

IN THE HIGH COURT OF JAMMU & KASHMIR AND LADAKH  
AT SRINAGAR

Reserved on: 01.10.2021  
Pronounced on:21.10.2021

WP(Crl.) No.50/2020

Gulzar Ahmad Bhat ...Petitioner(s)

Through: - Mr. Wajid Hasib, Advocate.

Vs.

UT of J&K & Ors. ...Respondent(s)

Through: - Mr. Mir Suhail, AAG.

**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/05 of2020 dated 14.02.2020, issued by District Magistrate, Budgam (for brevity "*Detaining Authority*"), has been assailed. In terms of the impugned order, *Shri Gulzar Ahmad Bhat @Phalwan son of Sonallah Bhat resident of Warpora Budgam*, has been placed under preventive detention and lodged in Kotbhalwal Jail, Jammu.

2) Petitioner has contended that the Detaining Authority has passed the impugned detention order mechanically without application of mind. It has been further contended that the Constitutional and Statutory procedural safeguards have not been complied with in the instant case. It has also been urged that the allegations made against the

detenue in the grounds of detention are vague and that the translated version of the documents/grounds of detention has not been provided to the detenue who is a semi-literate person. Petitioner has gone on 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 detenue has been detained only after following due procedure; that the grounds of detention were read over to the detenue; that there has been proper application of mind on the part of the Detaining Authority while passing the impugned order and that the detenue 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 grounds that have been argued during the course of hearing is that the detenue was already in custody in connection with case FIR No.61/2019 for offence under Section 10, 11, 13 ULAP Act registered with Police Station, Budgam, and there were no compelling reasons for the

Detaining Authority to make the impugned detention order and that the Detaining Authority has not spelt out the compelling reasons for detaining the detenu under preventive detention laws and that there has been non-application of mind on the part of the Detaining Authority as the grounds of detention are more or less a Xerox copy of the dossier.

6) It is trite that the preventive detention orders can be passed even when a person is in police 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 detenu could not be deterred from indulging in subversive activities by resorting to normal law and in the absence of these reasons, the order of detention becomes unsustainable in law. I am supported in my aforesaid view by the judgment of the Supreme Court in the case of **Surya Prakash Sharma v. State of U. P. and others, 1994 SCC (Cri) 1691**, wherein the Court has observed as under:

*“5. The question as to whether and in what circumstances an order for preventive detention can be passed against a person who is already in custody has had been engaging the attention of this court since it state first came up for consideration before a Constitution Bench in Rameshwar Shaw vs District Magistrate Burdwan to eschew prolixity we refrain from detailing all those cases except that of Dharmendra Sughan Chand Chelawat v. Union of India wherein a three judge Bench after considering all the earlier relevant decisions including Rameshwar Shaw answered the question in the following words:*

*“The decisions referred to above lead to the conclusion that an order for detection can be validly passed against a person in custody and for that purpose it is necessary that the grounds of detention must show that (i) the detaining authority was aware of the fact that the detenu is already in detention; and (ii) there were compelling reasons justifying such detention*

*despite the fact that the detenu is already in detention. The expression compelling reasons in the context of making an order for detention of a person already in custody implies that there must be cogent material before the detaining authority on the basis of which it may be satisfied that (a) the detenu is likely to be released from custody in the near future and (b) taking into account the nature of the antecedent activities of the detenu, it is likely that after his release from custody he would indulge in prejudicial activities and it is necessary to detain him in order to prevent him from engaging in such activities.”*

*6. When the above principles are applied to the facts of the instant case, there is no escape from the conclusion that the impugned order cannot be sustained. Though the grounds of detention indicate the detaining authority’s awareness of the fact that the detenu was in judicial custody at the time of making the order of detention, the detaining authority has not brought on record any cogent material nor furnished any cogent ground in support of the averment made in the grounds of detention that if the aforesaid Surya Prakash Sharma is released on bail “he may again indulge in serious offences causing threat to public order”. (emphasis supplied) To put it differently, the satisfaction of the detaining authority that the detenu might indulge in serious offences causing threat to public order, solely on the basis of a solitary murder, cannot be said to be proper and justified.*

*7. On the conclusions as above we quash the order of detention.”*

7) It is also settled position of law that a person involved in a criminal case can be detained under the provisions of preventive detention laws provided there are compelling circumstances for doing so otherwise the order of detention becomes unsustainable. In this connection, it is quite apt to quote following observations of the of Supreme Court in **T. P. Moideen Koya vs. Government of Kerala and ors.**” reported in 2004 (8) SCC 106:

*“.....in law there is no bar in passing a detention order even against a person who is already in custody in respect of a criminal offence if the detaining authority*

*is subjectively satisfied that detention order should be passed and that there must be cogent material before the authority passing the detention order for inferring that the detenu was likely to be released on bail”*

8) Adverting to the facts of the instant case, the detention record shows that the petitioner was arrested in FIR No.61/2019 for offence under Section 10, 11, 13 ULAP Act registered with Police Station, Budgam. So far as the grounds of detention are concerned, the same are based upon the solitary incident which is the subject matter of aforesaid FIR. There was no material on record excepting the allegations made in the aforementioned FIR before the Detaining Authority which would have compelled it to pass the impugned detention order against the petitioner who was already booked for commission of a substantive offence.

9) The material on record shows that the detenu has been shown involved in a substantive offence. When it is so, the Detaining Authority was bound to record the compelling reasons as to why the detenu could not be deterred from indulging in subversive activities by resorting to normal law. There are no such reasons or material available on record. The impugned order of detention of the petitioner is, therefore, unsustainable in law.

10) The other ground urged by the petitioner is that there has been non-application of mind on the part of the Detaining Authority, inasmuch as the grounds of detention are more or less a Xerox copy of the dossier. This contention finds support from the material on record. The grounds of detention, in this case are, in fact, a replica of dossier with interplay of some words here and there. This exhibits non-

application of mind and in the process deriving of subjective satisfaction has become a causality. While formulating the grounds of detention, the Detaining Authority has to apply its own mind. It cannot simply reiterate whatever is written in the dossier. Here it will be apt to notice the observations of the Supreme Court in the case of “*Jai Singh and ors vs. State of J&K*” (AIR 1985 SC 764), which are reproduced hereunder:

*“First taking up the case of Jai Singh, the first of the petitioners before us, a perusal of the grounds of detention shows that it is a verbatim reproduction of the dossier submitted by the Senior Superintendent of Police, Udhampur, to the District Magistrate requesting that a detention order may kindly be issued. At the top of the dossier, the name is mentioned as Sardar Jai Singh, father’s name is mentioned as Sardar Ram Singh and the address is given as village Bharakh, Tehsil Reasi. Thereafter it is recited “The subject is an important member of ……”*”

*Thereafter follow various allegations against Jai Singh, paragraph by paragraph. In the grounds of detention, all that the District Magistrate has done is to change the first three words “the subject is” into “you Jai Singh, S/o Ram Singh, resident of village Bharakh, Tehsil Reasi”. Thereafter word for word the police dossier is repeated and the word “he” wherever it occurs referring to Jai Singh in the dossier is changed into ‘you’ in the grounds of detention. We are afraid it is difficult to find proof of non-application of mind. The liberty of a subject is a serious matter and is not to be trifled with in this casual, indifferent and routine manner.”*

11) From a perusal of the aforesaid observations of the Supreme Court, it is clear that the ground of detention and the dossier, if in similar language, go on to show that there has been non-application of

mind on the part of the Detaining Authority. As already noted, in the instant case, it is clear from the record that the dossier and the grounds of detention contain almost similar wording which shows that there has been non-application of mind on the part of the Detaining Authority. The impugned order of detention is, therefore, unsustainable in law on this ground also.

**12)** For the afore-stated reasons, the petition is allowed and the impugned order of detention is quashed. Further custody of the detenu shall be regulated in accordance with the orders of the court of competent jurisdiction in connection with criminal case registered against him.

**13)** The record, as produced, be returned to the learned counsel for the respondents.

Srinagar  
21.10.2021  
"Bhat Altaf, PS"

(Sanjay Dhar)  
Judge

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