HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT SRINAGAR

WP (Crl) No. 39/2021

(Through Video Conferencing)

Reserved on: 18.11.2021
Date of Pronouncement: 09.12.2021

Yasir Majeed Mir

……...Petitioner (s)

Through: *Mr. Junaid Rashid, Advocate*

Versus

UT of Jammu and Kashmir and others

……...Respondent(s)

Through: *Mr. B. A. Dar, Sr. AAG*

CORAM:

Hon'ble Mr. Justice Javed Iqbal Wani, Judge.

J U D G E M E N T

1. Through the medium of instant petition quashment of detention order bearing No. 10/DMA/PSA/DET/2021 dated 31.03.2021, (hereinafter for short the "*impugned order*") passed against the detenu, namely, *Yasir Majeed Mir*, is being sought for by the petitioner as also a writ of mandamus for his release.

2. It is being stated in the petition that the detenu is a law abiding and peace loving citizen and has never involved in any subversive activity prejudicial to the public order or security of the State. The detenu is stated to have been arrested on 27.08.2020, after being summoned to Police Station Kokernag, and was implicated falsely in case FIR No. 108/2020 registered at Police Station, Kokernag, and while being in

3. The impugned order is being challenged, *inter alia*, on the grounds that detenu was already in custody in connection with case FIR No. 108/2020 and the detaining authority, despite having the knowledge of the said fact, detained the detenu without spelling out any compelling reason thereof in the grounds of detention.

4. It is being further urged in the grounds that the detenu had not been provided copies of the relevant material, like copy of dossier, copy of FIR, statements under Section 161, 164-A Cr. PC, referred to in the grounds of detention, thus, depriving him to file an effective representation against his detention. The said failure is stated to have infringed the constitutional right of the detenu guaranteed under Article 22 (5) of the Constitution of India.

5. On the other hand, respondents, in their reply affidavit filed in opposition to the petition, resist and controvert the contentions raised and grounds urged by the petitioner in the petition and have insisted that the order of detention is preventive and not punitive in nature, while it is being admitted by respondents that detenu was detained pursuant to impugned order. It is being stated that all statutory requirements and constitutional guarantees have had been fulfilled and complied with while detaining the detenu.

6. It is being next averred by respondents that impugned order was executed in accordance with the relevant provisions of law and that the detenu was handed over to the Assistant Superintendent, District Jail, Kathua, for lodgment and that the contents of detention order/warrant and grounds of detention were read over and explained to the detenu in the language which he fully understood and in lieu thereof the detenu subscribed his signatures on the execution report/order.

detention. Respondents in the process are stated to have complied with all statutory, constitutional provisions, and followed all requisite formalities without violating any of them.

8. Heard learned counsel for the parties, perused the record and considered the matter.

9. While dealing with the first contention/ground of challenge urged by the petitioner qua non-recording of compelling reasons for detaining the detenu when he was already in custody, it would be appropriate to refer to the judgement of the Apex Court in this regard passed in case titled as **'Surya Parkash Sharma v. State of U.P and Others, reported** in **1994 (3) SCC 195'**, wherein at paragraph 5 following has been noticed and laid down: -

> ***"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 first came up for consideration before a Constitution Bench in Rameshwar Shaw V. District Magistrate, Burdwan (1964) 4 SCR 92: AIR 1964 SC 334: (1964) 1 Crl LJ 257. To eschew prolixity we refrain from detailing all those cases except that of Dharmendra Suganchand Chelawat V. Union of India (1990) 1 SCC 746: 1990 SCC (Crl) 249: AIR 1990 SC 1196, wherein a three Judge Bench, after considering all the earlier relevant decisions including Rameshwar Shaw answered the question in the following words(SCC 754 para 21:*
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> > ***"****The decisions referred to above lead to the conclusion that an order for detention 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 detenue is already in detention; and (ii) there were compelling reasons justifying such detention despite the fact that the detenue is already in detention. The expression 'compelling reasons' in the context of making an order for detention of a person already in*

is necessary to detain him in order to prevent him from engaging in such activities."

10. Perusal of the grounds of detention/order of detention would manifestly reveal that the detaining authority has not drawn any satisfaction as per the mandate laid down by the Apex Court in the case of **Surya Parkash Sharma** (supra), while passing the impugned detention order against the detenu, so much so, the detaining authority has also failed to express any such compelling reason even in Reply Affidavit. The impugned order, thus in law, does not sustain on this count alone.

11. Another contention urged by learned counsel for petitioner concerning non-supply of material has taken this Court to have a glimpse of detention record, made available by learned counsel for respondents. Plain reading thereof unveils, amongst others, execution report as regards execution of impugned order of detention. It divulges that only three leaves have been given to the detenu.

12. Perusal of impugned detention order reveals that on the basis of dossier placed before detaining authority by Senior Superintendent of Police, Anantnag, detaining authority was satisfied that with a view to prevent detenu from acting in any manner prejudicial to the security of the State / Country, it was necessary to detain the detenu under necessary provisions of law. So, it is on the basis of dossier and other connected material/documents that impugned detention order has been passed by detaining authority. Grounds of detention, when looked into, give reference of one FIR to have been registered against detenu. Involvement of detenu in aforesaid case appears to have weighed with detaining authority, while making detention order. The detention record, as noted above, does not indicate that copies of statements recorded under Section 161 Cr.P.C. in above FIR and other material

circumstances of the case. It needs no emphasis, that 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 Jammu & Kashmir Public Safety Act, 1978, unless and until the material on which detention order is based, is supplied to him. It is only after detenu has all the said material available that he can make an effort to convince detaining authority and thereafter the Government that their apprehensions vis-à-vis his activities 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 material, relied at the time of making detention order to detenu, renders detention order illegal and unsustainable. These views are fortified, given the law laid down by the Apex Court 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 &ors, 2009 (I) S.L.J 219***. My views are also cemented by the judgement dated 18.05.2021 delivered in WP(Crl) No. 107/2020 titled Mohammad Rafiq Mir v. UT of J&K and another.

13. The Supreme Court in ***Abdul Latief Abdul Wahab Sheikh v. B.K. Jha, 1987 (2) SCC 22*** has made it clear that it is only the procedural requirements, which are the only safeguards available to detenu, that is to be followed and complied with as the Court is not expected to go behind the subjective satisfaction of detaining authority. In the present case, procedural requirements, as discussed above, have not been

and circumstances of the case being misplaced and misdirected and does not lend any support thereof to the case of the respondents.

15. Viewed thus, in the context what has been observed, analyzed and considered in the preceding paragraphs, instant petition is allowed and consequent to which the impugned order of detention bearing No. 10/DMA/PSA/DET/2021 dated 31.03.2021 is quashed, with the direction to the respondents to release the detenu forthwith from preventive custody unless required in any other case.

16. **Disposed of** along with all connected CrlM(s).

17. No orders as to costs.

(Javed Iqbal Wani)
Judge

Srinagar
09.12.2021
TASADUQ
SAB:

HIGH COURT
JAMMU & KASHMIR

Whether approved for reporting? Yes/ No.