VERDICTUM.IN

HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT SRINAGAR
…
WP (Crl) No.202/2022

Reserved on: 29.01.2024

Pronounced on: 31.01.2024

Muyeeb Shafi Ganie

……. Petitioner(s)

Through: Mr. Wajid Haseeb, Advocate

Versus

Union Territory of J&K and Anr.

….Respondent(s)

Through: Mr. Sajad Ashraf, GA

***CORAM*:**
HON'BLE MR JUSTICE VINOD CHATTERJI KOUL, JUDGE

JUDGEMENT

1. Through the medium of this writ petition, detention order No. DMS/PSA/09/2022 dated 07.04.2022, passed by District Magistrate, Srinagar, whereby detenu, namely, *Muyeeb Shafi Ganie S/o Mohammad Shafi Ganie R/o Sabzi Mandi Soura, Srinagar* has been placed under preventive detention with a view to prevent him from acting in any manner prejudicial to the maintenance of security of the state, is sought to be quashed and the detenu set at liberty on the grounds made mention of therein.
2. The main grounds on which detention is sought to be quashed are that the grounds of detention are vague, indefinite**,** cryptic, inasmuch as detaining authority has not attributed any specific allegation against detenu; that detaining authority has not furnished the material including dossier, relied upon by it, to detenu to enable him to make an effective representation by giving his version of facts attributed to him and make an attempt to dispel apprehensions nurtured by detaining authority concerning involvement of detenu in alleged activities; that grounds of detention do not give details or particulars of terrorists to whom detenu is alleged to have met or of those

VERDICTUM.IN

who are alleged to have been given assistance by the detenu; that there is no live link between the last activity and the impugned order of detention inasmuch as FIR no.48/2020 of Police Station Soura , has been taken into account by detaining authority while passing order impugned, unmindful of the fact that detenu has been bailed out in the said FIR on 19.08.2020 and there have been no further activities alleged against detenu.

3. Respondents have filed reply affidavit, insisting therein that the activities indulged in by detenu are highly prejudicial to the maintenance of security of State and, therefore, his remaining at large is a threat to the maintenance of security of state. The activities narrated in the grounds of detention have been reiterated in the reply affidavit filed by respondents. The factual averments that detenu was not supplied with relevant material relied upon in the grounds of detention, have been refuted. It is insisted that all the relevant material, which has been relied upon by the detaining authority, was provided to the detenu at the time of execution of warrant.
4. I have heard learned counsel for parties. I have gone through the detention record produced by the counsel appearing for respondents and considered the matter.
5. Taking into account the rival contentions of parties and submissions made by learned counsel for parties, it would be relevant to go through the detention record produced by counsel for respondents. The detention record, *inter alia*, contains "*Execution Report*" and *"Receipt of Grounds of detention".* It would be advantageous to reproduce relevant portion of *Execution Report* hereunder:

> "The detention order (01 leaf), Notice of detention (01 leaf) grounds of detention (02 leaves), Dossier of detention (Nil) Copies of FIR, Statements of witnesses and other related relevant documents (01 leaf), (Total 05 Leaves) have been handed over to the above said detenu….."

6. It would also be appropriate to reproduce relevant portion of "*Receipt* of Grounds of Detention" herein:

> "Received copies of detention order (01 leaf), Notice of detention (01 leaf) grounds of detention (02 leaves) Dossier of detention (Nil) Copies of FIR, Statements of witnesses and other related relevant documents (01) Total 05 leaves through executing officer ….."

7. It is evident very much from bare perusal of Execution Report and Receipt of Grounds of Detention that only five (05) leaves have been given to detenu.

VERDICTUM.IN

8. Perusal of impugned detention order reveals that on the basis of dossier placed before detaining authority by Senior Superintendent of Police, Srinagar, vide no. LGL/Det-PSA/2022/6058-59 dated 06.04.2022, detaining authority was satisfied that there are sufficient grounds to prevent detenu from acting in any manner prejudicial to the maintenance of security of the state, it was necessary to detain him under necessary provisions of law. So, it is on the basis of dossier and other connected material/documents that impugned detention order has been passed by detaining authority. The grounds of detention, on its perusal, give reference to case FIR No. 48/2020 to have been registered against detenu at Police Station Soura. Involvement of detenu in the aforesaid case appears to have weighed with detaining authority while making detention order. The detention record, as noted above, does not indicate that copies of aforesaid First Information Report, Statements recorded under Section 161 Cr.P.C. and other material collected in connection with investigation of aforesaid case was ever supplied to the detenu, on the basis whereof impugned detention order has been passed. The aforesaid material, thus, assumes importance in the facts and circumstances of the case.
9. It needs no emphasis, that detenu cannot be expected to make a meaningful exercise of his Constitutional and Statutory rights guaranteed under Article 22(5) of the Constitution of India and Section 13 of the J&K Public Safety Act, 1978, unless and until the material on which detention order is based, is supplied to him. It is only after detenu has all the said material available that he can make an effort to convince detaining authority and thereafter the Government that their apprehensions vis-à-vis his activities are baseless and misplaced. If detenu is not supplied the material, on which the detention order is based, he will not be in a position to make an effective representation against his detention order. The failure on the part of the detaining authority to supply the material, relied at the time of making the detention order to the detenu, renders the detention order illegal and unsustainable. In this regard I draw support from the law laid down in ***Thahira Haris Etc. Etc. v. Government of Karnataka, AIR 2009 SC 2184; Union of India v. Ranu Bhandari, 2008 Cr.L.J. 4567; Dhannajoy Dass v. District Magistrate, AIR, 1982 SC 1315; Sofia Gulam Mohd Bham v. State of Maharashtra and others AIR 1999 SC 3051;*** and ***Syed Aasiya Indrabi v. State of J&K & ors, 2009 (I) S.L.J 219***.

VERDICTUM.IN

10. The Supreme Court in ***Abdul Latief Abdul Wahab Sheikh v. B.K. Jha, 1987 (2) SCC 22***, has held that it is only the procedural requirements which are the only safeguards available to the detenu that is to be followed and complied with as the Court is not expected to go behind the subjective satisfaction of the detaining authority. In the present case, procedural requirements, as discussed above, have not been followed and complied by the respondents in letter and spirit and resultantly, the impugned detention needs to be quashed.

11. The question whether the prejudicial activities of a person requiring to pass a detention order is proximate to time when the order is made or the live-link between the prejudicial activities and the purpose of detention is snapped, depends on the facts and circumstances of each case. Nonetheless, when there is an undue and long delay between the prejudicial activities and the passing of the detention order, the Court has to scrutinize whether the detaining authority has satisfactorily examined such a delay and afforded a tenable and reasonable explanation as to why such a delay has occasioned, when called upon to answer and further the court has to investigate whether the casual connection has been broken in the circumstances of each case. Certainly, in the present case, there is no cogent explanation coming to fore from perusal of the grounds of detention with reference to the live-link between the prejudicial activities and the purpose of the detention and resultantly, the impugned detention order is liable to be quashed. In this regard reference is made to the law laid down in ***T. A. Abdul Rahman v. State of Kerala (1989) 4 SCC 741*** and ***Rajinder Arora v. Union of India and others (2006) 4 SCC 796***.

12. The law on the subject is settled. If detaining authority is apprehensive that in case detenu is released on bail he may again carry on his criminal activities, then in such situation, the authority should oppose the bail application and, in the event, bail is granted, the authority should challenge such a bail order in the higher forum and that merely on the ground that an accused in detention is likely to get bail, an order of preventive detention should not ordinarily be passed. Para 24 of judgement passed in ***Sama Aruna v. State of Telangana and another, AIR 2017 SC 2662***, reads as under:

> "24. There is another reason why the detention order is unjustified. It was passed when the accused was in jail in Crime No.221 of 2016. His custody in jail for the said offence was converted into custody under the impugned detention order. The incident involved in this offence is sometime in the year 2002-2003. The detenu could not have been detained preventively by taking

VERDICTUM.IN

this stale incident into account, more so when he was in jail. In Ramesh Yadav v. District Magistrate, Etah and Ors., this court observed as follows:

> "6. On a reading of the grounds, particularly the paragraph which we have extracted above, it is clear that the order of detention was passed as the detaining authority was apprehensive that in case the detenu was released on bail he would again carry on his criminal activities in the area. If the apprehension of the detaining authority was true, the bail application had to be opposed and in case bail was granted, challenge against that order in the higher forum had to be raised. Merely on the ground that an accused in detention as an undertrial prisoner was likely to get bail an order of detention under the Nation Security Act should not ordinarily be passed."

13. There is force in the submission of learned counsel for petitioner that there is no live link between the last activity and impugned detention order because FIR no. 48/2020 has been taken into account by detaining authority while passing order impugned, unmindful of the fact that detenu has been admittedly bailed out in the said FIR and there have been no further activities alleged against detenu. Resultantly, impugned order of detention is liable to be quashed.

14. Based on the above discussion, the petition is disposed of and Detention Order No. DMS/PSA/09/2022 dated 07.04.2022, issued by the District Magistrate, Srinagar against the detenu is quashed. As a corollary, respondents are directed to set the detenu at liberty forthwith provided he is not required in any other case. **Disposed of**.

15. Detention record be returned to counsel for respondents.

HIGH COURT
JAMMU & KASHMIR AND LADAKH

(Vinod Chatterji Koul)
Judge

Srinagar
31.01.2024
(Qazi Amjad, Secy)

Whether the order is reportable: No.