

**HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT SRINAGAR**

...

WP(Cr)No. 542/2022

Pronounced on :23.08.2023

Mohammad Amin Wani
S/o Ghulam Rasool Wani,
R/o Chuntimulla,
Tehsil & District Bandipora
Through His Brother
Bashir Ahmad Wani, Aged 41 years

.....Petitioner(s)

Through:
Mr. Wajid Mohammad Haseeb, Advocate.

Versus

1) UT of Jammu and Kashmir,
Through Additional Chief Secretary,
Home Department, J&K Govt.,
Civil Sectt. Srinagar/Jammu.

2) District Magistrate, Bandipora.

.....Respondent(s)

Through:
Mr. Ilyas Nazir Laway, GA.

CORAM: HON'BLE MR. JUSTICE PUNEET GUPTA, JUDGE.

JUDGMENT

1. The petitioner-Mohammad Amin Wani has challenged the detention order No. 29/DMB/PSA/2022 dated 25.06.2022 passed by the District Magistrate, Bandipora–respondent No.2 herein, whereby he had been placed under preventive custody and lodged in Central Jail, Jammu (Kot Bhalwal). The order was passed on the ground that the acts of the detenu-Mohammad Amin Wani are prejudicial to the security of the State.

2. The allegations against the detenu as per the detention order are that the detenu is the admirer of Lashkar-e-Toiba (LeT) terrorist outfit and is provoking the youth in the name of religion to join the terrorist ranks of banned outfit by misleading them. The detenu is stated to be Over Ground Worker (OGW) of Lashkar-e-Toiba (LeT) providing logistic support including financial assistance to the terrorists. The detenu is of a fundamentalist ideology and has become a hardcore

fundamentalist/terrorist associate and sympathizer of militants is also mentioned in the grounds of detention. The detention order of course stands executed. The detenu has stated in the grounds of detention that the allegations levelled in the grounds of detention are vague one, thus, not connecting the petitioner with the allegations levelled in the detention order. The detenu has not been supplied the supporting material which affects the rights of the detenu to make an effective representation to the concerned authority established under the Public Safety Act. The representation that has been otherwise submitted has not been considered by the authorities.

3. The respondents appeared through their counsel and filed the reply affidavit to the petition wherein the respondents have denied the contentions raised by the detenu. The respondents have fulfilled all the criteria as required under the PSA Act. The detenu has been given the material and made to understand the contents of the detention order in the language he understood.
4. Learned Government Advocate has also produced the photo copy of the detention record.
5. Learned counsels for both the sides have argued the matter in tune with their respective pleadings.
6. A perusal of the detention record reveals that the detention order has been passed by the District Magistrate on the basis of dossier provided by the SSP, Bandipora and when viewed even superficially does not record any justifiable reason to detain the detenu under the Public Safety Act. The grounds mentioned in the petition which allegedly link the detenu with the terrorist organization and the participation of the detenu whereby the detenu alleges to be alluring the youngsters to join the terrorist organization are too vague and bereft of any specific happening and also not to speak of any particular date or the month or the year when the alleged activities were being carried out by the detenu. The detenu's detention order even fails to record any name of youngsters who may have been led to join any terrorist outfit Lashkar-e-Toiba. The allegations which are ambiguous and vague and without any particulars prima facie do not make out that the detenu is a threat to the security of the State. It may also be mentioned that though the allegations are levelled against

the petitioner-detenu are with regard to the alleged acts of terrorism yet the detention order does not reveal that any case came to be registered by the police against the petitioner. No doubt, it is not necessary that the detention order should be preceded by registration of the case by the police against the detenu and the detention order can be passed even in the absence of the same yet the same assumes significance in the present case as the acts attributed to the petitioner in the grounds of detention are vague as stated above meaning thereby that the detaining authority was without any material which could compel the authority concerned to pass the detention order. The satisfaction recorded for detention of the petitioner-detenu is not based upon any worthy and genuine material. The reference can be safely made to the judgment of Hon'ble Apex Court in Mohd. Yousuf Rather v. State of Jammu and Kashmir and others" (1979) 4 SCC 370 wherein the court quashed the detention order as the grounds of detention were vague in nature.

7. The detention order passed by the respondents cannot stand the test of law. The subjective satisfaction though cannot be interfered normally by the court but at the same time it does not deprive the court to look into the satisfaction recorded by the detaining authority and set at naught, if the material is found to be completely deficient necessitating the passing of the detention order.
8. The detention order is liable to be quashed on the aforesaid grounds. The petition is, accordingly, allowed and the detention order is quashed. The detenu is directed to be released from the detention forthwith provided he is not required in connection with any other case.
9. Disposed of.

(PUNEET GUPTA)
JUDGE

Srinagar :
23.08.2023
Pawan Chopra

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