

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

Reserved on: 07.11.2024
Pronounced on: 21.11.2024

Case:- HCP No. 55/2024
CM No.2131/2024

Shakeel Mohd S/o Maluka Hussain R/o
Dadyal R.S.Pura, Jammu Through Mother
Bano Bibi, age 52 years

.....Petitioner/Detenu(e)s

Through: Mr. Gagan Oswal, Advocate

Vs

1. Union Territory of J&K through
Principal Secretary to Government,
Home Department, Civil Secretariat,
Srinagar/Jammu.
2. District Magistrate, Jammu

..... Respondent(s)

Through: Mr. Rajesh Thappa, AAG

Coram: HON'BLE MS. JUSTICE MOKSHA KHAJURIA KAZMI, JUDGE

सत्यमेव जयते
JUDGMENT

01. In the instant petition, the detenu(e) herein, through his mother namely Bano Bibi, has challenged Order No. PSA 12 of 2024 dated 16.03.2024 issued by respondent No. 2, by virtue of which the detenu(e) has been detained under preventive detention in terms of the provisions of Section 8(1) (a) of J&K Public Safety Act, 1978.

FACTUAL MATRIX

- 02.** It is stated that FIR No. 09/2020, FIR No. 415/2020, FIR No. 298/2021 and FIR No. 240/2023 under Section 188 of the IPC came to be registered against the detainee at Police Stations, Ghagwal, Nagrota, and Satwari, whereas FIR No. 51/2023 under Sections 451, 341, 323, 506 & 34 IPC and FIR No. 173/2023 under Sections 452, 323, 506 IPC came to be registered against the detainee at Police Station, R S Pura.
- 03.** In FIR No 09/2020, FIR No. 415/2020, FIR No. 298/2021 and FIR No.240/2023, it is alleged that the detainee was smuggling bovine animals from Jammu towards Srinagar in violation of the prescribed permission from District Magistrate concerned, whereas in FIR No. 51/2023 and FIR No. 173/2023 of Police Station, R. S. Pura, it is alleged that the detainee entered into the house of the complainant, beat them with Gandasa and lathies, torn the clothes of ladies and outraged their modesty. It is stated that in all the six FIRs, *challans* stand presented before the competent Court of jurisdiction and the detainee had been granted bail in all the *challans*. It is stated that the detention of the detainee under preventive detention is illegal, arbitrary and without any lawful jurisdiction as the substantive law of the land could have sufficiently taken care of the alleged activities of the detainee. The detainee, as such, has challenged the impugned order *inter alias* on the grounds:-
- a) That the detainee/detenu has not been supplied with the complete copies of dossier, clear copies of FIRs registered against the detainee, recovery memos, statement of witnesses recorded u/s 161 CrPC to enable the detainee to make effective representation

against the impugned detention order, detainee has a right to make representation to the detaining authority so long as order of detention has not been approved by the State Government and consequently non-supply of such material/noncommunication of fact to the detainee that he has a right to make representation to the detaining authority would constitute infraction of the valuable constitutional right guaranteed to the detainee under Article 22(5) of Constitution of India r/w Section 13 of Public Safety Act 1978 and such failure would make the order of detention invalid.

- b) That the power for fixing the period of detention is not within the domain of respondent No.2 who has reflected in his detention order that the detainee is detained for maximum period and the impugned detention order is bad and is required to be quashed.
- c) That the grounds of impugned detention order is verbatim copy of the dossier and no other material has been considered by the detaining authority which speaks volumes about the nonapplication of mind on the part of the detaining authority which does not justify the preventive detention and the detention order requires quashment.
- d) That the impugned detention order and the list of cases attached with it are in the English language whereas the detainee/detainee only understands Hindi, neither the detention order was read over and explained to the detainee in Hindi language which is a prerequisite for maintainability of the detention order, the non-supply of detention order and all other documents in Hindi language violates the provisions of law as such the detention order deserves its quashment.
- e) That though, the detainee/detainee has been booked in many FIRs, as is depicted from the detention order/dossier but it is settled position of law, that if the remedies to deal with the criminal activities of the detainee/detainee are sufficient under ordinary law

of the land, the detention order is unsustainable and the same is liable to be set aside.

- f) That no satisfaction has been recorded by the detaining authority in the grounds of detention while passing the order of detention.
- g) That all the safeguards available to the detainee in terms of the Constitution of India have been observed in breach by the respondents while detaining him in terms of impugned order.
- h) That the impugned order has not been forwarded to Advisory Board for confirmation within the stipulated time period as laid down under law, therefore, there is breach of procedure established by law.

04. *Per contra*, the respondents in their counter affidavit have stated that the detainee is a hardcore/habitual criminal and has been involved in various criminal offences by blatantly violating the rule of law indulging in stabbing, rioting, bovine smuggling and other criminal activities and has spread a reign of terror amongst the peace-loving people of the area and his anti-social activities are pre-judicial to the maintenance of public order. It is stated that the “maintenance of public order” always occurs in juxtaposition with public safety. Repeated offences committed by the detainee, who inflict major harm and injury on public, is not only prejudicial to the public safety and public order but also has the potential to sky-ball and impact overall security of the

state. It is stated that the dossier in respect of detainee dated 16.03.2024 was submitted to the detaining authority and after carefully examining the dossier and the relevant records attached with it, it was found imperative to detain the detainee under the relevant provisions of Public

Safety Act as after having been tried for repeated and continuous offences, the detainee, after getting bail, got again involved in bovine smuggling and other criminal activities and was, thus, posing serious threat to the maintenance of public order. It is further stated that the ordinary law has failed to deter the detainee, as is evident from his conduct as would emerge from the contents of the dossier submitted by SSP Jammu.

- 05.** It is further stated that at the time of execution of detention order, the executing officer has provided the relevant documents along with detention order, notice of detention, grounds of detention, dossier of detention, copies of FIRs and statements of witnesses (total 107 leaves) and had explained the same to the detainee in the language i.e Hindi/Dogri, which he understands, informing him about his right to make representation before the Government (Home Department) as well as before the Detaining Authority against the detention order. Respondents have also placed on record the execution report, and confirmation of detention order by Home Department after seeking opinion of the Advisory Board.
- 06.** Heard learned counsel for the parties.
- 07.** Learned counsel for the detainee states that the impugned detention order suffers from non-application of mind as the grounds of detention are mere reproduction of the dossier. It is submitted that since the ordinary law of the land had already been invoked against the detainee who was facing trial before the Competent Court of jurisdiction,

therefore, the issuance of detention order under Public Safety Act is a sheer abuse of the process of law.

08. Learned counsel for the detainee further submits that the impugned order of detention is liable to be quashed, in that, the grounds of detention have been read over and explained to the detainee in a language he is not conversant with and that the whole material relied upon by the detaining authority has not been supplied to the detainee. It

is further submitted that the detainee has been deprived of his right to make effective representation against the detention by not communicating the time within which he could make his representation. Learned counsel for the detainee has placed reliance on a Judgment of a Coordinate Bench in the case of **Tanveer Ahmed @ Jimmy [WP(Crl) No.57/2022] decided on 25.05.2023.**

09. Mr. Rajesh Thappa, learned AAG on the other hand submits that the detainee is a hardcore/habitual criminal and has been involved in various criminal offences by blatantly violating the rule of law indulging in bovine smuggling and other criminal activities and has spread a reign of terror amongst the peace-loving people of the area and his anti-social activities are pre-judicial to the maintenance of public order and had he been let free, there would have been every likelihood of his reindulging in criminal activities. He further submits that the procedural safeguards prescribed under the provisions of Public Safety Act and the rights guaranteed to the detainee under the Constitution have strictly been followed in the instant case. The detainee has been furnished all the

material, as was required, and was also made aware of his right to make representation to the detaining authority as well as to the government, against his detention.

10. Considered the submissions made and perused the material made available.
11. Perusal of the detention record produced by the learned State counsel indicates that the Senior Superintendent of Police, Jammu submitted dossier in respect of the detainee to the Detaining Authority on 16.03.2024 with a request to detain the detainee under the provisions of J&K Public Safety Act and the detaining authority by virtue of the order impugned issued on 16.03.2024 itself has ordered detention of the detainee under preventive detention. The detention order came to be executed on 18.03.2024. The Execution Report reveals that the notice of detention was given to the detainee and contents of the detention warrant and grounds of detention have been read over and explained to the detainee/detainee in Hindi/Dogri language, which he understood fully. The relevant material consisting of detention order (01 leaf), notice of detention (01 leaf), ground of detention (04 leaves), dossier of detention (10 leaves), copies of FIR, statement of witnesses and other related relevant documents (91 leaves) total 107 leaves have been supplied to the detainee, which has been acknowledged by him by affixing his signatures on the execution receipt. The detainee was also informed by the executing officer that he can make representation to the Government as well as Detaining Authority against his detention, if he so desires.

12. In the instant case, the detenue has been ordered to be detained in preventive detention under the provisions of Jammu & Kashmir Public Safety Act in order to prevent him from acting in any manner prejudicial to the maintenance of public order.
13. Public order is a broad concept that refers to the conditions that allow people to live together in society with freedom, security, and peace of mind. It is often associated with public safety and peace. In the case of **Arun Ghosh v. State of West Bengal, (1970) 1 SCC 98**, Hon^{ble} Supreme Court has dealt with the question of “Public order” and “law and order”. In this judgment by giving various illustrations, Supreme Court has explained the distinction between “public order” and law and order”. The relevant extract of the judgment reads thus:-

“Public order was said to embrace more of the community than law and order. Public order is the even tempo of the life of the community taking the country as a whole or even a specified locality. Disturbance of public order is to be distinguished, from acts directed against individuals which do not disturb the society to the extent of causing a general disturbance of public tranquillity. It is the degree of disturbance and its effect upon the life of the community in a locality which determines whether the disturbance amounts only to a breach of law and order. Take for instance, a man stabs another. People may be shocked and even disturbed, but the life of the community keeps moving at an even tempo, however much one may dislike the act. Take another case of a town where there is communal tension. A man stabs a member of the other community. This is an act of a very different sort. Its implications are deeper and it affects the even tempo of life and public order is jeopardized because the repercussions of the act embrace large Sections of the community and incite them to make further breaches of the law and order and to subvert the public order. An act by itself is not determinant of its own gravity. In its quality it may not differ from another but in its potentiality it may be very different. Take the case of assault on girls. A guest at a hotel may kiss or make advances to half a dozen chamber maids. He may annoy them and also the management but he does not cause a disturbance of public order. He may even have a fracas with the friends of one of the girls but even then it would be a case of breach of law and order only. Take another case of a man who molests women in lonely places. As a result of his activities girls going to colleges and schools are in constant danger and fear. Women going for their ordinary business are afraid of being waylaid and assaulted. The activity of this man in its essential quality is not different from the act of the other man but in its potentiality and in its affect

upon the public tranquillity there is a vast difference. The act of the man who molests the girls in lonely places causes a disturbance in the even tempo of living which is the first requirement of public order. He disturbs the society and the community. His act makes all the women apprehensive of their honour and he can be said to be causing disturbance of public order and not merely committing individual actions which may be taken note of by the criminal prosecution agencies. It means therefore that the question whether a man has only committed a breach of law and order or has acted in a manner likely to cause a disturbance of the public order is a question of degree and the extent of the reach of the act upon the society”

14. The concept of „public order“ and „law and order“ has again been dealt with by the Supreme Court in the case of **Pushkar Mukherjee and others v. The State of West Bengal, AIR 1970 SC 852**. Relying upon the work of Dr. Allen on „Legal Duties“ the Supreme Court had spelled out the distinction between “public” and “private” crimes in the realm of jurisprudence. In the case of **Babul Mitra alias Anil Mitra v. State of West Bengal and others (1973) 1 SCC 393** while dealing with the question of public order and law and order, the Supreme Court had observed that the true distinction between the areas of “law and order” is one of degree and extent of the reach of the act in question upon society. The Supreme Court pointed out that the act by itself is not detrimental of its own gravity. In its quality it may not differ but in its potentiality it may be very different.
15. Hon“ble the Supreme Court in the case of **Commissioner of Police and others v. C. Anita (Smt.), (2004) 7 SCC 467** again examined the issue of „public order“ and „law and order“ and observed as under:-

“The crucial issue is whether the activities of the detenu were prejudicial to public order. While the expression 'law and order' is wider in scope inasmuch as contravention of law always affects order. 'Public order' has a narrower ambit, and public order could be affected by only such

contravention which affects the community or the public at large. Public order is the even tempo of life of the community taking the country as a whole or even a specified locality. The distinction between the areas of 'law and order' and 'public order' is one of the degree and extent of the reach of the act in question on society. It is the potentiality of the act to disturb the even tempo of life of the community which makes it prejudicial to the maintenance of the public order. If a contravention in its effect is confined only to few individuals directly involved as distinct from a wide spectrum of public, it could raise problem of law and order only. It is the length, magnitude and intensity of the terror wave unleashed by a particular eruption of disorder that helps to distinguish it as an act affecting 'public order' from that concerning 'law and order'.

The question to ask is:

“Does it lead to disturbance of the current life of the community so as to amount to as disturbance of the public order or does it affect merely an individual leaving the tranquility of the society undisturbed?”

16. In the case of **R. Kalavathi v. State of Tamil Nadu, (2006) 6 SCC 14**,

Hon^{ble} the Supreme Court has observed that even a single act which has the propensity of affecting the even tempo of life and public tranquility would be sufficient for detention.

17. In view of the distinction drawn by the Hon^{ble} Supreme Court of India, it is crystal clear that what is relevant to determine is not the nature of act, but its potentiality to disturb even tempo of life of the community, which makes it prejudicial to the maintenance of the public order. The effect of

alleged activities of the detenu in the present case is not limited to the individuals directly involved. The bovine smuggling besides being a criminal offence has the potential of creating a feeling of discontent and indignation amongst a particular community. The bovine animals include

cows and calves and their illegal smuggling is always viewed by one community only for the purpose of slaughter and, therefore, there is a feeling amongst the people belonging to such community, that the activity hurts their religious sentiments.

18. The activities of the detainee, against whom number of FIRs stand registered for illegal smuggling of bovine animals, have the potential to disturb even tempo of current life of the community and not only poses law and order problem but would also be a threat to the maintenance of public order in the area.
19. Insofar as plea of the detainee that he has been deprived of his right to make effective representation is concerned, it is evident from the execution report that the entire material relied upon by the detaining authority was supplied to the detainee, which he has acknowledged by affixing his signature on the receipt. The detainee was also informed of his right to make representation against the detention order before the detaining authority as well as the Government. However, the detainee has chosen not to make any representation before the competent authority.
20. The reliance placed by the learned counsel for the detainee on a judgment of a Coordinate Bench of this Court in **Tanveer Ahmed @ Jimmy (supra)** to contend that the detainee has not been informed about the time limit within which he could make representation against his detention is misconceived. In the instant case the detainee was informed of his right to make representation against his detention and if the detainee was aggrieved by his detention, he was expected to have made representation with

promptness without wasting any time. The plea of time limit within which he was to make representation would only be available to the detainee if he had made representation and the same has either not been considered or rejected for being filed or moved after the detention was approved by the Government. However, in the instant case the record does indicate that the detainee has not filed any representation. Therefore, the plea of non-communication of the time limit is not available to the detainee.

21. From the discussion made above, it becomes manifest that all the procedural safeguards have been adhered to by the detaining authority while detaining the detainee under preventive detention, including subjective satisfaction, providing of all the relevant material, informing about detainee's right to make representation, as such, there is no perversity in the impugned detention order.
22. In the premises, this petition is found to be without any merit and is, accordingly, dismissed. The record produced by the learned counsel for the respondents be returned against proper receipt.

(MOKSHA KHAJURIA KAZMI)
JUDGE

JAMMU

21.11.2024

Vinod.

Whether the order is reportable: Yes