the court to sit in the place of the Central Government or the State Government and try to determine if it would have come to the same conclusion as the Central or the State Government. As has been generally observed, this is a matter for the subjective decision of the Government and that cannot be substituted by an objective test in a court of law. Such detention orders are passed on information and materials which may not be strictly admissible as evidence under the Evidence Act in a court, but which the law, taking into consideration the needs and exigencies of administration, has allowed to be considered sufficient for the subjective decision of the Government."

11. In light of the aforesaid legal position settled by the Six-Judge Constitution Bench way back in the year 1951, the scope of looking into the manner in which the subjective satisfaction is arrived at by the detaining authority, is limited. This Court, while examining the material, which is made basis of subjective satisfaction of the detaining authority, would not act as a court of appeal and find fault with the satisfaction on the ground that on the basis of the material before detaining authority another view was possible.

12. The courts do not even go into the questions as to whether the facts mentioned in the grounds of detention are correct or false. The reason for the rule is that to decide this, evidence may have to be taken by the courts and that it is not the policy of the law of preventive detention. This matter lies within the competence of the Advisory Board constituted under the Public Safety Act. Those who are responsible for national security or for maintenance of public order must be the sole arbiters of what the national security, public order or security of the State requires. Preventive detention is devised to afford protection to society.

The object is not to punish a man for having done something but to intercept before he does it and to prevent him from doing. Justification for such detention is suspicion or reasonable probability and not criminal conviction, which can only be warranted by legal evidence. Thus, any preventive measures, even if they involve some restraint or hardship upon individuals, as observed by the Supreme Court in the case 'Ashok Kumar v. Delhi Administration & Ors., AIR 1982 SC 1143', do not contribute, in any way, of the nature of punishment.

13. Observing that the object of preventive detention is not to punish a man for having done something but to intercept and to prevent him from doing so, the Supreme Court in the case 'Naresh Kumar Goyal v. Union of India & Ors., 2005 (8) SCC 276', and reiterated in the case titled 'Union of India and another v. Dimple Happy Dhakad' (AIR 2019 SC 3428), held that an order of detention is not a curative or reformatory or punitive, but a preventive action, acknowledged object of which being to prevent anti-social and subversive elements from endangering the welfare of the country or security of the nation or from disturbing public tranquility or from indulging in anti-national activities or smuggling activities or from engaging in illicit traffic in narcotic drugs and psychotropic substances, etc. Preventive detention is devised to afford protection to society. The rulings on the subject have consistently taken the view that preventive detention is devised to afford protection to society and that liberty of a citizen has to be subordinate to the good of the people. The object is not to punish a man for having done something but to intercept before he does it and to prevent him from doing so.

14. The record, produced by the respondents, reveals that the detainee was informed to make a representation to the detaining authority as also to the Government against his detention order if the detainee so desires. In compliance to District Magistrate's detention order, the warrant was executed by SI Abdul Rashid of DPL Kulgam at Central Jail Jammu on 07.07.2022, against a proper receipt. Further the execution report reveals that the detainee was informed about his right to make a representation to the Government as well as to the Detaining authority. It is also revealed that the detention warrant and grounds of detention have been read over and explained to the detainee in Urdu/Kashmiri languages which the detainee understood fully and signatures of detainee was also obtained. Thus, the contention of the petitioner for not supplying the material is not sustainable.

15. Argument of learned counsel for the petitioner that the detainee has not been provided translated copies of grounds of detention and other related documents has no weight at all, as on perusal of the record, it reveals that the qualification of detainee is 12th pass. Also the material as has been furnished to the detainee contains total 20 leaves; detention order -01 leaf, notice of detention- 02 leaves, grounds of detention -03 leaves, Police dossier -04 leaves, copies of FIR, statements of witnesses and other related relevant documents -10 leaves. The record further reveals that the detainee has been made aware of making

representation against his detention to the Government or to the detaining authority, as such, contentions of learned counsel for the petitioner in this direction are misplaced.

16. In view of the foregoing discussions, the instant petition is found devoid of any merit and is, accordingly, dismissed.

17. Detention record, as produced, be returned back to learned counsel for respondents.