HIGH COURT OF JAMMU AND KASHMIR
AT SRINAGAR

WP (Crl) no. 133/2020

Reserved on 14.07.2021
Pronounced on 19.07.2021

Shaheen Ahmad Parray

…. Petitioner(s)

Through: Mr Syed Sajad Geelani, Advocate

v/s

Union Territory of JK and others

Through: Mr Asif Maqbool, Dy.AG

**CORAM:**

**HON'BLE MR JUSTICE ALI MOHAMMAD MAGREY, JUDGE**

**JUDGMENT**

1. By the present habeas corpus petition, the detenue through his father Ghulam Mohammad Parray, has challenged the detention Order No. 24/DMS/PSA/2019 dated 10.08.2019, for short impugned order, issued by the District Magistrate, Shopian, whereby the detenue, namely Shaheen Ahmad Parray S/o Ghulam Mohammad Parray R/o Shangpora, Zainapora, District Shopian, has been detained under the provisions of the Jammu and Kashmir Public Safety Act, 1978, for short Act.

2. Briefly stated the case of the petitioner is that the detenue was arrested by the Police Station Zainapora, in case FIR no. 53/2016 & 54/2016 allegedly for the commission of offences punishable in terms of Section 13 ULA (P) Act without any rhyme; reason or justification. The District Magistrate, Shopian, detained him in the preventive custody under the provisions of J&K Public Safety Act, 1978, in terms of the impugned order and lodged him in Central Jail, Srinagar, when the petitioner was in custody having been arrested on 4th August, 2019.

3. The challenge to the impugned order is *inter alia* made on the grounds that, the allegations against the detenue are false and have been fabricated by the police to justify the illegal action of detaining him in preventive custody; the grounds of detention are vague, non-existent and the impugned order, being based on such vague, non-existent grounds, deserves to be quashed; the detenue is innocent and has not committed any offence of whatsoever nature; the detaining authority has

not applied its mind while issuing the impugned order; the detenue was already arrested and was in police custody in connection with a case FIR no. 53/2016 & 54/2016 and had not applied bail, therefore, his preventive detention, despite him being in the police custody, is uncalled for; the material relied upon has no rational nexus with the satisfaction recorded by the detaining authority vis-à-vis the alleged activities of the detenue being prejudicial to Security of State; the material in the shape of dossier has not been furnished to the detenue nor has he been furnished the copy of FIR, statements allegedly recorded under section 161, of the Code of Criminal Procedure, seizure memo, recovery memo as mentioned in the grounds of detention so that the detenue could have made an effective representation against his detention to the Competent Authority; the petitioner is shown to be involved in connection with FIR no. 53/2016 & 54/2016 and it does not connect with the dossier supplied in August 2019; there is no plausible explanation for three years long delay for detaining the detenue in preventive custody for a case registered three years back; there is no justification given as to why the ordinary law was not sufficient for taking care of his activities, etcetera.

4. Counter has been filed by the respondents resisting therein the claim of the petitioner.

5. Heard learned counsel for the parties and considered the submissions made.

6. Learned counsel for the petitioner submits that it is unwarranted and illegal to detain an individual under the provisions of public safety Act on the same set of facts on which he previously stands arrested and was in police custody already. He further submits that there is a complete non-application of mind on the part of Detaining Authority as the order of detention is issued against the detenue for his activities being prejudicial to the security of State when there is no material placed before the Detaining Authority to reach to such conclusion, therefore, the grounds of detention and the impugned order are inconsistent with each other which makes the impugned order bad in law, therefore, deserves to be quashed.

7. Learned counsel for the petitioner has in order to strengthen his submissions referred to and relied upon ***2017 vol. 2 SLJ 650 titled Bilal Ahmad Dar v. State of J&K and anr; 2018 vol. 2 SLJ 774 titled Bashir Ahmad Rather v. State of J&K and others; AIR 1999 SC 618 tiled as Powanammal v. State of Tamil Nadu and anr; AIR 2020 SC 1936 titled as Rekha v. State of Tamil Nadu and AIR 1989 SC***

***1234 titled as Chhagan Baghwan Kahar v. N. H. Kalna and others; (2006) 2 SCC 664 titled T. V. Sravanan Alias SAR Prasana v. Stae through Secretary and anr.***

8. On the other hand, learned Counsel appearing for the respondents, while resisting the claim of the petitioner, submits that the impugned order is quite in consonance with law and the safeguards, as were required to be taken in terms of the provisions of the Act, have been taken.

9. **Although the detention records have been produced by the learned Government Counsel, but it does not contain anything as would suggest that there were compelling reasons for the respondents for keeping the detenue in preventive custody and the ordinary law was not sufficient to take care of his alleged subversive activities.**

10. As per pleadings and contentions raised at bar the detenue has been prevented from making an effective representation against his detention as he was not supplied the dossier and the other allied material and has, as such, been deprived of an important constitutional right, and that the detaining authority did not apply his mind while passing the detention order and has not revealed as to on what materials he assumed subjective satisfaction regarding necessity of having the subject detained when the detenu was in police custody in connection with case FIR no. 53/2016 and 54/2016 of police station Zainapora.

11. There is nothing on the file to show or suggest that the grounds of detention couched in English language were explained to the detenu in a language understood by him. This according to the view taken by Hon'ble Apex Court in ***"Lallubhai Jogibhai Patel v. Union of India, (1981) 2 SCC 427"***; the *detenu* did not know English, while the grounds of detention were drawn up in English and an affidavit filed on behalf of the detaining authority stated that while serving the grounds of detention were fully explained to the *detenu*, but the Apex Court held that, was not a sufficient compliance with the mandate of Article 22(5) which requires that the grounds of detention must be communicated to the *detenu*. The Apex Court observed as under:

> *"Communicate' is a strong word which means that sufficient knowledge of the basic facts constituting the 'grounds' should be imparted effectively and fully to the detenu in writing in a language which he understands. The*

> *whole purpose of communicating the 'grounds' to the detenu is to enable him to make a purposeful and effective representation. If the 'grounds' are only verbally explained to the detenu and nothing in writing is left with him in a language which he understands, then that purpose is not served, and the constitutional mandate in Article 22(5) is infringed."*

12. In view of the law laid down by the Apex Court in case titled ***Lallubhai Jogibhai Patel v. Union of India*** (supra) vitiates the detention order, as not amounting to effect communication of grounds, and resultant deprivation of the right to make representation against the same.

13. In yet another pronouncement reported as ***(2009) 5 SCC 296*** titled ***Pooja Batra v. Union of India & Ors***., the Honble Supreme Court expounded on the jurisdiction of the Court while considering the challenge to the detention order under judicial review. It was held as follows:

> *"30. It is settled law that Courts exercising powers of judicial review do not consider the challenge to an order of detention as if on an appeal, reappreciating the materials, yet since an order of detention in prison involves the fundamental rights of citizens, freedom of movement and pursuit of normal life and liberty, no absolute immunity can be claimed by the authorities as to the decision arrived, and it is open to the Courts to see whether there has been due and proper application of mind and that all the relevant and vital materials for the purpose have been noticed, adverted to and considered."*

14. The Division Bench of this Court has also, in a case, reported as ***2020 (2) JKJ 102*** **titled** ***Younis Nabi Naik v. Stae of J&K & others*** has laid down the same principle.

15. In view of above, I am of the considered view that there must have been some additional material adverted to and considered by the Detaining Authority in arriving at a conclusion that the ordinary law was not enough for deterring the detenue from indulging in the alleged subversive activities, registered against the detenue three years back where no bail has even been granted to him and that being unavailable in the instant case renders the impugned order as bad in law. Nowhere do the respondents state that from the year of registration of FIR 53/2016 & 54/2016, till the year of issuance of impugned order i.e. 2019, the detenue has indulged in activities that additionally constituted to commission of offence which compelled the Detaining Authority to issue the impugned order.

16. In the above background, the petition succeeds and is allowed as such. The impugned detention order No. 24/DMS/PSA/2019 dated 10.08.2019, issued by the District Magistrate, Shopian, detaining the detenue, namely Shaheen Ahmad Parray S/o Ghulam Mohammad Parray R/o Shangpora, Zainapora, District Shopian, in preventive detention, is quashed and the detenue is directed to be released from the preventive custody forthwith.

17. Records be returned to the learned Government Counsel under receipt.

**(Ali Mohammad Magrey)**
**Judge**

**Srinagar**
19.07.2021
Amjad lone PS


Whether approved for reporting: Yes/ No.