HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT SRINAGAR

WP(Crl) No. 665/2022

Reserved on: 31.07.2023

Pronounced on: 09.08.2023

Abdul Hameed Ganie @ Dr.Hameed Fayaz

…Petitioner(s)

Through: Mr. Z.A.Qureshi, Sr. Advocate with
Ms. Raziya Amin, Advocate.

Vs.

Union Territory of J&K & Anr.

…Respondent(s)

Through: Mr. Sajad Ashraf, GA.

CORAM: HON'BLE MR. JUSTICE M. A. CHOWDHARY, JUDGE

JUDGMENT

1. By virtue of Detention Order No. 149/DMS/PSA/2022 dated 16.09.2022 (for short 'impugned order') passed by District Magistrate, Shopian -respondent No.2 the petitioner namely Ab. Hameed Ganie @ Dr. Hameed Fayaz (for short 'detenue'), was ordered to be detained under preventive custody with a view to prevent him from acting in any manner in the activities which are prejudicial to the maintenance of public order in terms of Clause (a-i) of Sub Section (1) of Section-8 of J&K Public Safety Act, 1978 (for short 'the Act').

2. Aggrieved of the said detention order, detenue, through his wife, has filed the present petition seeking quashment of the same on the grounds taken in the petition on hand; that the detenue, in terms of the impugned order, has been detained under the Act on false and flimsy grounds without any justification; that the grounds of detention are vague and mere assertions of the detaining authority and no prudent man can make

an effective and meaningful representation against these allegations; that he was not provided the material/documents relied upon by the detaining authority so as to make an effective representation before the detaining authority; that mere use of words that 'the detenue can make a representation before the District Magistrate, if he so desires, fails to fulfill the basic procedure laid down in Article 22 of the Constitution and is in total violation of the rights of the detenue guaranteed under Article 22 of the Constitution; that the Detaining authority, while passing the impugned order, has relied upon the stale grounds, therefore, the same is not sustainable. It was prayed to quash the impugned order for the afore-stated grounds.

3. Counter affidavit has been filed by respondent No. 2 vehemently resisting 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 public order etc. In the instant case there is enough material against the detenue 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 detenue 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.

5. The detention record, on its perusal, would indicate that the detenue is a highly qualified person and has completed Ph.D degree from Kashmir University; that the detenue was affiliated with Jammat-e-Islami from college life and subsequently he was selected as "Ameer" of Jamat-e-

Islami J&K in the year 2018; that the detenue was a hardcore motivator and supporter of terrorists and was acting to bring about secession of J&K from the Union of India and to its consequent merger with Pakistan; that the detenue had never remained law abiding citizen which can be gathered from the fact that in 2009 he secretly sowed the seeds of hatred and disaffection against the army in the town of Shopian; that earlier an FIR No. 42/2019 under Section 10, 11 & 13 of Unlawful Activities Prevention Act was registered against the detenue in Police Station Budgam.

6. For his involvement in active role in the banned organization of Jamat-e-Islami for carrying out anti-national propaganda and campaigning against sovereignty and integrity of the country, besides instigating and motivating general masses for anti national propaganda, he was detained under Public Safety Act from District Budgam, however the said detention order was quashed and the detenue was released in the year 2021; that post release the detenue did not mend his ways and continued to foment trouble in district Shopian; that the detenue clandestinely was collecting funds from the people for reviving of Jammu-e-Islami and to fuel anti national activities; that being an influential person, the detenue has indulged/instigated a large number of youth to the path of violence; that the only aim and purpose of the detenue was to liberate the State of J&K from India and annex it with Pakistan. It is prayed that to curb the activities of the detenue, it was imperative to detain the detenue 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 and the procedure as laid down in the case '**Maneka Gandhi vs. Union of India, (1978 AIR SC 597)'**. 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 right from the college life the detenue was involved in anti-national activities. His

affiliation with banned organization Jamat-e-Islami and holding the different positions in the said organization with an aim and purpose to liberate the State of J&K from India and annex it with Pakistan. His inclination towards secessionist elements gave him a place in Jamat-e-Islami which is a banned organization, of which he was an active member. The detaining authority after keeping in view the activities of the detenue highly prejudicial and detrimental to the maintenance of the public order, detained him under preventive custody, in terms of the impugned order, which is under challenge in the present petition.

10. The record, produced by the State, reveals that the detenue was informed to make a representation to the detaining authority as also to the Government against his detention order if the detenue so desires. In compliance to District Magistrate's detention order, the warrant was executed by ASI Showkat Ahmad of Police Station Shopian, by supplying the copies of detention warrant, , grounds of detention etc., against a proper receipt. Further the execution report reveals that the detenue can 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 were read over and explained to the detenue in Urdu/Kashmiri/English language which the detenue understood fully and signatures of detenue was also obtained. Thus, the contention of the petitioner for not supplying the material is not sustainable.

11. It would be apt to refer to the observations made by the Constitution Bench of the Supreme Court in the case '**The State of Bombay v. Atma Ram Shridhar Vaidya AIR 1951 SC 157' Para- 5** 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 defense of India, the relations of India with foreign powers, or the security of India, or (2) the security of the State or the maintenance of public order, or (3) the 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 deter- mine 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."***

12. 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.

13. 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.

14. Those who are responsible for national security or for maintenance of public order must be the sole judges 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 held 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.

15. 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 held in the case **'Naresh Kumar Goyal v. Union of India & Ors., 2005 (8) SCC 276'**, and reiterated in the judgment in a case titled **'Union of India and another v. Dimple Happy Dhakad' (AIR 2019 SC 3428),** that an order of detention is not a curative or reformative 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. Rulings on the subject have consistently taken the view that 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 so.

16. In the backdrop of foregoing discussion, the petition is found devoid of any merit and is, accordingly, dismissed.

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

(M. A. CHOWDHARY)
JUDGE

Srinagar
09.08.2023
Muzammil. Q

Whether the order is reportable: Yes / No