HIGH COURT OF JAMMU AND KASHMIR
AT SRINAGAR
(THROUGH VIRTUAL MODE)
….
WP(Crl) no. 148/2020

Reserved on: 20.05.2021

Pronounced on: 04.06.2021

Mohammad Maqbool Dar ……. Petitioner(s)
Through: Mr. G. N. Shaheen, Advocate

Versus

UT of JK and others ……...Respondent(s)
Through: Mr. Mir Suhail, AAG

***CORAM*:**
HON'BLE MR. JUSTICE VINOD CHATTERJI KOUL, JUDGE

JUDGMENT

1. The Order No.27/DMP/PSA/20 dated 12.09.2020, issued by District Magistrate, Pulwama, placing detenu, namely, *Mohammad Maqbool Dar S/o Ghulam Ahmad Dar R/o Haripargam Tehsil Awantipora District Pulwama*, under preventive detention in terms of J&K Public Safety Act, so as to prevent him from acting in any manner prejudicial to the security of the State and directing his lodgement in Central Jail Kot Bhalwal, Jammu, has been challenged, in this writ petition through his uncle.

2. The order of detention though challenged on various grounds, yet learned counsel for the petitioner has vehemently urged that the material relied upon by the detaining authority while passing impugned detention order has not been provided to detenu to enable him to make an effective and meaningful representation. Another submission of learned counsel for petitioner is that grounds of detention are replica of police dossier.

3. Respondents, in their counter affidavit, have submitted that there is no illegality in the order of detention, as it was necessary to place the detenu under preventive detention. The detenu has been indulging in activities which are prejudicial to the security of the State. The grounds taken by the detenu are said to be legally misconceived, untenable and without any merit. It is further contended that the grounds of detention are precise, proximate and relevant. The detenu was also informed to make his representation to the Government against his detention order. The warrant was read over and explained to him and the order has been passed after proper application of mind. Detention record has also been produced by the learned counsel for respondents.

4. I have heard learned counsel for the parties and considered the matter.

5. The main ground taken by the detenu, in this writ petition, is that he was not in a position to make an effective and meaningful representation either to the detaining authority or to the Government against his detention because he was not provided the material by the detaining authority, thus, there is violation of provisions of Article 22 (5) of the Constitution of India and in absence of such material he was prevented from making an effective representation.

6. To evaluate the submissions made by learned counsel for parties vis-à-vis furnishing of material to detenu that has been relied upon by detaining authority while issuing impugned detention order, it would be appropriate to go through the detention record, produced by learned counsel for respondents. Detention record contains, amongst others, Execution Report, which reveals that only four leaves have been furnished to detenu. It does not show or suggest that detenu has been furnished copy of dossier, copies of FIR and other relevant material relied upon by detaining authority while issuing impugned detention order.

7. Bare reading of impugned detention order divulges that Sr. Superintendent of Police, Awantipora, vide his letter no. Pros/PSA/2020/68-71 dated 09.09.2020, produced dossier, material record, and other connected documents in respect of detenu and it was only after perusal thereof that impugned detention order has been issued by detaining authority. Grounds of detention attribute various incidents and instances to detenu and mention that detenu has been instigating/provoking the masses against the government and his persistent involvement in antinational activities is posing severe threat to the security of the State. Detention record also mentions lodgment of one FIR against the detenu. The material, relied upon by detaining authority, thus, assumes significance in the facts and circumstances of the case. It needs no emphasis, that the detenu cannot be expected to make a meaningful exercise of his Constitutional and Statutory rights guaranteed under Article 22(5) of the Constitution of India and Section 13 of the J&K Public Safety Act, 1978, unless and until the material on which the detention order is based, is supplied to the detenu. It is only after the detenu has all the said material available that he can make an effort to convince the detaining authority and thereafter the Government that their apprehensions concerning the activities of detenu are baseless and misplaced. If detenu is not supplied the material, on which detention order is based, he will not be in a position to make an effective representation against his detention order. Failure on the part of detaining authority to supply the material relied at the time of making the detention order to detenu, renders detention order illegal and unsustainable. While saying so, I draw the support from the law laid

down in ***Thahira Haris Etc. Etc. v. Government of Karnataka, AIR 2009 SC 2184; Union of India v. Ranu Bhandari, 2008, Cr. L. J. 4567; Dhannajoy Dass v. District Magistrate, AIR, 1982 SC 1315; Sofia Gulam Mohd Bham v. State of Maharashtra and others AIR 1999 SC 3051;*** and ***Syed Aasiya Indrabi v. State of J&K & others, 2009 (I) S.L.J 219***.

8. In the present case, it is submission of respondents that there are very serious allegations against detenu as he has always been in the lead role in anti-national activities, which are detrimental to the sovereignty and integrity of the country and has been creating law and order problem. And in this connection, a criminal case is already going on against detenu under various provisions of Penal Laws and if he is found guilty, he will be convicted and given appropriate sentence. Maybe, offences allegedly committed by detenu attract punishment under prevailing laws but that has to be done under prevalent laws and taking recourse to preventive detention laws would not be warranted. Detention cannot be made a substitute for ordinary law and absolve investigating authorities of their normal functions of investigating crimes, which detenu may have committed. After all, preventive detention cannot be used as an instrument to keep a person in perpetual custody without trial. The Supreme Court in ***Rekha v. State of Tamil Nadu AIR 2011 SCW 2262***, while emphasising need to adhere to procedural safeguards, observed:

> "It must be remembered that in case of preventive detention no offence is proved and the justification of such detention case is suspicion or reasonable probability, and there is no conviction which can only be warranted by legal evidence. Preventive detention is often described as "jurisdiction of suspicion", The Detaining Authority passes the order of detention on subjective satisfaction. Since Clause (3) of Article 22 specifically excludes the applicability of Clauses (1) and (2), the detenue is not entitled to a lawyer or the right to be produced before a Magistrate within 24 hours of arrest. To prevent misuse of this potentially dangerous power the law of preventive detention has to be strictly construed and meticulous compliance with the procedural safeguards, however, technical, is, in our opinion, mandatory and vital."

9. In a case of preventive detention, no offence is proved, nor any charge is formulated and the justification of such detention is suspicion or reasonability and there is no criminal conviction which can only be warranted by legal evidence. Preventive justice requires an action to be taken to prevent apprehended objectionable activities. But at the same time, when a person's greatest of human freedoms, i.e., personal liberty, is deprived, the laws of preventive detention are required to be strictly construed, and a meticulous compliance with the procedural safeguards, howsoever technical, has to be mandatorily made. Reference in this regard is made to ***Haradhan***

Saha v. State of West Bengal & ors, (1975) 3 SCC 198; Union of India v. Paul Manickam & anr, (2003) 8 SCC 342; ***Rajinder Arora v. Union of India (2006) 4 SCC 796***; ***Powanammal v. State of Tamil Nadu and anr., AIR 1999 SC 618; G. M. Shah v. State of J&K, (1980) 1 SCC 132; Talib Hussain v. State of J&K & others, 2009 (II) SLJ 849; Nissar Ahmad Bhat v. State & ors, 2014 (III) SLJ 1047***; ***Shahmali v. State & others, 2010 (1) SLJ 56***; ***Dilawar Magray v. State of J&K & ors, 2010 (II) SLJ 696;*** and ***Sajad Ahmad Khan v. State & others, 2010 (II) SLJ 743***.

10. Preventive detention cannot be resorted to when sufficient remedies are available under general laws of the land for any omission or commission under such laws. [See: - ***V. Shantha v. State of Telangana and others, AIR 2017 SC 2625***]. Recourse to normal legal procedure would be time consuming and would not be an effective deterrent to prevent the detenu from indulging in further prejudicial activities, affecting maintenance of public order or security of the State, and that there was no other option except to invoke the provisions of the preventive detention Act as an extreme measure to insulate. No doubt the offences alleged to have been committed by detenu are such as to attract punishment under the prevailing laws but that has to be done under the said prevalent laws and taking recourse to preventive detention laws would not be warranted. Preventive detention involves detaining of a person without trial in order to prevent him from committing certain types of offences. But such detention cannot be made a substitute for the ordinary law and absolve the investigating authorities of their normal functions of investigating crimes which the detenu may have committed. After all, preventive detention cannot be used as an instrument to keep a person in perpetual custody without trial. Regard in this respect is had to the judgements rendered in the cases of ***Rekha's*** and ***V. Shantha*** (supra) as also in ***Sama Aruna v. State of Telengana AIR 2017 SC 2662***.

11. Based on the above discussion, the petition is disposed of and Detention Order No.27/DMP/PSA/20 dated 12.09.2020, issued against the detenu, *Mohammad Maqbool Dar S/o Ghulam Ahmad Dar R/o Haripargam Tehsil Awantipora District Pulwama*, is quashed. As a corollary, respondents are directed to set the detenu at liberty forthwith provided he is not required in any other case. **Disposed of**.

12. Detention record be returned to the learned AAG.

(Vinod Chatterji Koul)
Judge

Srinagar
04.06.2021
Qazi Amjad, Secy

Whether approved for reporting? Yes/No