

HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT JAMMU

WP (Crl) no. 42/2022

Reserved on: 15.12.2022
Pronounced on : 30.12.2022

Akash Kharka

..... /Petitioner(s)

Through: Mr. K S Johal, Sr. Advocate with
Mr. Karman Singh Johal, Advocate

Vs

UT of J & K and others

..... Respondent(s)

Through: Mr. Sumit Bhatia, GA

Coram: HON'BLE MR. JUSTICE WASIM SADIQ NARGAL, JUDGE

JUDGMENT

BRIEF FACTS OF THE CASE

1. The petitioner through the medium of the present petition is calling in question the proceedings and order of detention dated 31.08.2022 passed by respondent no. 2 under provisions of Section 8 of the Public Safety Act.
2. The petitioner is aggrieved of the order of detention and also the grounds of detention which are impugned in present petition and have been passed allegedly without application of mind, arbitrarily and by misusing the power vested in detaining authority.

ARGUMENTS ON BEHALF OF PETITIONER

3. Learned counsel for the petitioner Sh. K S Johal, Senior Advocate, has argued that the order impugned is total non-application of mind and before issuing the order impugned, the subjective satisfaction has not been arrived at by the detaining authority.

4. Learned counsel for the petitioner has further contended that order of detention is reproduction of the grounds urged in the dossier *per verbatim* which clearly shows that no subjective satisfaction has been arrived at by the detaining authority before issuing the order of detention and, thus, the same cannot sustain the test of law.

5. Learned senior counsel appearing on behalf of the petitioner has further argued the person should specifically file an affidavit who has served the order of detention and the relevant record to the detenu and such satisfaction has also not been arrived and accordingly, the order impugned cannot sustain the test of law.

6. It has been further argued that no subjective satisfaction has been arrived to the extent that the ordinary law was not sufficient to deal with the detenu and, accordingly, the respondents were left with no other option but to resort to the provisions of the PSA for detaining the detenu. In absence of any such satisfaction that the ordinary law was not sufficient to deal with the detenu, the order impugned cannot sustain the test of law.

7. It is further submitted that the petitioner, during the intervening period when he was bailed out, never indulged in any activity which is prejudicial to the state and mere apprehension of breach of law to maintain the public disorder is not sufficient to pass the order of detention.

8. Mr. K S Johal, learned senior counsel, has argued that mere apprehension of breach of law or to indulge in activities which are prejudicial to the interest of the state, are no sufficient reasons to pass the order of detention. Subjective satisfaction has to be arrived at while passing the

detention order and the details thereof need to specified/rejected, which are prejudicial to the interest of the state and the action of the detenu is extraneous to the law in force.

9. He has emphasized that during intervening seven months' period, he has not done anything which is prejudicial to the interest of the state and can be basis for passing of order of detention.

10. Lastly, learned counsel for the petitioner has argued that the language in which he understands the grounds have not been conveyed to him and on this ground also, the impugned order cannot sustain the test of law.

11. He further contends that he has been denied of effective representation and the material has not been supplied to him in the language in which he understands. Learned counsel for the petitioner further argued that there was no material or action of the detenu which falls within the realm of public disorder and can be basis for issuing the order of detention.

12. Learned counsel for the petitioner further argues that the material which has been referred in page 119 of the petition by way of general diary details is not sufficient to the extent which falls within the realm of the public disorder and could be basis for detaining the petitioner. Learned counsel for the petitioner has further argued that the above material pertains to General Diary dated 15.07.2022 and the said material ought to have been reflected in the dossier or whether the authorities have considered that material while passing order of detention is not coming from the record as there is no whisper in order of detention with regard to the aforesaid material.

13. Lastly, learned counsel for the petitioner has laid much emphasis on the word **“heard”** i.e. on hearsay, the respondents in the general diary details have observed that the **petitioner, who is notorious drug smuggler, from past 5-6 years is not deterring from his antics.** The whole game plan as per petitioner was to detain the person for one reason or the other and the allegation leveled in the general diary details does not say that the activities of the petitioner was in any way against the public disorder and can be basis for detaining the detenu.

ARGUMENTS ON BEHALF OF RESPONDENTS

14. *Per contra*, learned counsel appearing for the respondents, Mr. Sumeet Bhatia, has referred to the grounds of detention, a perusal whereof, reveals that the subjective satisfaction has been arrived at by the detaining authority while passing the order of detention. In the grounds of the detention, it has been specifically provided that the ordinary law was not sufficient to deter him not to indulge any criminal activities and accordingly, his activities were prejudicial to the interest of the state. Therefore, the respondents have resorted to the order of detention and the **“subjective satisfaction that the ordinary laws were not sufficient to deter him has been arrived at while passing the order of detention.”**

15. Learned counsel for the respondents has further referred that he continued his activities till 17.07.2022 as admitted by the petitioner in their averments in the writ petition. Learned counsel for the respondents has further referred to execution report in which he submits that the detention order, notice of detention, grounds of detention, dossier of detention, copies

of the FIR, statements of witnesses and other related documents, total of 83 leaves have been handed over to the detenu in Central Jammu on 02.09.2022, against proper receipt and the detenu was informed that he can make representation to Government as well as the detaining authority against the detention order. Besides this, learned counsel for the respondents have also argued that the grounds of the detention has been read over to the detenu in English and explained in Dogri and Hindi language, which he understood fully and he is signatory to that effect, which is evident from the bare perusal of the execution report dated 02.09.2022.

16. Learned counsel for the respondents has further referred to para 3 of the reply filed by the detaining authority (Respondent no. 2), in which it has been emphatically made clear that the detenu was a threat to larger public interest and despite the registration of the FIRs under IPC/RPC, NDPS Act, coupled with the fact that he had been arrested, he continued to be undeterred with respect to the activities which are prejudicial to the interest of the State.

17. Learned counsel for the respondents has also tried to distinguish the judgments produced by leaned senior counsel for the petitioner and he submits that the judgments are not applicable to the case of the petitioner and in the present case, the subjective satisfaction has been arrived at by the detaining authority.

18. Learned counsel, Mrs. Monika Kohli, Sr. AAG, appearing on behalf of respondents i.e. Home Department submits that the argument of learned counsel for the petitioner that order of detention is reproduction of grounds urged in dossier will not come in the way because the facts cannot be

changed while passing the order of detention and relying upon dossier. She submits that whatever actual incidents are reflected in FIRs, those cannot be changed. However, she laid emphasis that the detaining authority has considered all the relevant material before arriving at subjective satisfaction, which ultimately lead to the passing of the detention order.

19. Learned counsel for the respondent no. 1 has argued that the order has been issued with due application of mind and she has also referred to the order of confirmation issued by the Home Department dated 27.09.2022, confirming the detention order dated 31.08.2022 in exercise of power under Section 17(1) of the Public Safety Act, 1978.

20. Learned counsel for the respondent no. 1 has also referred to the reply filed by respondent no. 4, that in spite of obtaining bail orders, the petitioner still continued his activities which were prejudicial to the interest of the State and the ordinary laws were not sufficient to deter him. The detenu was continuing his activities and there was sufficient material for the detaining authority to arrive at a subjective satisfaction for passing order of detention.

21. Learned counsel for respondent no. 1 has further argued that the import of the ordinary criminal law and the orders passed by way of detention are different and since the ordinary criminal law was not sufficient to deter the petitioner as he was continuing his activities unabated and accordingly, the detaining authority was left with no other option but to detain him under prevention laws. She further submits that the application of

both the laws is different and one solitary incident is sufficient to detain somebody under the detention law.

LEGAL ANALYSIS

22. In the present case, learned Senior Counsel for the petitioner in support of his arguments, has placed reliance on *V. Shantha v. State of Telangana and others*, (2017) 14 SCC 577, *Mallada K Sri Ram v. State of Telangana and others*, 2002 LiveLaw (SC) 358 and, *Anant Sakharam Raut: Leena Anand Raut v. State of Maharashtra*, (1986) 4 SCC 584, *Jai Singh and others v. State of J&K and others*, 2011(2) JKJ 323, *Navjot Singh alias Bablu v. UT of J&K and others* (WP(Crl) No.11/2022 decided on 30.09.2022 and *Balbir Chand v. UT of J&K and others*, JKJ Online 71793. These judgments do not apply in the present case as the facts and circumstances of the cases mentioned *supra* are distinguishable.

23. The present case relates to the illicit trafficking of narcotic drugs along with other criminal activities. The menace of drugs is a serious threat to public health, safety and well-being of citizens at large. Even globally, the society is facing detrimental consequences of trafficking of drugs/drug abuse because it undermines the socio-economic and political stability of a nation. Besides that, it also distorts the public order and the fabric of society as it is considered to be the originator for petty offences as well as heinous crimes such as smuggling of arms, ammunition and money laundering. Furthermore, drug trafficking leads to a constant threat to national security and sovereignty of the State by way of narco-terrorism. Drug trafficking along with drug abuse, especially by younger generation, has continued to take a significant

toll on valuable human lives and productive years of people around the globe. With the growth and development of the world economy, drug traffickers are seamlessly trafficking various types of drugs from one corner to another, ensuring the availability of the contraband for vulnerable segments of the society, who fall into the trap of drug peddlers and traffickers. India is facing this serious menace of drug trafficking and as a spill-over effect, drug abuse especially amongst the youth. This is a grave concern for all the stakeholders of the nation.

24. The framers of our Constitution had visualized the danger of misuse of such type of substances and, therefore, made it part of directives issued to the State. The Directive Principles of State Policy, which are part of our Constitution, lay down that the State shall make endeavours to bring about the prohibition of substances injurious for health, except for medicinal and scientific purposes. It is no secret that illicit traffic in narcotic drugs and psychotropic substances poses a grave threat to health and welfare of the people and activities of persons engaged in such illicit traffic have a far reaching effect on national growth, public order and economy. Thus, it has become imperative for prohibition of such activities by preventive detention of persons engaged with the perpetration of the same in any manner therewith.

25. The grounds of detention in the present case reveals that the detenu had an inclination towards criminality, which ultimately resulted in the detenu becoming a notorious trafficker of narcotic drugs. Furthermore, the

gang associated with the detenue had spread criminal activities in different parts of the district Udhampur and had become potential threat to that area.

26. It has also been mentioned in the grounds of detention that the activities of the detenue are highly prejudicial to the maintenance of public order and it has become imperative to detain him as the ordinary laws are not sufficient to curb his pervasive activities. It is not so, even the petitioner has diversified his criminal profile and took others like minded criminal into partnership. Petitioner's involvement in narcotic smuggling and attempts to broaden the network are a cause of alarm for the area as it would wreak havoc upon the youth of the district, who are primarily falling prey to his nefarious designs.

27. The respondent, as such, have arrived at subjective satisfaction before passing the order of detention, as it is the constitutional obligation of the State to protect the life and property of its citizens from any possible threat and to provide an atmosphere where citizens can live freely with dignity.

28. The grounds of detention further reveals that the petitioner is a criminally minded person, and is involved in a number of heinous crimes. Furthermore, it is averred that the notoriety of the petitioner has assumed such an alarming proportion that even the ordinary law of the land has failed to deter the detenue from committing the criminal activities and most of the time when the petitioner was arrested, he managed to obtain bail from various Courts by taking advantage of the technicalities of the law.

29. In the above backdrop, it is mentioned that the purpose of the Jammu & Kashmir Public Safety Act, 1978 is to prevent the acts and activities, which are prejudicial to the security of the State or maintenance of public order. The ground of detention further reveals that the petitioner has been found involved in number of criminal acts and transportation of drug consignments in district Udhampur, and as such, has created a reign of terror among the peaceful and law abiding citizens of that area. The motive of the detenu is not only to create terror among the peaceful and law abiding citizens, but also to form a deep rooted nexus by encouraging criminally minded people to join him in his nefarious designs to commit illegal sale and purchase of narcotic contraband amongst the innocent youth of that area. Therefore, the acts of the petitioner were posing a grave threat to public peace and tranquility. The grounds of detention have also referred six FIR registered against the petitioner for various offences. List of the FIRs registered against the detenu which find mention in the grounds of detention are as under:-

- 1) FIR No.19/2019 U/s 279/337 RPC, 8/21/22 NDPS Act at Police Station, Ramnagar.
- 2) FIR No.109/2019 under Section 279/337 RPC at Police Station Ramnanagr
- 3) FIR No.54/2020 under Section 342/323/34 IPC at Police Station Ramnagar.
- 4) FIR No.114/2020 under Section 294 IPC at Police Station Ramnagar

5) FIR No.532/2020 under Section 8/21/22/27(a)/29/60 NDPS Act at Police Station Udhampur

6) FIR No.201/2021 under Section 8/21/22 NDPS Act at Police Station Ramnagar

30. The aforementioned FIRs registered against the detenu were having direct nexus with regard to the threat to the maintenance of peace and tranquility. Since people of the area were feeling highly insecure due to his criminal activities, the order of detention came to be issued by the Detaining Authority after arriving at subjective satisfaction. The right of the people to live peacefully is guaranteed under the Constitution of India and the activities of the petitioner was the main impediment, which was coming in the way of the people residing in district Udhampur in enjoying such constitutional right and, accordingly, the order impugned came to be issued by invoking the provisions of Public Safety Act, 1978.

31. I have gone through the stand taken by the respondents and also perused the record supplied to me and, accordingly, I hold that the grounds of detention are definite, proximate and free from any ambiguity. The detenu has been informed with sufficient clarity, which actually weighed with the Detaining Authority while passing the detention order. The Detaining Authority has narrated facts and figures that made it to exercise its powers under Section 8 of the Public Safety Act, 1978. The Detaining Authority has recorded subjective satisfaction that the detenu was required to be placed under preventive detention, with a view to prevent him from indulging in

activities, which are prejudicial to the security of the State and maintenance of public order, as a consequence of which order of detention came to be issued.

32. In such circumstances, suffice it is to say that there had been sufficient material before the Detaining Authority to come to a conclusion and hence, it cannot be said that the subjective satisfaction of the Detaining Authority was wrongly arrived at or the grounds of detention are vague. It is evident from the past record of the detenué that the substantive laws of the land have failed to deter the detenué, as the detenué is undeterred even after registration of many criminal cases against him. He has managed to dodge the criminal justice system by taking advantage of intricacies and technicalities of the law, and was taking undue advantage of the bail granted by various courts in multiple offences. The Detaining Authority has arrived at subjective satisfaction that with a view to prevent the detenué from disturbing peace and order, it has become necessary to detain the detenué under preventive detention and, accordingly, the Detaining Authority has passed the order of detention against the detenué/petitioner.

33. The argument raised by the learned counsel for the petitioner that the petitioner was deprived from making effective representation is contradictory in light of the record, which has been perused by this court. As per the record, it is manifestly clear that the detention order dated 31.08.2022 has been executed properly as per the norms by the Executing Officer and signatures of the petitioner have also been taken properly. Besides, in the

execution report, it is specifically mentioned that the contents of detention warrant and grounds of detention were read over and explained to the detenu in Dogri/Hindi language, which the petitioner fully understood and in lieu of the same, his signature has been obtained. The record further reveals that the detenu was also made aware about the fact that he can make representation against the order of detention. It is the specific stand of the respondents that copies of the FIR, statements of witnesses along with other material have been properly supplied to the detenu and, thus, the stand of the detenu that he has not been provided with the material is factually incorrect and contrary to the record supplied to this Court as well as the stand taken by the respondents in the reply affidavit.

34. As per the stand of the respondents, the detenu was first arrested for his involvement in illegal transportation and selling of narcotic drugs in case FIR No.19/2019 under Section 279/227 RPC and 8/21/22 NDPS Act registered at Police Station Ramnagar. After investigation, challan was produced before the competent Court of law. Apart from this, the detenu was also found involved in five other cases, four registered at Police Station, Ramnagar and one at Police Station Udhampur. The Detaining Authority, keeping in view the criminal activities of the detenu, after due application of mind, arrived at subjective satisfaction before ordering detention of the detenu under preventive detention. The record further reveals that the detention order was passed by respondent No.2 and subsequently, was approved by the Government vide Government Order dated 08.09.2022. The record further reveals that the repeated involvement of the detenu clearly

proves beyond any shadow of doubt that the ordinary laws of the land have failed to deter him from indulging in criminal activities and the detention of the detenu/petitioner under preventive custody has become imperative to resist the future criminal activities with a view to provide peaceful atmosphere to the people residing in the area.

35. The record further reveals that the detenu was having close nexus with the gang of criminals, who have spread the menace of drugs in the entire State and the detenu was spreading the menace of drug by supplying drugs to youth and students. The Detaining Authority has also arrived at subjective satisfaction that if the detenu had not been detained under Public Safety Act, there was every likelihood that this menace would engulf another generation.

36. I have perused the record minutely, and from a bare perusal of the execution report dated 02.09.2022, it is evident that the detention order (01 leaf), notice of detention (01 leaf), grounds of detention (04 leaves), dossier of detention (05 leaves), copies of FIR, statements of witnesses and other relevant documents (72 leaves), total 83 leaves have been handed over to the detenu at Central Jail, Kot Bhalwal, Jammu. In acknowledgement thereto, the detenu signed in English. Simultaneously, the detenu was also informed about his right to make representation to the Government as well as the Detaining Authority against his detention. **Besides, the detenu was also explained the grounds of detention in Dogri/Hindi, which he understood fully, yet the detenu has chosen not to make representation. Therefore,**

fault, if any, is attributable to the petitioner/detenué and not to the Detaining Authority.

37. Thus, the argument raised by the learned counsel for the petitioner that **insufficient material prevented the petitioner from making effective representation against the detention order is factually incorrect and not sustainable in the eyes of law. Therefore, the same stands rejected.**

38. The grounds of detention clearly prove that the detenué was involved in illegal trade of contraband and was posing serious threat to the public peace and tranquility. Keeping in view the activities of the detenué, the Detaining Authority after due application of mind, by arriving at subjective satisfaction has issued the order of detention, which cannot be found fault with.

39. It is settled proposition of law that this Court while exercising jurisdiction under Article 226 of the Constitution has a limited scope to scrutinize whether detention order has been passed on the material placed before it, and it cannot go further and examine the sufficiency of material. I am fortified by the view of Hon'ble Supreme Court in the **State of State of Gujrat v. Adam Kasam Bhaya, (1981) 4 SCC 216**. This Court does not sit in appeal over the decision of the Detaining Authority and cannot substitute its opinion over that of detaining authority when the grounds of detention are precise, pertinent, proximate and relevant. I am fortified by the judgment of Supreme Court in the case of **State of Punjab v. Sukhpal Singh, (1990) 1 SCC 35**.

40. The power of preventive detention is a precautionary power exercised in reasonable anticipation. It may or may not relate to an offence. The order of preventive detention may be made before or during prosecution and the pendency of the prosecution is not a bar to an order of preventive detention and is also not a bar to prosecution. The power of preventive detention is qualitatively different from punitive detention. In a prosecution, the accused is sought to be punished for his past acts, however, in preventive detention the past act is merely a material for drawing inference about future conduct of the detenue.

41. In the present case, the Detaining Authority has applied its mind by going through all the material, past conduct of the detenue against whom six FIRs stand registered and accordingly, arrived at subjective satisfaction that the criminal activities of the detenue were prejudicial to the interest of the State and issued the order of detention, which cannot be faulted.

42. The continuous criminal activities of the detenue were indicative of the strong probability of the impending commission of an prejudicial act. The preventive laws, therefore, require that the State must be satisfied, with respect to any person, with a view to prevent him from acting in any manner prejudicial to the security of the State or from acting in any manner prejudicial to the maintenance of Public order. Hence, the detaining authority has to arrive at a subjective satisfaction that it is necessary to make an order directing such person to be detained.

43. Since the activities of the detainee were directed against the object mentioned in the Act and the Detaining Authority has arrived at subjective satisfaction that it was necessary to prevent the detainee from acting in such manner and consequently, order of detention came to be issued. Thus, it clearly shows that it is satisfaction of the Government on the point, which alone is necessary to be established.

44. Learned counsel for the petitioner has submitted that the grounds of detention are *verbatim* of the dossier. It has already been discussed in the preceding paragraphs that this Court while examining the material which is made basis of subjective satisfaction of the Detaining Authority, would not act as a court of appeal and find fault with satisfaction on ground that on the basis of the material before detaining authority, another view was possible. Such is the limited scope of enquiry in this aspect. However, in the present case, the grounds of detention are not a replica of the dossier. The sponsoring authority has not only supplied the material i.e. dossier, containing gist of the activities of the detainee but has also supplied the material in the shape of FIRs and other relevant material, which was considered by the Detaining Authority while arriving at subjective satisfaction that the activities of the detainee were prejudicial to the maintenance of public order, requiring the preventive detention of the detainee.

45. The grounds of detention were well explained to the detainee in a language, which he fully understood as is evident from the execution report, where the detainee is a signatory to the same. Moreover, the detainee was well

informed that he can make representation to the government as well as to the Detaining Authority against his detention, if he so desire.

46. The detinue has received the grounds of detention and other relevant record besides he has signed the execution report, thereby, admitting the factum of receiving 83 leaves of the entire record against a proper receipt. The execution report further reveals that the grounds of detention were read over to the detinue in English and explained to him in Dogri/Hindi language, which he fully understood and in lieu of which his signatures have been obtained on the execution report and no grouse was ever raised by the petitioner that the documents were never read over and explained to him in the language which he understands, which is evident from the fact that the detinue never demanded translated copies of any of the documents forming part of the grounds of detention.

47. From a bare perusal of the provisions of the Public Safety Act, 1978 dealing with preventive detention, read with the constitutional mandate under Article 22(5) of the Constitution of India, I do not find that such requirement is mandatory and failure on part of detaining authority to supply translated copies in all cases vitiates the detention.

48. Nowhere the petitioner has demonstrated before this Court as to how this omission on part of the Detaining Authority, if any, has violated the right of the detinue to make effective representation, moreso, when the detinue by his own volition chose not to make representation either to the Detaining Authority or to the Government. Besides, the detinue had an

option to appear before the Advisory Board and make such submissions before it, but he has chosen not to do so.

49. The detenu has an alternative remedy of filing review before the Advisory Board, whose members are of judicial background and the remedy under PSA was available to the detenu but the detenu without availing the alternate efficacious remedy has chosen to file the present petition, which is not maintainable. In such situation, submission of the learned counsel for the detenu is unacceptable and, accordingly, rejected.

50. Liberty of an individual has to be subordinated, within reasonable bounds, for the good of the society at large. The framers of the Constitution were conscious of the practical need of preventive detention with a view to strike a just and delicate balance between need and necessity to preserve individual liberty on one hand, and security of the country as well as the interest of society on the other. Security of State, maintenance of public order, prevention of drug trafficking and other criminal activities demand effective safeguards in the larger interest of the sustenance of a peaceful and democratic way of life.

51. The aim of the preventive detention is not to punish a person for having done something but to intercept and prevent him from doing so. Hon'ble the Supreme Court in the case of **Naresh Kumar Goyal v. Union of India and others, (2005) 8 SCC 276** and **Union of India and another v. Dimple Happy Dhakad, AIR 2019 SC 3428** has held that "an order of detention is not a curative or reformatory or punitive action, but a preventive

action, avowed object of which being to prevent antisocial and subversive elements from imperiling welfare of the country or security of the nation from disturbing public tranquility or from indulging in illegal activities or from engaging in illicit traffic in narcotic drugs and psychotropic substances etc. Preventive detention is devised to afford protection to society. The object is not to punish a man for having done something but to intercept before he does it, and to prevent him from doing so.”

52. The law of preventive detention has direct bearing on the subjective satisfaction and the Detaining Authority. The subjective satisfaction of a Detaining Authority, whether to detain a person or not, is not open to the objective assessment by a Court. The Court while exercising power under Article 226 is not to act as an appellate forum to scrutinize the merits of the administrative decision to detain a person. The Court cannot substitute its own satisfaction for that of the authority concerned and decide whether its satisfaction was reasonable or proper, or whether in the circumstances of the matter, the person concerned should have been detained or not. This aspect of the matter lies in the competence of the Advisory Board.

53. It is apposite to mention that our Constitution undoubtedly guarantees various freedoms and personal liberty to citizens in our Republic, however, such freedoms guaranteed by the Constitutional mandate are not meant to be abused and misused so as to endanger and threaten the very foundation of our society. The larger interests of our nation as a whole and the cause of preserving for every person the guaranteed freedoms demands

reasonable restrictions on the prejudicial activities of individuals who jeopardize the rightful freedoms of the rest of the society. The main object of preventive detention is the security of the State, maintenance of public order and of supplies and services essential to the community. They demand effective safeguards in the larger interest of the sustenance of peaceful and democratic way of life. All the aforesaid objects have weighed with the Detaining Authority while arriving at subjective satisfaction in the present case.

54. Subjective satisfaction of the Detaining Authority constitutes the very foundation for the exercise of the power of detention and this Court cannot enter into the arena to substitute its opinion with regard to propriety or sufficiency of the grounds on which the satisfaction of the detaining authority is based. Since power of detention is clearly a preventive measure, it cannot partake, in any manner, of the nature of punishment. The liberty of an individual has to be subordinated within reasonable bounds to the good of the society at large. The record further reveals that the Government in the Home Department vide order dated 08.09.2022, in exercise of the powers conferred by sub-section (4) of Section 8 of the Jammu & Kashmir Public Safety Act, 1978 has approved the detention order dated 31.08.2022 passed by the District Magistrate, Udhampur. A perusal of the record further shows that the detenu at the time of execution of the detention order was provided all the relevant material relied upon by the Detaining Authority i.e. Detention order, notice of detention, grounds of detention, dossier of detention, copies of FIR, statements of witnesses and other related documents. The detenu has

acknowledged the same by putting his signatures on the receipt and the concerned Sub Inspector-Daljeet Singh of Police Station, Ramnagar has read over the detention warrant and grounds of detention and explained the same to him in Dogri/Hindi language, which he understood fully. The detenu has further been informed that he has a right to make representation to the Government as well as Detaining Authority against the detention order, which the petitioner has not availed of, by his own volition. **Thus, I hold that detention order, which has been issued by the detaining authority after arriving at subjective satisfaction, does not suffer from any legal infirmity as the grounds of detention are definite, proximate and free from any ambiguity. Furthermore, the detenu was duly informed of what weighed with the detaining authority while passing the order of detention. The Detaining Authority has recorded its subjective satisfaction after considering all the material available, thus, I hold that none of the constitutional or statutory provision has been violated.**

55. The personal liberty may be curtailed, were a person faces a criminal charge or is convicted of an offence and sentenced to imprisonment. Where a person is facing the trial on a criminal charge and is temporarily deprived of his personal liberty because of the criminal charge framed against him, he has an opportunity to defend himself and to be acquitted of the charge in case the prosecution fails to bring home his guilt. Where such an accused is convicted of offence, he still has satisfaction of having been given the adequate opportunity to contest the charge and also adduce the evidence in his defence.

56. The incorporation of Article 22 in the Constitution left room for detention of person without a formal charge and trial and without such person held guilty of an offence and sentenced to imprisonment by a competent Court. Its aim and object are to save the society from activities that are likely to deprive a large number of people of their right to life and personal liberty. In such a case, it would be dangerous for the people at large, to wait and watch as by the time ordinary law is set into motion, the person having the dangerous designs, would execute his plans, exposing the general public to risk, causing colossal damage to life and property. It is for that reason necessary to take preventive measures and subsequently, prevent the person bent upon to perpetuate mischief from translating his ideas into actions. Therefore, where individual liberty comes into conflict with an interest of the security of the State or public order, then the liberty of individual must give way to the larger interest of the nation. I am fortified by the observations made by the Hon'ble Supreme Court in **Sunil Fulchand v. Union of India (2003) 3 SCC 409**.

“33(1) Personal liberty is one of the most cherished freedoms, perhaps more important than the other freedoms guaranteed under the Constitution. It was for this reason that the Founding Fathers enacted the safeguards in Article 22 in the Constitution so as to limit the power of the State to detain a person without trial, which may otherwise pass the test of Article 21, by humanizing the harsh authority over individual liberty. In a democracy governed by the rule of law, the drastic power to detain a person without trial for security of the State and/or maintenance of public order, must be strictly construed. However, where individual liberty comes into conflict with an interest of the security of the State or public order, then the liberty of the individual must give way to the larger interest of the nation.”

57. In “**Mohd. Subrati alias Mohd. Karim v. State of West Bengal (1973)3 SCC 250**”, the Hon’ble Supreme Court has held as under:-

“7.No doubt, the right to personal liberty of an individual is jealously protected by our Constitution but this liberty is not absolute and is not to be understood to amount to licence to indulge in activities which wrongfully and unjustly deprive the community or the society of essential services and supplies. The right of the society as a whole is, from its very nature, of much greater importance than that of an individual. In case of conflict between the two rights, the individual’s right is subjected by our Constitution to reasonable restrictions in the larger interest of the society.”

58. For all what has been said hereinbefore and having regard to the law laid down and noted herein above, the petition fails and is dismissed, as such.

The impugned detention order, accordingly, sustains and is maintained.

59. Record produced by the respondents be returned back to the learned counsel for the respondents.

(Wasim Sadiq Nargal)
Judge

Jammu
30.12.2022
Vinod

Whether the order is speaking: Yes
Whether the order is reportable: Yes