

IN THE HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT SRINAGAR
(through virtual mode from Jammu)

Reserved on : 31.12.2022

Pronounced on : 30.01.2023

WP(Crl) No 507/2022

Javaid Ahmad Bhat

...Appellant(s)/Petitioner(s)

Through: Mr. N. A. Tabasum, Advocate

Vs.
UT of J&K and another ...Respondent(s)

Through: Mr. Sajad Ashraf, GA

CORAM:

HON'BLE MR. JUSTICE RAHUL BHARTI, JUDGE

JUDGEMENT

Heard learned counsel for the petitioner. Perused the pleadings in the case along with the accompanying record.

1) Every case in which either the District Magistrate or the Government is approached by the law enforcement agencies for seeking a preventive detention of a citizen of India, every such case demands and expects a very fact sensitive and law centric application and approach of mind on the part of and by the holders of preventive detention jurisdiction. An application of law lives in its seriousness, and the law detests non-seriousness on the part of law operating hands and minds. The preventive detention law is no exception to this demand and command.

2) The present case is an example of sheer non-seriousness on the part of the District Magistrate Kupwara in dishing out a preventive detention order against the petitioner by literally acting as a post-office as if delivering a dossier of the Superintendent of Police, Handwara asking for the preventive detention of the petitioner under the provisions of the Jammu & Kashmir Public Safety Act, 1978. In the present writ petition, the petitioner having suffered loss of his personal liberty, is seeking the quashment of preventive detention order no. 17-DMK/PSA of 2022 dated 24.06.2022 issued by the District Magistrate Kupwara which came to be executed against him to land him languish in the District Jail Rajouri.

3) The factual background gatherable from the pleadings and the documents accompanying therewith is that by virtue of a dossier no. Pross/Dossier/2022/3290-93 dated 23.06.2022, the Superintendent of Police, Handwara came to approach the District Magistrate Kupwara seeking the invocation of the power of the District Magistrate as vested under section 8 of the Jammu & Kashmir Public Safety Act, 1978 for subjecting the petitioner to preventive detention as the petitioner's personal liberty was reckoned to be likelihood of threat to fragile law and order situation and harm to the security forces in the Qaziabad area. The dossier of the Superintendent of Police, Handwara painted and portrayed the petitioner as an aide of Lashar-e-Taiba (LeT) outfit.

4) The recital for so depicting the petitioner as such is drawn from the purported facts and circumstances upon which the

petitioner was earlier subjected to suffer preventive detention by virtue of preventive detention order no. 58/DMK/PSA of 2019 dated 19.10.2019 passed by the District Magistrate Kupwara which came to be quashed by this Court in WP (Crl) no.127/2020 vide judgment dated 28.06.2021.

5) As soon as the petitioner was restored back his personal liberty, within one year thereafter the Superintendent of Police, Handwara came forward with the dossier for seeking second time preventive detention of the petitioner. For the period intervening the date of quashment of first detention order by virtue of judgment dated 28.06.2021 and the issuance of second preventive detention order no. 17-DMK/PSA of 2022 dated 24.06.2022, impugned herein, there is no factual content stated in the dossier by the Superintendent of Police Handwara on the basis of which the petitioner could be said to have indulged in acts of omission or commission whereby his personal liberty was reckoned as a circumstance posing live threat to the so called security of the State. Thus, the dossier so served by the Superintendent of Police Handwara before the District Judge Kupwara was nothing but repetition of the premise upon which the first detention order 58/DMK/PSA of 2019 dated 19.10.2019 was passed.

6) Post his release by quashment of above said first detention order which had made the petitioner to suffer stay behind the jail bars for a period of four months short of two years, the petitioner was put on a bond for keeping peace by reference to proceedings under section 107/151 of the Code of Criminal Procedure 1973

dated 14.08.2021, 08.10.2021 and 24.01.2022. In the dossier it is no where mentioned that the petitioner ever breached his bonds so given under section 107 of the Code of Criminal Procedure, 1973 and still the petitioner came to be branded as a case for detention under the Public Safety Act, 1978.

7) When it came to the matter of applying mind to the issue whether to subject the petitioner to suffer preventive detention upon the basis of the dossier so served by the Superintendent of Police, Handwara before him, the District Magistrate Kupwara seems to have relieved himself from labour and effort of independent application of mind to the dossier case put up by the Superintendent of Police Kupwara and instead the District Magistrate Kupwara simply carried out re-typing of the dossier in the name of showing so called application of mind. So much so, even the typographical error/s and omission of the dossier was/were imported and repeated as it is by the District Magistrate Kupwara. In this regard, reference is made to a date given in the dossier which is 01.03.2009 vis-à-vis an incident which is then shown to be of 01.03.2019 on the basis of which FIR no. 08/2019 under section 302/307 Ranbir Penal Code, 7/27 of the Arms Act, 1959 and section 19 of the Unlawful Activities (Prevention) Act, 1967 was registered with the Police Station Karalgund. Same error of date by showing FIR no.08/2019 with respect to incident of 01.03.2009 came to be typed by the District Magistrate Kupwara in the grounds of detention to the extent of not even mentioning the date of FIR no. 08/2019 because the date of registration of said FIR

was not there in the dossier and so is the case with the grounds of detention. This is the best exhibit of the mechanical application of mind on the part of the District Magistrate Kupwara in issuing the preventive detention order against the petitioner as if the matter of depriving a person of his personal liberty, which being a fundamental right under the Constitution of India, is a matter of pleasure for the authority seeking preventive detention and the authority granting the said preventive detention. Discretion to issue non bailable warrant instead of bailable warrant against an accused in a criminal case would have much better quality of application of mind on the part of a magistrate issuing the process than the District Magistrate Kupwara in issuing the preventive detention order in reference against the petitioner.

8) Thus, this Court finds the detention order of the petitioner ex-facie bad in the eyes of law and as such is held illegal deserving to be quashed. The impugned detention order no. 17-DMK/PSA of 2022 dated 24.06.2022 of the petitioner passed by the District Magistrate Kupwara and its consequential confirmation is hereby quashed and the petitioner be restored to his personal liberty with immediate effect in the context of his detention by reference to the detention order hereby quashed.

Disposed of accordingly.

(RAHUL BHARTI)
JUDGE

JAMMU
30.01.2023
Muneesh

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