

**IN THE HIGH COURT OF JAMMU AND KASHMIR
AT SRINAGAR**

Reserved on: 29.01.2021
Pronounced on: 27.01.2022

WP(Crl.) No.192/2020

MOHAMMAD ASLAM SHEIKH ...Petitioner(s)

Through: - Mr. Wajid Haseeb, Advocate

Vs.

UT OF J&K AND ANR. ...Respondent(s)

Through: - Mr. Usman Gani, GA, vice
Mr. Irfan Andleeb, Dy. AG.

CORAM: HON'BLE MR. JUSTICE SANJAY DHAR, JUDGE

JUDGMENT

1) By the medium of this petition, veracity and validity of the order of detention bearing No.DMB/PSA/20 of 2020 dated 11.11.2020, issued by District Magistrate, Budgam (for brevity "*Detaining Authority*"), has been assailed. In terms of the impugned order, *Shri Mohammad Aslam Sheikh son of Abdul Salam Sheikh resident of Gudpora Yarikah Khansahib, Budgam*, has been placed under preventive detention and lodged in District Jail, Amphala J&K, Jammu.

2) Petitioner has contended that the Detaining Authority has passed

documents/grounds of detention has not been provided to the detainee who is a semi-literate person. Petitioner has gone to contend that he has not been informed as to before which authority he had to make a representation.

3) The respondents, in their counter affidavit, have disputed the averments made in the petition and stated that they have followed the provisions of J&K Public Safety Act. It is contended that the detainee has been detained only after following due procedure; that the grounds of detention were read over to the detainee; that there has been proper application of mind on the part of the Detaining Authority while passing the impugned order and that the detainee has been provided all the material. The learned counsel for the respondents also produced the detention records to lend support to the stand taken in the counter affidavit.

4) I have heard learned counsel for parties and I have also gone through detention record.

5) Learned counsel for the petitioner highlighted various grounds while seeking quashment of impugned order but the main ground that has been argued during the course of arguments is that the

detainee was already in custody in case FIR No 86/2020 for offences

Detaining Authority has not spelt out the compelling reasons for detaining the detainee under preventive laws.

6) It is a settled position of law that preventive detention orders can be passed even when a person is in police/judicial custody or involved in a criminal case but for doing so, compelling reasons are to be recorded. The Detaining Authority is bound to record the compelling reasons as to why the detainee could not be deterred from indulging in subversive activities by resorting to normal law. In the absence of these reasons, the order of detention becomes unsustainable in law. I am supported in my aforesaid view by the judgments of the Supreme Court in the cases of **Surya Prakash Sharma v. State of U. P. and others, 1994 SCC (Cri) 1691, T. P. Moideen Koya vs. Government of Kerala and ors.** 2004 (8) SCC 106 and **Sama Aruna v. State of Telangana & Anr (AIR 2017 SC 2662**

7) Coming to the facts of instant case, in the grounds of detention, after referring to the allegations made in the FIR, it has been mentioned that these activities of the detainee are prejudicial to the security of State that have a potential of destabilizing the country in case the detainee is allowed to remain at large. However, the Detaining Authority has not referred to any other cogent material or furnished any other cogent

in the aforesaid FIR and no other material. The detainee was already in custody in the aforesaid FIR and there were remote chances of his getting bail as he was involved in the offences to which rigor of S.43D of UAPA is attracted. Thus, there were no compelling reasons for the detaining authority to pass the impugned order of detention. The same, therefore, is not sustainable in law.

8) For the afore-stated reasons, the petition is allowed and the impugned detention order, is quashed. The detainee is directed to be released from the preventive custody forthwith provided he is not required in connection with any other case.

9) The detention record be returned to the learned counsel for the respondents.

(Sanjay Dhar)
Judge

Srinagar
27.01.2022
"BhatAltaf, PS"

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

Yes/No
Yes/No