

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

WP(Crl) No. 142/2022

Shahbaz Ahmad Palla.

..... Appellant/Petitioner(s)

Through: Mr. Shabir Ahmad, Advocate

V/s

Union Territory of JK & Ors.

.....Respondent(s)

Through: Mr. Rais-u-din Ganie, Dy.AG &
Mr. Ilyas Nazir Laway, GA.

CORAM:

HON'BLE MR. JUSTICE ATUL SREEDHARAN, JUDGE.

ORDER

19.07.2023

The present petition has been filed by the father of the detenu. The detenu Shahbaz Ahmad Palla, who is a youth aged about 22 years. He was detained by Police Station Pulwama, on 08.04.2022, by virtue of impugned detention order bearing no. 14/DMP/PSA/2022 dated 08.04.2022. The said order was passed in exercise of powers vested in the respondent no. 2 (District Magistrate, Pulwama) by clause (a) of Section 8 of the Jammu & Kashmir Public Safety Act 1978, (hereinafter referred to as "The Act of 1978") directing the detention of the petitioner in Kot Bhalwal Jail, Jammu, which was executed resulting in the detention of the son of the petitioner on 14.04.2022.

2. The order of detention disclosed that it was necessary to detain the petitioner under the provisions of the Act of 1978, in order to prevent him from acting in any manner, prejudicial to the security of the State and the order was accompanied by the grounds of detention. In the grounds of the petition, the petitioner has stated that the grounds of detention were not communicated to the petitioner in his native language and instead it was given in the English language. However, the execution report reflects that the detenu has signed in English and he has studied up to 11th Standard though he could not pass the 12th Standard.

3. Under the circumstances, the grounds of detention having been communicated to the petitioner in English cannot be said to be a violation to the provisions of law as the petitioner himself has not stated in ground (A) that he does not understand English. In ground (B) the petitioner states that he was already in judicial custody in FIR No. 177/2021 (wrongly written as FIR No. 91/2021) and therefore, there was no justification of the detention order as he has not been enlarged on bail till date in the case. In addition thereto, it is also stated that the impugned order of detention is bad in law as relevant and cogent material connecting the petitioner to anti-national activities are general and sweeping and passed on conjectures and speculations.
4. It has also been averred that the order of detention is arbitrary as it is not supported by any material warranting the detention of the petitioner and that the grounds are non-existing.
5. During the course of arguments, learned counsel for the petitioner also stated that the grounds of detention are vague, non-specific with regard to date and time of the alleged acts prejudicial to the nation.
6. *Per contra*, learned counsel for the Union Territory has vehemently opposed the petition by stating that the contention put forth by the learned counsel for the petitioner that the material on the basis of which the grounds of detention formulated by the District Magistrate, were not supplied to him is incorrect. In support of his submission, learned counsel for the UT has placed before this court the record of the District Magistrate, where the execution report reflects that the grounds of detention along with the material relied upon by the District Magistrate while formulating the grounds of detention were indeed given to the petitioner who has signed the said execution report. It was placed before the learned counsel for the petitioner who has not explained the signature of the petitioner on the execution report or its contents. Therefore, the contention of learned counsel for the petitioner that the material relied upon by the District Magistrate while formulating the grounds of detention were not supplied to the

petitioner on the ground on which he could not prepare his statutory representation, is rejected.

7. As regards the argument of the learned counsel for the petitioner that the grounds of detention are vague, superfluous based upon speculations and conjectures, this court went through the grounds of detention. Broadly, the grounds disclosed that the detenu is an active member of terrorist organisation TRF (The Resistance Front) and is helping the organisation in its subversive activities in and around district Pulwama. No details with regard to the date from which the petitioner has been a member of the said organisation or the nature of the so called subversive activities are specifically mentioned in the said ground. It is also alleged that the petitioner was harbouring the terrorists of the TRF (The Resistance Front) at unknown far reaching locations and has been motivating the youth to indulge in subversive activities in the areas of district Pulwama or its adjoining areas and have been urging the people to follow the agenda of separatists in letter and spirit by exploiting their religious sentiments and recruiting them in militant cadres and thereby was promoting the terrorist activities in Pulwama area in an attempt to ensure the peace does not return there and such activities are highly prejudicial to the security of the State.
8. In the said set of allegations, it has not been specifically alleged with reference to date or persons or the precise nature of the petitioner's activities. The learned counsel for the UT has been unable to show any statement of any witness making allegations against the detenu here.
9. It is further alleged that the detenu is having a fundamentalist ideology and has become a "hard core fundamentalist" and voluntarily agreed to work as Over Ground Worker (OGW) of the TRF (The Resistance Front) which according to the learned counsel for the Union Territory is an outfit of the erstwhile of (LeT). The usage of the phrase "*fundamentalist ideology*" by the District Magistrate, does not necessarily mean that the detenu possess an extremist or separatist ideology. The Oxford 'Fundamentalist ideology' is part and parcel of the Abrahamic faith where the adherents have to necessarily believe in

certain fundamentals of the religion to be accepted as the adherents of that religion. Therefore, someone who steadfastly pursues or follows the fundamentals of an Abrahamic faith, is undoubtedly a fundamentalist but there is no negativity associated with it and it is distinct from an extremist or a separatist and here it is relevant to mention that the dictionary defines fundamentalism as **“the strict maintenance of traditional orthodox religious beliefs of doctrines; ESP belief in the inerrancy of scripture and literal acceptance of the creeds as fundamentals of protestant Christianity”** *. Fundamentalist an adherent of fundamentalism’ pertaining to a Muslim who is a fundamentalist is merely someone who believes in the fundamentals of Islam and steadfastly pursues the same. It cannot have a negative bearing on his personality. The same is as a fundamentalist Muslim cannot be equated with an extremist or a separatist. Therefore, the said ground also is vague and has been used lucidly without proper understanding.

10. Another ground is that the detenu and a friend of his went missing on the same date and time (the date and time has not been mentioned in the ground of detention) and it further says that the other persons with whom the detenu allegedly went missing (Suhail) is alleged to have joined the TRF. The petitioner was arrested in case FIR No. 177/2021 for offences under Section 121 IPC and 18, 20 & 38 of the ULA(P) Act which was registered at Police Station Pulwama. The same has been relied upon by learned counsel for the UT. The Court requested the learned counsel for the Union Territory to inform the Court regarding the allegations against the detenu in the aforementioned FIR, muchless than any allegation against the detenu, he has not even named as an accused in the said FIR. He was subsequently arrested pursuant to investigation. The learned counsel for the UT examined the statement of the witnesses in the said case and informed the court that the main accused against whom the said FIR was lodged (Suhail) only stated that he and two others went away to join the TRF, but none of the witnesses said that the detenu was one of the other two

*The New Shorter Oxford dictionary

persons who had gone along with Suhail to join the TRF. Thus, this court finds that the FIR against Suhail in which the detenu was arrested does not specifically name the detenu as one of the two unknown persons who had accompanied the main accused Suhail.

11. The grounds which have been reproduced in brief hereinabove clearly are vague, they do not accord the detenu a fair opportunity of giving a precise rebuttal and are surmises and conjectures on the part of the detaining authority.
12. Therefore this petition is *allowed*. The impugned order of detention bearing no. 14/DMP/PSA/2022 dated 08.04.2022 is *quashed*. The detenu shall be set at liberty forthwith.
13. It is however, made clear that the observations made in this order shall not influence the learned trial court while adjudicating the case relating to FIR No. 177/2021 of Police Station Pulwama, and that these observations have been made only for deciding this petition.
14. With the above, writ petition is allowed.

(Atul Sreedharan)
Judge

SRINAGAR:

19.07.2023

“Shaista”

Whether approved for reporting? Yes/No