

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

Reserved on : 26.09.2024
Pronounced on:17.12.2024

**LPA No. 133/2024 in
WP(Crl) 789/2022**

Imran Rashid Rather
S/o Abdul Rashid Rather
R/o Khurhama Budgam
Through his father Abdul Rashid
Rather (Aged 63 years)

.....Appellant

Through :- Mr. Riyaz Ahmad Khan,
Advocate

v/s

1. UT of Jammu and Kashmir
through
Addl. Chief Secretary, Home
Department, J&K,
Srinagar/Jammu
2. District Magistrate, Budgam

.....Respondent(s)

Through :- Mr. Bikramdeep Singh Dy.AG
Mr. Nowbahar Khan, Assisting
Counsel

**CORAM:HON'BLE MR. JUSTICE ATUL SREEDHARAN, JUDGE
HON'BLE MR JUSTICE MOHD. YOUSUF WANI, JUDGE**

JUDGMENT

Per Atul Sreedharan-J

The present appeal has been filed against the judgement and order dated 21/05/2024 by which the writ of habeas corpus of the appellant was dismissed by the Ld. Single Bench.

- 2.** The brief facts of the case are as follows. The appellant filed WP CrI. No. 789/2022 against the order of the District Magistrate Budgam dated 22/11/2022 passed under the relevant provisions of the Public Safety Act, 1978 (hereinafter referred to as the “PSA”) taking him into preventive detention. The detainee was allegedly arrested in the year 2020 and later implicated in FIR 101/2020 of PS Magam for which he is facing trial. The detainee has been enlarged on bail in the said case. The detainee was once again arrested in the second week of November 2022 and was detained at JIC Budgam and while being in custody, the impugned order detaining him under the PSA was passed and he is undergoing detention at the Kotbalwal Jail in Jammu.
- 3.** The impugned order of detention has been challenged on the grounds that the grounds of detention have no nexus with the appellant, that the grounds are vague and non-existent, non-specific and do not accord a reasonable opportunity to the detainee to give a precise rebuttal. Besides, it is also urged on behalf of the appellant that he had already been granted bail by the Ld. Trial Court but the same had not been considered by the Respondent while passing the impugned order. It has also been urged before this Court that the only act alleged against the

appellant is of the year 2020 and thereafter, there is no material warranting the detention of the appellant. According to the appellant, the detention order is stale having been passed after two years of the only incident attributable to the appellant and that the unexplained delay between the act alleged and the order of detention, render the impugned order unsustainable in the eyes of law. It is also the case of the appellant that the detaining authority has not applied his mind independently to the case against the appellant and has merely acted as a post office by reproducing the police dossier sent to the detaining authority.

4. The Respondent UT on the other hand has argued that the impugned order has considered the case of the appellant and the UT in the right perspective and that the appeal deserves to be dismissed as it has not made out a case of the non-compliance of the mandatory provisions of the PSA and that the appellant was given an opportunity to represent his case before the Government which was considered and rejected. Further, it has also been argued on behalf of the UT that this Court can only examine if the statutory requirement of giving a reasonable opportunity to the detainee to represent against the detention was given and besides that, the

Court is not expected to examine the sufficiency of the subjective satisfaction arrived at by the detaining authority.

- 5.** Heard the Ld. Counsels for the respective parties and perused the record of the case. A dossier against the appellant was prepared by the SP Budgam and sent to the DM Budgam requesting the DM to take the appellant under preventive detention. The order of detention under s. 8 of the PSA was passed against the appellant by the District Magistrate Budgam on 22/11/2022. The reason for detaining the appellant under the PSA was based upon the satisfaction of the DM that the same was necessary in order to prevent the appellant from acting in a manner that may be prejudicial to the security of the UT. By another order passed on 22/11/2022, the appellant was informed of his right to make a representation to the detaining authority or the Government.
- 6.** The grounds of detention prepared by the DM are required to be referred to briefly. At the outset, it was alleged that the appellant is an over ground worker (hereinafter referred to as “OGW”) for the Lashkar-I-Toiba, a terrorist outfit and that the appellant was providing shelter and logistic support to the active

terrorists of the LeT outfit in the area that the appellant remained in touch with the active terrorists of the LeT and also motivated the youth of the area for anti-national activities by luring them for terror related activities in the area. As regards this allegation, there is no specific material which is even fleetingly referred to by the DM to arrive at this finding. There is no specific instance as to when and how the appellant has assisted the LeT as their OGW. No details are given of the date and place where he gave logistic support and shelter to the active terrorists. it is also relevant to observe here that no details are given of the youth that the appellant is alleged to have motivated to join the cause of the terrorists. No statements of any such youth with their names redacted have ever been given to the appellant in order to assist him in preparing a precise rebuttal. The first allegation in the grounds of detention is identical reproduction of the first allegation in the dossier given to the DM by the SP.

- 7.** The second allegation in the grounds of detention relates to the registration of FIR No. 101/2020 at PS Magam for offences u/ss. 18, 23, 39 of the UAP Act, 7/25 if the Indian Arms Act, in which the appellant was found to be involved. It is pertinent to mention here that the appellant has stated that he has been enlarged on bail in

the said case. However, the detaining authority has not taken the said fact into consideration and has given no reason why the detention of the appellant was still required in a stale case which was more than two years old and moreso, when the Ld. Trial Court had enlarged the appellant on bail in the said case.

8. The third ground on which the appellant has been detained is that he is aiding and abetting terrorism in the jurisdiction of PS Budgam and its adjacent areas and that he is facilitating movement of terrorists and also harbouring them. Once again, this ground does not give any specific instance of time and place whereby the appellant could either accept or deny specifically. Thus this ground is also vague.

9. The fourth ground is that the appellant is alleged to have deep links with terrorists and the same in conjunction with his “recent past terror activities” that the appellant is involved in, the appellant is perceived as a threat not only to public order but also to the security of the state, if he is allowed to roam free. The Court finds this ground to be extremely vague and does not give an opportunity to give a precise rebuttal as there is no details of the terrorists with whom the appellant is alleged to have established “deep links”. This ground is extensive

verbiage with no substance that would enable the detenu/appellant to give a precise rebuttal.

10. Fifthly, the appellant is charged of being a supporter of terrorists for “quite long” and that he has been acting to bring about secession of the UT of J and K from the union of India and merge it with Pakistan. No material is provided or any averment made in the ground as to what are the specific ways in which the appellant has been supporting terrorists and for how long? In fact, ground 1, 3 and 5 are materially the same.
11. The sixth ground is that the chances of the appellant mending his ways and shunning the path of violence is bleak and that there are “very high chances” that the appellant would “fuel the nefarious activities” of the terrorists and destabilise peace in the area. This is unsubstantiated allegations padded with strong adjectives, but vague, nonetheless.
12. The seventh and eighth grounds relate to the necessity to detain the appellant under the PSA in “public interest” and straight away for a maximum period of two years. Thus, the grounds of detention are vague, and they are incapable of being rebutted with precision as they lack specific details.

- 13.** The grounds of detention must give an opportunity to the detainee to give specific rebuttal rather than a generalised one that the “allegations are false and denied”. Vague grounds militate against subjective satisfaction, which is not satisfaction based upon specific acts attributable to the detainee which raise a “reasonable apprehension” in the mind of the detaining authority, that not taking the detainee under preventive detention would have a deleterious effect, either on public order, or on the security of the state. Grounds of detention disclosing specific instances verifiable by documents and/or statement of witnesses establish “subjective satisfaction” and its absence, vitiates the order of detention, as the satisfaction is not subjective but one influenced by prejudice or unsubstantiated apprehension.
- 14.** Detaining a person under the provisions of the PSA is an exercise of executive discretion, seriously infracting the individual’s right under article 21 of the constitution. Though constitutionally and statutorily valid, the exercise of jurisdiction under laws of preventive detention must be an exception to the general laws of arrest and detention.
- 15.** The exercise of executive discretion of detaining a citizen under the preventive detention laws without justifiable grounds, is an act of colourable exercise of executive

discretion making such action violative of article 21 of the constitution. The Supreme Court has in held in several cases that the power to act in discretion is not a power to act “ad-arbitrium” and that such power to exercise jurisdiction is not a “despotic power” nor is it “hedged with arbitrariness” and when the discretion is exercised mala fide, it gets vitiated by colourable exercise of power. In another case, the Supreme Court observed that the “attainment of ends” beyond the sanctioned purposes of power is a colourable exercise of power. Yet in a case under the COFEPOSA, the Supreme Court held that even a solitary instance may be sufficient for the detaining authority to be subjectively satisfied about the detrimental effect of letting the detainee roam free, the subjective satisfaction of the authority is not “absolute” and neither ought it be “unreasonable” and that the authority must disclose the reasons for its inference as to why it arrived at the subjective satisfaction that not taking the detainee into preventive detention would result in the detainee continuing with his/her nefarious acts. It was also held that the absence of any “specific and authenticated material” to indicate that the detainee had the inclination to indulge in similar activities would not

for a legitimate basis to take the detainee into preventive detention¹.

- 16.** Therefore, this Court holds that vague and non-specific grounds of detention **firstly**, violates the fundamental right to life and personal liberty of the detainee under article 21 of the constitution as it summarily curtails the liberty of the citizen based on the subjective satisfaction of the executive which is an exceptional power as against the general law relating to arrest and detention. **Secondly**, it deprives the detainee of giving a specific rebuttal to the grounds of detention which may satisfy the detaining authority or the Government that his detention is unlawful and compels him to answer the grounds of detention as “it is incorrect” or “it is false” etc. **Thirdly**, vague and generalised grounds in the order of detention, smacks of arbitrariness on the part of the detaining authority rendering the subjective satisfaction arrived at as violative of article 14 of the constitution and **fourthly**, vague and non-specific grounds raise the impression that the same has been done deliberately in order to deprive the detenu of giving a precise rebuttal. Malafide in fact may be difficult to establish as they must be pleaded with specific facts, but the lack of bonafides

¹State of Bihar Vs. P.P. Sharma, 1992 Supp(1) SCC 222, paragraph 49 – State of Punjab Vs. Gurdial Singh, (1980) 2 SCC 471, paragraph 9 – Pooja Batra Vs. Union of India and others, (2009) 5 SCC 296, paragraphs 18, 40 and 41

may be presumed where the executive act results in the deprivation of personal liberty from a detention order based on vague grounds. In such cases, the lack of bonafides is to be presumed due to a cavalier or casual exercise of the authority to detain the citizen without any specific ill will or personal animosity. The lack of bonafides is on account of failure to take due care and act without introspection, blindly on the report of the SP without insisting on supporting material which justifies the deprivation of liberty.

- 17.** Thus, in view of what has been argued, considered and held hereinabove by this Court, the impugned order of detention is set aside. If the period of detention has expired, the appellant shall be set forth at liberty from the date on which this order is pronounced in open court and the continued incarceration of the appellant for even a day thereafter, would be illegal detention for which there shall be consequences to be suffered by the Respondents.

(Mohd. Yousuf Wani)
Judge

(Atul Sreedharan)
Judge

SRINAGAR
17.12.2024
Yasmeen, Secy.

Whether the order is speaking: yes/no
Whether approved for reporting: yes/no