HIGH COURT OF JAMMU AND KASHMIR AND LADAKH
AT SRINAGAR
…
WP (Crl) no.151/2021

Reserved on: 26.04.2022

Pronounced on: 28.04. 2022

Javid Ahmad Mir

……. Petitioner(s)

Through: Mr. B.A.Tak, Advocate

Versus

UTof J&K and another

..…Respondent(s)

Through: Mr. Sajjad Ashraf, GA

<u>CORAM</u>: HON'BLE MR JUSTICE VINOD CHATTERJI KOUL, JUDGE

<u>JUDGEMENT</u>

1. In this petition, the order of detention, bearing no.DMS/PSA/36/2021 dated 23.08.2021, passed by District Magistrate, Srinagar (respondent no.2), placing *Javid Ahmad Mir S/o Bashir Ahmad Mir resident of Gota Pora Narbal, District Budgam*, (for brevity "detenu") under preventive detention and directing his lodgement in District Jail, Kupwara, is sought to be quashed on the grounds made mention of therein.

2. The case set up by petitioner in the petition is that detenu is a carpenter and remains always busy in earning his livelihood. It is also stated that detaining authority while passing impugned detention order has mentioned **in** the grounds of detention 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 highly 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. It is also averred that the detenu is an illiterate person and grounds of detention, served upon him, are based on hyper technical language, which is neither understandable nor communicable to detenu. It is also stated that the material relied upon by detaining authority has not been furnished to the

detenu to enable him to make an effective representation against his detention.

3. Reply has been filed by respondents, vehemently resisting the petition. The detention record has also been produced by the learned counsel for the respondents to substantiate the averments made in the Reply.

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 ad 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 as 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 detaining authority had stated that by committing this offence in public, 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 said 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. I have also gone through the record produced by counsel for respondents. Perusal thereof reveals that the dossier prepared by police, which forms part of detention record when compared with grounds of detention with dossier, shows and reflects that grounds of detention are ditto copy of dossier. The detaining authority may get inputs from different agencies, including Senior Superintendent of Police of the concerned District, but the responsibility to prepare grounds of detention is exclusive responsibility of detaining authority. Thus, it is the detaining authority to go through the reports and other inputs received from concerned police and other agencies and on such perusal arrive at a subjective satisfaction that a person is to be placed under preventive detention. It is, therefore, for the detaining authority to prepare and formulate the grounds of detention and satisfy itself that the grounds of detention so prepared/formulated warrant passing of the order of preventive detention. Perusal of grounds of detention, in the present case, would show that it is a verbatim copy of Dossier of Senior Superintendent of Police, submitted by him to the concerned Magistrate. This Court as regards the *verbatim* reproduction of the Dossier in the grounds of detention, in the case of ***Naba Lone v. District Magistrate 1988 SLJ 300***, while dealing with a case where a similar situation arose, has observed and held as under:

> "The grounds of detention supplied to the detenu is a copy of the police dossier, which was placed before the District Magistrate for his subjective satisfaction in order to detain the detenu. This shows total non-application of mind on the part of the detaining authority. He has dittoed the Police direction without applying his mind to the facts of the case."

13. Again in the case of ***Noor-ud-Din Shah v. State of J&K &Ors. 1989 SLJ 1***, this Court quashed the detention order, which was only a

reproduction of the Dossier supplied to the detaining authority on the ground that it amounted to non-application of mind. The Court observed:

> "I have thoroughly by examined the dossier submitted by the Superintendent of Police, Anantnag, to District Magistrate, Anantnag as also the grounds of detention formulated by the latter for the detention of the detenu in the present case, and I find the said grounds of detention are nothing but the verbatim reproduction of the dossier as forwarded by the Police to the detaining authority. He has only changed the number of paragraphs, trying in vain to give it a different shape. This is in fact a case of non-application of mind on the detaining authority. Without applying his own mind to the facts of the case, he has acted as an agent of the police. It was his legal duty to find out if the allegations levelled by the police against the detenu in the dossier were really going to effect the maintenance of public order, as a result of the activities, allegedly, committed by him. He had also to find out whether such activities were going to affect the public order is future also as a result of which it was necessary to detain the detenu, so as to prevent him from doing so. After all, the preventive detention envisaged under the Act is in fact only to prevent a person from acting in any manner which may be prejudicial to the maintenance of public order, and not to punish him for his past penal acts. The learned District Magistrate appears to have passed the impugned order in a routine manner being in different to the import of preventive detention as or detained in the Act, Passing of an order without application of mind goes to the root of its validity, and in that case, the question of going into the genuineness or otherwise of the grounds does not arise. Having found that the detaining authority has not applied his mind to the facts of the case while passing the impugned order, it is not necessary to go to the merits of the grounds of detention, as mandated by Section 10-A of the Act."

14. A similar situation arose in the case of ***Jai Singh and ors. v. State of Jammu & Kashmir AIR 1985 SC 764***, before the Supreme Court. The Court quashed the detention as it found that there cannot be a greater proof of non-application of mind and that the liberty of a subject being a serious matter, it is not to be tripled with in this casual, indifferent and routine manner. The Court observed:

> "First taking up the case of Jai Singh, the first of the petitioners before us, a perusal of the grounds of detention shows that it is a verbatim reproduction of the dossier submitted by the Senior Superintendent of Police, Udhampur to the District Magistrate requesting that a detention order may kindly be issued. At the top of the dossier, the name is mentioned as Sardar Jail Singh, father's name is mentioned as Sardar Ram Singh and the address is given as village Bharakh, Tehsil Reasi. Thereafter it is recited "The subject is an important member of…."
> Thereafter follow various allegations against Jai Singh, paragraph by paragraph. In the grounds of detention, all that the District Magistrate has done is to change the first three words "the subject is" into "you Jai singh, S/o Ram Singh, resident of village Bharakh,

> S/o Ram Singh, resident of village Bharakh, Tehsil Reasi". Thereafter word for word the police dossier is repeated and the word "he" wherever it occurs referring to Jail Singh in the dossier is changed into 'you' in the grounds of detention. We are afraid it is difficult of find greater proof of non-application of mind. The liberty of a subject is a serious matter and it is not to be trifled with in this casual, indifferent and routine manner."

15. When applying the above settled legal position to the facts of the instant case, I find the order impugned cannot stand as it is based on the grounds of detention which is only *verbatim* copy of police dossier. For these reasons, the order of detention reflects total non-application of mind on the part of detaining authority and, therefore, detention order is liable to be quashed.

16. 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, which is on the detention record produced by the counsel for respondent, reveals that only copies of detention warrant and grounds of detention have been furnished to detenu. Grounds of detention make reference of two FIRs and other activities have also been attributed to detenu, but the same has not been furnished to detenu, which violates the rights of the detenu guaranteed under the Constitution. On this count as well impugned order is liable to be quashed.

17. For the reasons discussed above, this petition is disposed of and detention Order no. DMS/PSA/36/2021 dated 23.08.2021, passed by District Magistrate, Srinagar, is quashed. Respondents, including Jail Superintendent concerned, are directed to release the detenu forthwith, unless he is required in any other case. **Disposed of**.

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

(Vinod Chatterji Koul)
Judge

Srinagar
28.04.2022
(Qazi Amjad)

Whether the order is reportable: No.