

**HIGH COURT OF JAMMU AND KASHMIR
AT SRINAGAR
(Through virtual mode)**

WP(Cr1) No. 661/2019

Pronounced on: 03.09.2020

Fayaz Ahmad Mir Petitioner(s)

Through:- Mr. Wajid Haseeb, Advocate,

V/s

Union Territory of J&K andRespondent(s)
another

Through:- Mr. Mir Suhail, AAG

Coram : HON'BLE MRS. JUSTICE SINDHU SHARMA, JUDGE

JUDGMENT

01. The District Magistrate, Pulwama vide his order No. 53/DMP/PSA/19 dated 08.08.2019 detained Fayaz Ahmad Mir S/o Ab. Rashid Mir R/o Pahoo, District Pulwama under section 8(a) of the Jammu and Kashmir Public Safety Act, 1978 with a view to prevent him from acting in any manner prejudicial to the Security of the State. This order of detention is assailed by the detenu through his father.

02. The detenu has challenged the order of detention on the ground that:

- (i) the grounds mentioned in the detention order have no nexus with the detenu and were fabricated to illegally detain the detenu.
- (ii) the allegations made in the grounds of detention are vague and non-existent and no prudent man can make a representation against the same.

- (iii) the detenu was at large and there was no fresh activities attributed to him after 2016, as such, there was non-application of mind by the Detaining Authority to warrant his detention.
- (iv) there was unexplained delay between the alleged activities and the date of passing of order of detention which renders the detention order unjustified and illegal.
- (v) the order of detention had been passed on the twin activities viz. 'Maintenance of Public Order' as well as 'Security of State' which reflects total non-application of mind by the Detaining Authority and, as such, the detention order is bad in the eyes of law and requires to be quashed.
- (vi) the Detaining Authority had not prepared the grounds of detention itself which is a pre-requisite for passing any order of detention but had only relied on the police dossier, as such, there was total non-application of mind, while passing the order of detention and the same has vitiated.
- (vii) the detenu had not been furnished all the relevant material like copy of the dossier and other connected material relied upon by the Detaining Authority, while passing the order of detention and the same had prevented the detenu from making an effective representation.
- (viii) the grounds of detention order and other material were not explained to the detenu in the language which he understands thereby prevented him for making an effective representation.

03. Mr. Mir Suhail, learned AAG has produced the record as well as filed counter affidavit. According to him, the detenu was detained validly and legally by virtue of the detention order dated 08.08.2019 and all the statutory requirements and constitutional guarantees were fulfilled and complied with by the Detaining Authority, while passing the order of detention. The grounds of detention as well all the other material relied upon by the Detaining Authority had been furnished to the detenu within the statutory period. The contents of the grounds of detention and warrant were read over and explained to the detenu in the language he fully understands and he had subscribed his signatures to the execution report also.

04. Heard learned counsel for the parties and perused the record.

05. The first challenge to the order of detention is that the detention had been ordered on twin grounds to prevent the detenu from indulging in activities which were prejudicial to the Security of the State, whereas the grounds of detention reveal that alleged activities of the detenu were for Maintenance of Public Order. In the last, the order of detention dated 08.08.2019 reads as under:

“Whereas I, District Magistrate Pulwama have perused the contents and recommendations mentioned in the dossier carefully after it was produced before me in respect of the said person;

Whereas after perusal of the record submitted by the Superintendent of Police, Pulwama and after applying my mind carefully and having regard to the requirements of

law, I am satisfied that with a view to prevent Shri Fayaz Ahmad Mir @ Chota Geelani S/o Ab. Rashid Mir R/o Pahoo Tehsil Kakapora district Pulwama from acting in a manner, prejudicial to the Security of the State, it is necessary to detain the said person under the provisions of J&K Public Safety Act.”

06. However, the last paragraph of the grounds of detention reads as under:

“.....Therefore, in order to prevent you from indulging in the activities, which are detrimental to the maintenance of public order, it is necessary to detain you by invoking the provisions of J&K Public Safety Act, 1978.”

07. Reliance of both the expressions ‘Security of the State’ and ‘Maintenance of Public Order’ which are distinct concepts reflect the total non-application of mind by the Detaining Authority.

08. In **G. M. Shah V. State of Jammu and Kashmir, 1980 AIR 494**, wherein, the Court, while considering a similar issue wherein both the expressions have been used, has held as under:

“The expressions "law and order", "public order" and "security of the State" are distinct concepts though not always separate. Whereas 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". This is borne out from the observations made by Patanjali Sastri, J . in the decision of this Court in Romesh

Thappar V. The State of Madras (1) Which are as follows:-

“.....As observed by Hidayatullah, J. (as he then was) in [Dr. Ram Manohar - Lohia v. State of Bihar & Ors.](#) one has to imagine three concentric circles, in order to understand the meaning and import of the above expressions. 'Law and order' represents the largest circle within which is the next circle representing "public order" and the smallest circle represents "security of State". It is then easy to see that an act may affect law and order but not public order just as an act may affect public order but not security of State. It is in view of the above distinction, the Act defines the expressions "acting in any manner prejudicial to the security of the State" and "acting in any manner prejudicial to the maintenance of public order" separately. An order of detention made either on the basis that the detaining authority is satisfied that the person against whom the order is being made is acting in any manner prejudicial to the security of the State or on the basis that he is satisfied that such person is acting in any manner prejudicial to the maintenance of public order but which is attempted to be supported by placing reliance on both the bases in the grounds furnished to the detenu has to be held to be an illegal one vide decisions of this Court in [Bhupal Chandra Ghosh v. Arif Ali & Ors.](#)(2) and [Satya Brata Ghose v. Arif Ali & Ors](#)(3).

The order of detention is, therefore, liable to be quashed and the detenu is entitled to be set at liberty. The petition is accordingly allowed.”

- 09.** In view of the settled law, the detention of the detenu which was on the twin grounds as referred to above, shows total non-application of mind of the Detaining Authority, as such, the same is vitiated.
- 10.** The next ground of challenge is that the detenu was not supplied all the material relied upon by the Detaining Authority, while passing the order of detention and the same had not been explained to the detenu in the language which he understands.
- 11.** Perusal of the record reveals that the order of detention has been passed after considering dossier and other connected documents which were produced by the Senior Superintendent of Police Pulwama. Perusal of the record reveals that the Executing Officer in compliance to the order of District Magistrate dated 08.08.2019 has provided copies of PSA warrant, grounds of detention and Letter addressed to the detenu (total 4 leaves) only.
- 12.** From the aforesaid facts and circumstances, it is clear that the subjective satisfaction arrived at by the Detaining Authority was based on the material documents, dossier, report supplied to the Detaining Authority by the police authorities, however, this material had not been supplied to the detenu. He was given a mere copy of the order of detention and grounds of detention as mentioned without giving him the dossier, FIR and other relevant material.
- 13.** In view of the above, the detenu was not provided all the material and, thus, was prevented the detenu from making an effective representation as mandated under Article 22(5) of the Constitution of India as well as under Section 13 of the J&K Public Safety Act,

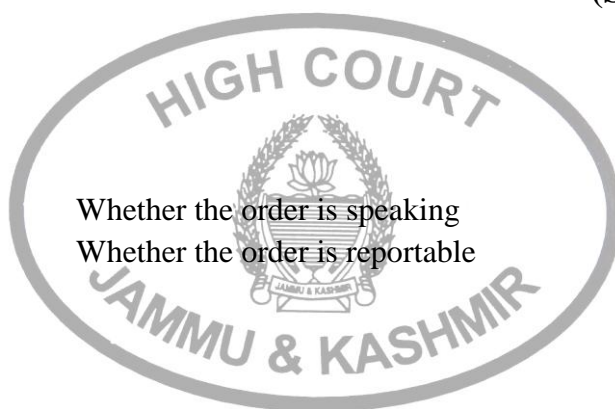
therefore, the impugned order is vitiated on this account and the same cannot be sustained.

14. In view of the above and without adverting to other grounds raised in this petition, this petition is allowed. The impugned detention order No. 53/DMP/PSA/19 dated 08.08.2019 detaining Fayaz Ahmad Mir S/o Ab. Rashid Mir is quashed. Accordingly, the respondents are directed to release the detenu from the custody forthwith, if he is not required in any other case.

15. Let the detention record be handed over to learned counsel for the respondents by the Registry forthwith.

(Sindhu Sharma)
Judge

SRINAGAR
03.09.2020
SUNIL-II



Whether the order is speaking : Yes
Whether the order is reportable : Yes/No