

**(2022) 06 J&K CK 0003**

**In the Jammu And Kashmir High Court**

**Case No : Writ Petition (Criminal) No. 164 Of 2021**

Zain ul Hafeez

APPELLANT

Vs

UT of J&K And Another

RESPONDENT

**Date of Decision : 02-06-2022**

**Acts Referred:**

**Citation : (2022) 06 J&K CK 0003**

**Hon'ble Judges : Vinod Chatterji Koul, J**

**Bench : Single Bench**

**Advocate : Bilal Ahmad Khan, Sajjad Ashraf**

**Final Decision : Disposed Of**

## Judgement

Vinod Chatterji Koul, J

1. Through the medium of this writ petition, Order No. DMS/PSA/44/2021 dated 09.09.2021, passed by District Magistrate, Srinagar (respondent no. 3) whereby detenu, namely, Zainul Hafeez S/o Mohammad Hafeez Malik R/o Natipora Azad Basti, Srinagar has been placed under preventive detention with a view to prevent him from indulging in the activities which are prejudicial to the maintenance of public order, is sought to be quashed and the detenu set at liberty on the grounds made mention of therein.

2. The case set up by petitioner in the petition is that the allegations made in the grounds of detention are vague and non-existent; that the material record, like dossier, copies of FIRs, material collected during investigation of those FIRs, shown in the grounds of detention have not been provided to the detenu by the detaining authority thereby depriving him of his legal right to make an effective representation against his detention order. It is also contended that the detaining authority while passing impugned detention order has mentioned that detenu is being placed under preventive detention as his activities are prejudicial to the maintenance of public order whereas in the grounds of detention it is mentioned that the activities of the detenu are prejudicial to the maintenance of public order

as well as security of the UT of J&K, which reflects non-application of mind on the part of detaining authority because detention order is to be issued either for public order or for security of the State but not under both the heads, and as a corollary thereof impugned order of detention deserves to be quashed.

3. The respondents have resisted the petition by filing a counter affidavit thereto in which they have denied the contentions raised by the petitioner in the petition. The detaining authority has, in its affidavit, justified the grounds of detention as well as the impugned detention order while denying the allegation of non-supply of relevant material to the detenu. To substantiate their case, the respondents have produced the detention record.

4. I have heard learned counsel for parties and considered the matter.

5. Learned counsel for petitioner has stated that grounds of detention has been prepared on both expressions, viz. "prejudicial to the maintenance of public order as well as prejudicial to the security of UT of J&K", which reflects non-application of mind on the part of detaining authority.

6. Taking into account the submissions made by learned counsel for parties, it would be appropriate to say that the Government may, if satisfied with respect to any person that with a view to prevent him from acting in any manner prejudicial to the maintenance of the public order or the security of the State, make an order directing that the person be detained. When the law providing for preventive detention permits detention of a person whose activities are prejudicial to defence, security of India or security of the State, it will be lawful to detain such person if any of his activities is considered by detaining authority affecting security of the State. [See: A. K. Roy v. Union of India, AIR 1982 SC 710]. The security of the State can be put to danger by crimes of violence intended to overthrow the government. The expression "security of the State" includes economic security also. Those who commit economic offences do harm to the national interest and economy of the State and can be detained under preventive detention. Counterfeiting of currency and putting the same in circulation destabilize the economy of the State and it affects the security of the State. [Santokh Singh v. Delhi Administration, 1973 SC 1091; A.G. v. Amritlal(1994) 5 SCC 54; Safiya v. Government of Kerala, AIR 2003 SC 3562; Bashir Ahmad v. State 2004 (ii) SLJ 550]. The question to ask is: "does it lead to disturbance of the public order or does it affect merely an individual leaving the tranquillity of the society undisturbed"? This question has to be faced in every case on its facts. "Public order", "Law and order", and "security of the State", draw three concentric circles, the largest representing law and order, the next representing public order and the smallest representing security of the State. Every infraction of law must necessarily affect order, but an affecting law and order may not necessarily also affect the public order. Likewise, an act may affect public order, but not necessarily the security of the State. The true test is not the kind, but the potentiality of the act in question. One act may affect only individuals while the other, though of a similar kind, may have such an impact

that it would disturb the even tempo of the life of the community. This does not mean that there can be no overlapping in the same that an act cannot fall under two concepts at the same time. An act, for instance, affecting public order may have an impact that it would affect both public order and security of the State.

7. Perusal of relevant case law, thus, would show that "public order" specifies something more than "law and order". The breach of public order involves a degree of disturbance and it affects upon the life of the community in a locality, which determines whether the disturbance amounts only to breach of law and order and not a public order. The difference between two concepts is in only one degree. An act affecting law and order may not necessarily also affect the public order and an act which might be prejudicial to public order may not affect the security of the State. Public order is synonymous with public safety and tranquillity and it is the absence of any disorder involving breaches of local significance in contradiction to national upheavals, such as revolution, civil strife, war, affecting the security of the State.

8. In *Dr Ram Manohar Lohia v. State of Bihar and others*, 1966 AIR SC 740, it has been held by the Supreme Court that any contravention of law always affects order but before it can be said to affect public order, it must affect the community or the public at large. It was observed that offences against "law and order", "public order" and "security of the State" are demarcated on the basis of the gravity. It is the degree of disturbance and its affect upon the life of the community in a locality which determines whether the disturbance amounts only to breach of law and order though in the grounds of detention, the detenu created a sense of alarm, scare and a feeling of insecurity in the minds of the public of the area and thereby acted in a manner prejudicial to the maintenance of public order which affected the even tempo of life of the community. It was held that mere citation of these words in the order of detention was more in the nature of a ritual rather than with any significance to the content of the matter.

9. The determining test in all such cases is "the act leads to disturbance of the current of life of the community so as to amount to a disturbance of the public order or does it affect merely an individual leaving the tranquillity of society undisturbed". The expression "law and order", "public order" and "security of the State" are distinct concepts though always not separate. Every public order if disturbed, must lead to public disorder but every breach of the peace does not lead to public disorder. For example, when two drunkards quarrel and fight there is disorder but not public disorder. They can be dealt with under the powers to maintain law and order but cannot be detained on the ground that they were disturbing public order. Disorder is no doubt prevented by the maintenance of law and order also but disorder is a broad spectrum which includes at one end small disturbances and at the other the most serious and cataclysmic happenings.

10. As has been held by the Supreme Court in *G.M. Shah v. State of J&K*, 1980 (AIR) SC 494, the expressions "law and order", "public order" and "security of

the State” are distinct concepts, though not always separate. While every breach of peace may amount to disturbance of law and order, every such breach does not amount to disturbance of public order and every public disorder may not prejudicially affect the “security of the State”.

11. In the present case, detaining authority has made use of both expressions “prejudicial to maintenance of public order” as well as “prejudicial to security of the State”. Impugned detention order, made on the basis of grounds of detention using both expressions by the detaining authority to place detenu under preventive detention, in view of above discussion and well settled law, is held illegal and consequently impugned order is vitiated.

12. Perusal of the record also reveals that the material produced by Senior Superintendent of Police to the detaining authority has not been provided to detenu to enable him to make an effective representation against his detention. Execution report overleaf impugned order of detention, which is on the detention record produced by the counsel for respondent, is for ready reference advantageous to be reproduced hereunder:

“In Compliance to District Magistrate Order ..... I PSI Ashfaq Ahmad..... The contents of Detention warrant & grounds of detention/ FIR copies have been read over to the said detenu in English and urdu translated papers of order of detention explained him in Kashmiri Language which he understood fully, in lieu of which his signature/thumb impression has been obtained below at mark (A).

The detenu along-with relevant document i.e copies of detention warrant and grounds of detention etc has been handed over to authorities of District Jail Kupwara on 22.09.2021 against proper receipt for further lodgement. The detenu has also been informed that he can make representation to the Government against his detention order, if he so desire.”

13. Thus from Execution Report it is evident that detenu has not been provided the material, like copies of dossier, FIRs, material collected during investigation of these FIRs, has been furnished or provided to detenu to enable him to make an effective representation against his detention, which violates the rights of the detenu guaranteed under the Constitution. On this count as well impugned order is liable to be quashed.

14. For the reasons discussed above, this petition is disposed of and detention Order no. DMS/PSA/44/2021 dated 09.09.2021, passed by District Magistrate, Srinagar, is quashed. Respondents, including Jail Superintendent concerned, are directed to release the detenu forthwith, provided he is not required in any other case. Disposed of.

15. Registry to return detention record to learned counsel for respondents.