HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT SRINAGAR

…

WP(Crl) No.450/2022

Reserved on: 06.10.2023

Pronounced on: 21.10.2023

Fayaz Ahmad Wani …….Petitioner(s)

Through: Mr. Mansoor Ah Mir, Advocate

Versus

Union Territory of J&K and ors. ……Respondent(s)

Through: Mr. Fameem Ahmad Shah, GA

CORAM:

HON'BLE MR JUSTICE VINOD CHATTERJI KOUL, JUDGE

JUDGEMENT

1. Through the medium of this writ petition, the petitioner prays for quashment of Order no. DMB/PSA/19 of 2022 dated 25.06.2022, passed by District Magistrate, Budgam (for short "detaining authority") whereby detenu, namely, *Fayaz Ahmad Wani S/o Mlohammad Sultan Wani R/o Pethkoot Beerwah, District Budgam,* has been placed under preventive detention with a view to prevent him from indulging in the activities which are prejudicial to the security of the State, on the grounds made mention of therein.

2. Respondents have filed reply affidavit, insisting therein that the activities indulged in by detenu are highly prejudicial to the security of the Union Territory and, therefore, his remaining at large is a threat to the security of Union Territory of J&K. The activities narrated in the grounds of detention have been reiterated in the reply affidavit filed by respondents. The factual averments that detenu was not supplied with relevant material relied upon in the grounds of detention have been refuted. It is insisted that all the relevant material, which has been relied upon by the detaining authority, was provided to the detenu at the time of execution of warrant.

3. I have heard learned counsel for parties. I have gone through the detention record produced by the counsel appearing for respondents and considered the matter.

4. Learned counsel for the petitioner has stated that the allegations made in the grounds of detention are vague and indefinite and no prudent man can make an effective representation against these allegations inasmuch as there are no particulars of persons with whom he is alleged to have association or to whom he is

alleged to have provided any support, food, shelter, and even there is no mention of any particular date(s) to reflect any clear cut prejudicial activity against detenu. It is also stated that detenu is not involved in any criminal activity nor any FIR is registered against him regarding any prejudicial activity, as such, there was no compelling reason for detaining authority to pass impugned detention order. The detenu is stated to have not been provided all the material relied upon by detaining authority.

5. Taking into account the rival contentions of parties and submissions made by learned counsel for parties, it would be relevant to go through the grounds of detention. Perusal thereof reveals that same are vague and ambiguous, and do not refer to any date, month or year of the activities, which have been attributed to detenu. Detention in preventive custody on the basis of such vague and ambiguous grounds of detention cannot be justified. It may not be out of place to mention here that preventive detention is largely precautionary and is based on suspicion. The Court is ill-equipped to investigate into circumstances of suspicion on which such anticipatory action must be largely based. The nature of the proceeding is incapable of objective assessment. The matters to be considered by the detaining authority are whether the person concerned, having regard to his past conduct judged in the light of surrounding circumstances and other relevant material, is likely to act in a prejudicial manner as contemplated by the provisions of the law and, if so, whether it is necessary to detain him with a view to preventing him from so acting. These are not the matters susceptible of objective determination, and they could not have been intended to be judged by objective standards. They are essentially the matters which have to be administratively determined for the purpose of taking administrative action. Their determination is, therefore, deliberately and advisedly left by the Legislature to the subjective satisfaction of detaining authority which, by reason of its special position, experience and expertise, would be best suited to decide them. Thus, the Constitutional imperatives of Article 22(5) and the dual obligation imposed on the authority making the order of preventive detention, are twofold: (1) The detaining authority must, as soon as may be, i.e. as soon as practicable, after the detention order is passed, communicate to the detenu the grounds on which the order of detention has been made, and (2) the detaining authority must afford the detenu the earliest opportunity of making the representation against the order of detention, i.e. to be furnished with sufficient particulars to enable him to make a representation which, on being considered, may obtain relief to him. The inclusion of an irrelevant or

non-existent ground, among other relevant grounds, is an infringement of the first of the rights and the inclusion of an obscure or vague ground, among other clear and definite grounds, is an infringement of the second of the rights. In either case there is an invasion of the constitutional rights of the detenu entitling him to approach the Court for relief. The reason why the inclusion of even a simple irrelevant or obscure ground, among several relevant and clear grounds, is an invasion of the detenu's constitutional right is that the Court is precluded from adjudicating upon the sufficiency of the grounds, and it cannot substitute its objective decision for the subjective satisfaction of the detaining authority. Even if one of the grounds or reasons, which led to the subjective satisfaction of the detaining authority, is non-existent or misconceived or irrelevant, the order of detention would be invalid. Where the order of detention is founded on distinct and separate grounds, if any one of the grounds is vague or irrelevant the entire order must fall. The satisfaction of detaining authority being subjective, it is impossible to predicate whether the order would have been passed in the absence of vague or irrelevant data. A ground is said to be irrelevant when it has no connection with the satisfaction of the authority making the order of detention. Irrelevant grounds, being taken into consideration for making the order of detention, are sufficient to vitiate it. One irrelevant ground is sufficient to vitiate the order as it is not possible to assess, in what manner and to what extent, that irrelevant ground operated on the mind of the appropriate authority, and contributed to his satisfaction that it was necessary to detain the detenu in order to prevent him from acting in any manner prejudicial to the maintenance of the public order or security of the State. Reference in this regard is made to ***Mohd. Yousuf Rather v. State of J&K and others, AIR 1979 SC 1925;*** and ***Mohd. Yaqoob v. State of J&K &ors, 2008 (2) JKJ 255 [HC]***.

6. There is also a submission on the part of learned counsel for petitioner that detenu was not provided all the material relied upon by detaining authority. To consider this submission, I have gone through the detention record produced by learned counsel for respondents. Perusal of "*Execution Report*" as also "*Receipt of Grounds of detention & other relevant record*" would reveal that detenu, besides other material, has been given copies of FIR, statements of witnesses and other related relevant documents. It would be appropriate to reproduce relevant portion of Execution Report as under:

> "The detention order (01 leaf), Notice of detention (01 leaf) grounds of detention (03 leaves) Dossier of detention (03 leaves) copies of FIR,

statements of witnesses and other related relevant documents (06 leaves) Total 14 leaves) have been handed over the above said detenu….."

Relevant portion of "Receipt of Ground of detention & other relevant record" is also reproduced hereunder:

"Received copies of detention order (01 leaf), Notice of detention (01 leaf) grounds of detention (03 leaves), Dossier of detention (03 leaves) Copies of FIR, Statements of witnesses and other related relevant documents (06 leaves) Total 14 leaves through executing officer ……"

When above "*Execution Report*" as also "*Receipt of Grounds of detention & other relevant record*" are read together with grounds of detention made by detaining authority, it reflects total non-application of mind. Bare perusal of grounds of detention does not show or suggest any FIR registered or lodged against detenu whereas perusal of aforesaid "*Execution Report*" as also "*Receipt of Grounds of detention & other relevant record*" reveals that copies of FIR, Statement of Witnesses etc., have been given to detenu. Thus, this important aspect of the matter indicates non-application of mind and result thereof is that it vitiates impugned detention.

7. It is pertinent to mention here that perusal of grounds of detention reveals that the same are replica of dossier with interplay of some words here and there. This, thus, portrays non-application of mind and in the process of deriving of subjective satisfaction, has become causality. While formulating grounds of detention, detaining authority has to apply its own mind. It cannot simply reiterate whatever is written in the dossier. Here it will be apt to notice the observations of the Supreme Court in the case of ***"Jai Singh and ors vs. State of J&K" (AIR 1985 SC 764),*** which are reproduced hereunder:

> "First taking up the case of Jai Singh, the first of the petitioners before us, a perusal of the grounds of detention shows that it is a verbatim reproduction of the dossier submitted by the Senior Superintendent of Police, Udhampur, to the District Magistrate requesting that a detention order may kindly be issued. At the top of the dossier, the name is mentioned as Sardar Jai Singh, father's name is mentioned as Sardar Ram Singh and the address is given as village Bharakh, Tehsil Reasi. Thereafter it is recited "The subject is an important member of ……"
> Thereafter follow various allegations against Jai Singh, paragraph by paragraph. In the grounds of detention, all that the District Magistrate has done is to change the first three words "the subject is" into "you Jai Singh, S/o Ram Singh, resident of village Bharakh, Tehsil Reasi". Thereafter word for word the police dossier is repeated and the word "he" wherever it occurs referring to Jai Singh in the dossier is changed into "you" in the grounds of detention. We are afraid it is difficult to find proof of

> non-application of mind. The liberty of a subject is a serious matter and is not to be trifled with in this casual, indifferent and routine manner."

8. From perusal of above quoted observations of the Supreme Court, it is crystal clear that grounds of detention and dossier, if in similar language, go on to show that there has been non-application of mind on the part of detaining authority. As already noted, in the instant case, it is clear from the record that the dossier and the grounds of detention contain almost similar wording which shows that there has been non-application of mind on the part of the detaining authority. The impugned order of detention is, therefore, unsustainable in law on this ground alone.

9. Based on the above discussion, the petition is disposed of and Detention Order no. DMB/PSA/19 of 2022 dated 25.06.2022, issued against detenu, *is* quashed. As a corollary, respondents are directed to set the detenu at liberty forthwith provided he is not required in any other case.

10. **Disposed of**.

11. Detention record be returned to counsel for respondents.

(Vinod Chatterji Koul)
Judge

Srinagar
21.10.2023
(Qazi Amjad Secy.)

Whether approved for reporting? Yes/No