

**HIGH COURT OF JAMMU AND KASHMIR  
AT JAMMU  
(Through Virtual Mode)**

**Pronounced on: .04.06.2021**

WP(Crl) No. 09/2021

Sohan Singh .....Petitioner(s)

Through :- Mr. Rohit Mattu, Advocate  
v/s

Union Territory of J&K and others .....Respondent(s)

Through :- Mr. Aseem Sawhney, AAG

**Coram: HON'BLE MR. JUSTICE PUNEET GUPTA, JUDGE**

**JUDGEMENT**

1. The petitioner has challenged detention order No. 01 of 2021 dated 23.01.2021 passed by the respondent No.2 under provisions of J&K Public Safety Act (hereinafter called Act) on the ground that the order was served upon the petitioner when he was already in police custody under substantive offences; that the order impugned does not reflect the factual aspects of the case as the petitioner had either been acquitted or granted bail in some of the FIR mentioned in the order; that the petitioner was not supplied the relevant material nor was he made to understand the documents in the language he understands; that the execution of the detention order was also delayed though the petitioner was in custody of the Police; that the petitioner was deprived of making an effective representation before the Government and Advisory Board in respect of the detention order passed against him. The prayer is for quashment of order impugned in the writ petition.

2. The counter affidavit has been filed separately on behalf of the respondent Nos. 2 & 3. The grounds raised for seeking quashment of detention order is denied by the respondents in the affidavits. It is submitted that the

petitioner has indulged in criminal cases from time to time and has not mended his ways and earned bail or acquittal by winning over the witnesses or tempering with the evidence. The petitioner has been supplied all the material by the respondents and has been explained the documents in the Dogri language which he understands. The order has been passed after due application of mind by the respondent No.2. The respondents seek dismissal of the writ petition on the ground that the detention order has been passed as per law.

3. The detention order, in the first instance, has been approved by the Government vide order No. PB-V/197 of 2021 dated 09.03.2021.

4. Mr. Rohit Mattu, advocate appearing on behalf of the petitioner and Mr. Aseem Sawhney, learned Additional Advocate General have argued the matter as per the submissions made in their respective pleadings. The arguments shall be detailed while analyzing various aspects of the matter.

5. The order of preventive detention is passed with a view to prevent the person from committing such illegal activities in future on the past conduct which may be prejudicial and disturb the public order. The preventive detention is a deviation from the concept of liberty which is sacrosanct to a human life and the power of preventive detention is to be exercised with caution and restraint. The concept of the preventive detention is summed up by the Apex Court in Haradhan Shah's Vs. State of West Bengal 1975 3 SCC 198 as under:-

“32. The power of preventive detention is qualitatively different from punitive detention. The power of preventive detention is a precautionary power exercised in reasonable anticipation. It may or may not relate to an offence. It is not a parallel proceeding. It does not overlap with prosecution even if it relies on certain facts for which prosecution may be launched or may have been launched. An order of preventive detention, may be made before or during prosecution. An order of preventive detention may

be made with or without prosecution and in anticipation or after discharge or even acquittal. The pendency of prosecution is no bar to an order of preventive detention. An order of preventive detention is also not a bar to prosecution.

33. Article 14 is inapplicable because preventive detention and prosecution are not synonymous. The purposes are different. The authorities are different. The nature of proceedings is different. In a prosecution an accused is sought to be punished for a past act. In preventive detention, the past act is merely the material for inference about the future course of probable conduct on the part of the detenu.”

6. The court would like to address the procedural aspects of the matter in the first instance which are stated to have not been adhered to by the authorities and has caused prejudice to the petitioner. The respondents have pleaded that all the requirements were met by the authorities. The perusal of the documents from the record produced reveals that while executing the order of detention the petitioner has been supplied eighty seven leaves (87) and include copy of detention warrant, grounds of detention and copy of dossier and other relevant documents. The documents have been read over to the petitioner in English and explained in Dogri language as well. The signature of the petitioner on the receipt of grounds of detention is also there. The affidavit of the officer Nayat Ali executing the warrant is also on record. The petition has been supplied the detention order along with the relevant record on 27.01.2021. The court does not find any reason to disbelieve the execution report as revealed from the record. The petitioner is stated to practicing lawyer as per the petition and to say that he was deprived of understanding the documents is but a

specious plea, taken in a casual manner. The court holds that the argument raised by the petitioner in this regard does not hold water.

7. The main contention raised on behalf of the petitioner is that the detention order has been passed by the detaining authority without application of mind. The learned counsel appearing for the petitioner has argued that the detention order though mentions of number of F.I.Rs in which the petitioner is stated to have been involved yet the detention order does not speak of the outcome of some of the cases in which the petitioner has either been acquitted or bailed out by the courts. The order is passed in a mechanical and perfunctory manner and even denies the petitioner of making an effective representation to the concerned authorities as provided under the Act.

8. Mr. Aseem Sawhney, learned AAG has argued that the order impugned is passed consequent to the dossier supplied by the respondent No.3 and the application of mind is evident from the order impugned itself.

9. The petitioner in his petition has given details of the cases in which he has been acquitted or bailed out by the courts. The petition has also annexed the copies of the relevant orders passed by the courts in this regard and the same cannot be disputed. The perusal of the petition reveals that the petitioner has been acquitted in Serial Nos.1, 2, 3 and 4 of the list of the cases (FIR) mentioned in the impugned order. If the respondent No.3 has forwarded dossier to the detaining authority with recommendation for passing of the detention order and having mentioned number of cases registered against the petitioner herein the status of those cases ought to have been mentioned in the dossier by the respondent No.3. What prevented the authority to do so is known to the authority only. The mentioning of the same is germane as the respondent No.2 would have been in the know of the factual position of the cases against the petitioner while making subjective assessment on the dossier forwarded by the

respondent No.3. The court does find force in the argument of the petitioner that the non-mentioning of the acquittal or the bail of the petitioner in the dossier has possibly affected the decision making of the detaining authority. In other words, the impugned order which is more or less is the manifestation of the dossier can be said to be the result of the non-application of mind on behalf of the respondent No.2. As the person is to suffer detention without facing the trial it becomes bounden duty of the concerned authorities to be sensitive and alive to the consequences which the person has to otherwise face.

10. In V.C. Mohan Vs. Union of India and others WP (Crl) No. 161/2002 decided on 01.03.2002 the Hon'ble Apex Court noted that the factum of non placement of relevant documents by the concerned authorities before the detaining authority and held the same to have vitiated proceedings.

11. The detention order is required to be quashed on the above ground alone.

12. The learned counsel for the petitioner has vehemently argued that the non-mentioning of the material facts not only deprives the detaining authority but also the Advisory Board constituted under the Act of the factual aspects of the matter. The present case also mirrors the same position. It is not made out from the record made available to the court that the Advisory Board was also made aware of the final result of those cases in which the petitioner stands acquitted or the ones in which he has been bailed out. The argument raised on behalf of the respondents that the wife of the petitioner had moved the Advisory Board with a representation and thus shows that the petitioner had moved the authorities having knowledge of all the facts of the case. The court cannot fall in line with the argument of learned counsel for the respondents. No doubt the petitioner has himself mentioned in the petition about making a representation to the respondent no.2 and the Principal Secretary to the Home

Department against the detention order, however, the same has been taken into consideration by the government authorities or the Advisory Board is not reflected from the record made available to the court. The petitioner stands prejudiced on this score also is more than evident.

13. Learned counsel for the petitioner has argued that there was no occasion to pass detention order against the petitioner when the offences alleged against him could be taken care of under ordinary law of land. Learned AAG appearing on behalf of the respondents has argued that the cases lodged against the petitioner reflects the criminal mind and tendency of the petitioner and is incorrigible as he did not leave the path of crime and this led to the passing of the detention order. The court is of the considered view that this aspect of the matter need not detain the court in view of the discussion made above. As the court has emphatically held above that the detention order is outcome of non-application of mind, the nature of offences alleged against the petitioner in the order by themselves cannot sustain the detention order in the eyes of law.

14. In view of the above, the court need not go into any other aspect of the case. Accordingly, the writ petition is allowed and order impugned in the writ petition is quashed. The petitioner shall be released forthwith if not required otherwise in any other case.

15. The petition is, accordingly, disposed of.

16. The record produced be returned to the learned AAG.

**(Puneet Gupta)**  
**Judge**

Jammu  
04.06.2021  
Shammi

Whether the order is speaking: Yes/No  
Whether the order is reportable: Yes/No