

IN THE HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT JAMMU

HCP No.48/2023

Reserved on : 30.01.2024
Pronounced on : 19.02.2024

Tajinder Singh @ Jinda Age 29 years
S/o Darshan Singh
R/o Ward No.02, Simbal Camp, Mira Sahib, Jammu Petitioner(s)

Through: Mr. Jagpaul Singh, Advocate

Versus

1. **Union Territory of Jammu & Kashmir**
Through Commissioner-cum-Secretary to the
Government Home Department, Civil Secretariat, Jammu
2. District Magistrate, Jammu
3. Senior Superintendent of Police, Jammu
4. Superintendent, Central Jail, Kot- Bhalwal,
Jammu.Respondent(s)

Through: Mr. Pawan Dev Singh, Dy. AG

CORAM: HON'BLE MR. JUSTICE SANJEEV KUMAR, JUDGE

JUDGMENT

1. The petitioner is aggrieved of and has challenged through his mother, his order of detention made by the District Magistrate, Jammu ["Detaining Authority"] vide his No.01 of 2023 dated 10.02.2023, whereby the petitioner has been placed under preventive detention with a view to prevent him from acting in any manner prejudicial to the maintenance of public order.

2. The detention has been ordered by the Detaining Authority on the basis of Grounds of Detention dated 10.02.2023 served upon the petitioner. The basis of detention, as is apparent from the grounds of detention is registration of 12 different FIRs against the petitioner in various Police Stations of Jammu. In short, the petitioner is found to be a notorious, hardcore and habitual criminal and also a drug peddler. He is found to have formed a gang of criminals to carry out his nefarious designs in an organized manner. The Detaining Authority has, on the basis of material placed before him by the police, arrived at a satisfaction that allowing the petitioner at large is detrimental to the maintenance of public order and, therefore, it is imperative to detain him in the exercise of powers conferred upon her under Section 8(1)(a) of the Jammu & Kashmir Public Safety Act, 1978 [“the Act”].
3. The impugned order of detention is assailed by the petitioner on multiple grounds. However, the grounds which were pressed and emphasized by Mr. Jagpaul Singh, learned counsel appearing for the petitioner, can be put as under:-
 - i) That on the selfsame grounds the petitioner was earlier detained under the Act in the year 2016 vide Detention Order No.05 of 2016 dated 18.04.2016. The said order was subsequently revoked and the petitioner was placed under preventive detention by issuing a fresh order bearing No.07 of PSA of 2017 dated 07.06.2017. The said detention order was quashed by this Court vide order dated 08.02.2018 passed in HCP No.46/2017. The

Detaining Authority had relied upon all the FIRs registered till the year 2017 against the petitioner in various Police Stations to base its subjective satisfaction. It is argued that the aforesaid FIRs which had earlier been relied upon in the detention order issued in the year 2017 could not have been made the basis of detention ordered by the Detaining Authority vide order impugned. It is, thus, argued that the impugned order is vitiated on this count.

ii) That against his detention, the petitioner through her mother, Daljeet Kour, made a representation to the Secretary to Government, Department of Home, which, as per the stand of the respondents and the record produced, has not been considered and disposed of under any intimation to the petitioner. Right of the petitioner to make a representation and to have the same considered and disposed of by the Competent Authority within reasonable time has been violated. The impugned order of detention is, thus, vitiated.

4. Despite several opportunities granted, including last and final opportunity, the respondents have chosen not to contest this petition by filing any reply affidavit of the Detaining Authority. The respondents through their counsel have, however, produced the record of detention to justify the detention of the petitioner ordered by the Detaining Authority.

5. Heard learned counsel for the parties and perused the material on record including the original record produced by Mr. Pawan Dev Singh, Dy. AG.
6. Indisputably, in the year 2017 as well the petitioner was placed under preventive detention by the District Magistrate, Jammu vide order No.07/PSA of 2017 dated 07.06.2017, with a view to prevent him from acting in any manner prejudicial to the maintenance of public order. The aforesaid order was passed by the Detaining Authority on the basis of its subjective satisfaction derived from the dossier presented by the police. The grounds of detention clearly indicated that the basis of drawing subjective satisfaction by the Detaining Authority to put the petitioner in detention in the year 2017 was registration of multiple FIRs in various Police Stations of Jammu district. All the FIRs registered upto the date of issuance of the order of detention in the year 2017 were taken note of and strongly relied upon to issue detention order against the petitioner. The aforesaid detention order was assailed by the petitioner before this Court in HCP No.46/2017, which was allowed by a Bench of this Court vide order dated 08.02.2018 and the detention order was quashed.
7. In the instant case the Detaining Authority, in addition to the FIRs registered from time to time upto 2017, has also taken note of two subsequent FIRs i.e. FIR No.60/2019 and 5/2013 to slap another detention order on the petitioner. From a reading of the grounds of detention, it is not discernible as to whether two subsequent FIRs alone have persuaded the Detaining Authority to issue a fresh

detention order against the petitioner or it is the cumulative consideration of all the FIRs including FIRs registered against the petitioner upto 2017, which has persuaded the Detaining Authority to arrive at a subjective satisfaction that allowing the petitioner to remain at large would be detrimental to the maintenance of public order and, therefore, it is imperative to place him under preventive detention. Otherwise also, it is trite law that the grounds of detention, which were base for the detention order quashed by a competent Court of law earlier, cannot be relied upon again for passing a fresh order of detention. In **Chhagan Bhagwan Kahar v. N.L.Kalna and others**, AIR 1989 SC 1234, the Hon'ble Supreme Court while dealing with similar issue held thus:-

“12. It emerges from the above authoritative judicial pronouncements that even if the order of detention comes to an end either by revocation or by expiry of the period of detention there must be fresh facts for passing a subsequent order. A fortiori when a detention order is quashed by the Court issuing a high prerogative writ like habeas corpus or certiorari the grounds of the said order should not be taken into consideration either as a whole or in part even along with the fresh grounds of detention for drawing the requisite subjective satisfaction to pass a fresh order. Once the Court strikes down an earlier order by issuing rule, it nullifies the entire order.”

8. It is, thus, well settled that when a detention order is quashed by the Court, the grounds of such order should not be taken into consideration either as a whole or in part even along with fresh grounds of detention for drawing the requisite subjective satisfaction

to pass a fresh order. That apart, it would not be possible for this Court to segregate the grounds of detention of the quashed detention order and the fresh grounds of detention without getting into the mind of the Detaining Authority. In such situation, the court is left with no option but to presume that what persuaded the Detaining Authority to draw subjective satisfaction with respect to detention of the detenu is the cumulative consideration of all grounds old as well as fresh.

9. So far as the plea of learned counsel for the petitioner that failure of the Government to consider representation within reasonable time and convey the decision of such representation to the detenu breaches his fundamental right guaranteed to him under Article 22(5) of the Constitution of India, suffice it to say that from a perusal of the record produced by Mr. Pawan Dev Singh, learned Dy.AG, it clearly transpires that the representation made by the petitioner has been received by the Government but the same has not been considered by it or referred to the Advisory Board for consideration.
10. Undoubtedly, the fundamental right of the petitioner vested by Article 22(5) of the Constitution of India has been breached. Article 22(5) of the Constitution of India reads thus:-

“When any person is detained in pursuance of an order made under any law providing for preventive detention, the authority making the order shall, as soon as may be, communicate to such person the grounds on which the order has been made and shall afford him the earliest opportunity of making a representation against the order.”
11. Implicit in the right of the detenu to be communicated the grounds of detention and afforded an earliest opportunity of making a

representation against his detention, is the right of the detenu to have his representation considered with reasonable despatch.

12. In **Sarabjeet Singh Mokha v. District Magistrate, Jabalpur and others, 2021 SCC OnLine SC 1019**, Hon'ble the Supreme Court has held thus:-

“22..... Article 22(5) reflects a keen awareness of the framers of the Constitution that preventive detention leads to the detention of a person without trial and hence, it incorporates procedural safeguards which mandate an immediacy in terms of time. The significance of Article 22 is that the representation which has been submitted by the detenu must be disposed of at an early date. The communication of the grounds of detention, as soon as may be, and the affording of the earliest opportunity to submit a representation against the order of detention will have no constitutional significance unless the detaining authority deals with the representation and communicates its decision with expedition.”

13. A Constitution Bench of the Hon'ble Supreme Court in **Jayanarayan Sukul v. State of West Bengal, 1970(1) SCC 219** had authoritatively settled the legal position on the point long back. It is, thus, beyond the pale of discussion that in terms of Article 22(5) of the Constitution of India, the detenu does not have only right to make a representation against his detention but has a right to have his representation considered and disposed of at the earliest. Coupled with this is a further right of the detenu to be conveyed/informed about the decision taken on his representation.

14. In the instant case, as is rightly contended by Mr. Jagpaul Singh, the representation of the petitioner has not been considered by the competent authority at all. This failure of the respondents to consider the representation of the petitioner against his detention violates the fundamental right guaranteed to the petitioner under Article 22(5) of the Constitution of India and, therefore, his detention is vitiated in law.
15. For the foregoing reasons, I find merit in this petition and the same is, accordingly, allowed. Detention Order No.01 of 2023 dated 10.02.2023 is quashed and the petitioner is directed to be released forthwith from preventive custody, if not required in any other case.

(Sajeev Kumar)
Judge

JAMMU
19.02.2024
Vinod, PS

Whether order is reportable: Yes/No