

**HIGH COURT OF JAMMU AND KASHMIR
AT SRINAGAR**

...

WP (Crl) no.546/2019

Reserved on: 13.03.2020

Pronounced on: 16.04.2020

Fayaz Ahmad Zargar

..... Petitioner(s)

Through: Mr. G.N.Shaheen with Mr.W.Haseeb , Advocates

Versus

State of J&K and others

....Respondent(s)

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

CORAM: HON'BLE MR JUSTICE TASHI RABSTAN, JUDGE

JUDGEMENT

1. District Magistrate, Srinagar, has, vide Order no.DMS/PSA/125/2019 dated 18.09.2019, placed Fayaz Ahmad Zargarson of Ghulam Rasool Zargarresident of Gani Mohalla, Jamia Masjid, District Srinagar (for brevity "*detenu*"), under preventive detention and directed his lodgement in Central Jail, Srinagar, which is under challenge in petition on hand on the grounds averred therein.
2. Respondents have filed Reply Affidavit in opposition to the petition.
3. I have heard learned counsel for parties. I have perused the detention record produced by learned counsel for respondents and considered the matter.
4. Learned counsel appearing for petitioner, to augment the case set up by petitioner in writ petition on hand, contends that *detenu* was arrested by police without any justification on 15.08.2019 and subsequently placed under preventive detention. Learned counsel also states that grounds of detention are ditto copy of dossier inasmuch as impugned detention has been passed on the basis of record submitted by Senior Superintendent of Police, Srinagar and what was the record perused by detaining authority is not reflected

either in grounds of detention nor same has been supplied to petitioner. Grounds of detention are stated to be vague, non-existent and sketchy and resultantly vitiates impugned detention order.

5. Perusal of grounds of detention unmasks grounds are vague and ambiguous and do not refer to any date, month or year of the activities, which have been attributed to detenu. Detention in preventive custody on the basis of such vague and ambiguous grounds of detention cannot be justified. It may not be out of place to mention here that preventive detention is largely precautionary and is based on suspicion. The Court is ill-equipped to investigate into circumstances of suspicion on which such anticipatory action must be largely based. The nature of proceeding is incapable of objective assessment. The matters to be considered by detaining authority are whether the person concerned, having regard to his past conduct judged in light of surrounding circumstances and other relevant material, is likely to act in a prejudicial manner as contemplated by provisions of law and, if so, whether it is necessary to detain him with a view to preventing him from so acting. These are not the matters susceptible of objective determination, and they could not have been intended to be judged by objective standards. They are essentially the matters which have to be administratively determined for the purpose of taking administrative action. Their determination is, therefore, deliberately and advisedly left by the Legislature to subjective satisfaction of detaining authority which, by reason of its special position, experience and expertise, would be best suited to decide them. Thus, the Constitutional imperatives of Article 22(5) and dual obligation imposed on the authority making order of preventive detention, are twofold: (1) detaining authority must, as soon as may be, i.e. as soon as practicable, after detention order is passed, communicate to detenu grounds on which order of detention has been made, and (2) detaining authority must afford detenu earliest opportunity of making representation against detention order, i.e. to be furnished with sufficient particulars to enable him to make a representation which, on being considered, may obtain relief to him.

The inclusion of an irrelevant or non-existent ground, among other relevant grounds, is an infringement of first of the rights and inclusion of an obscure or vague ground, among other clear and definite grounds, is an infringement of second of the rights. In either case there is an invasion of constitutional rights of detenu entitling him to approach the Court for relief. The reason why inclusion of even a simple irrelevant or obscure ground, among several relevant and clear grounds, is an invasion of the detenu's constitutional right is that the Court is precluded from adjudicating upon sufficiency of grounds, and it cannot substitute its objective decision for subjective satisfaction of detaining authority. Even if one of the grounds or reasons, which led to subjective satisfaction of detaining authority, is non-existent or misconceived or irrelevant, the order of detention would be invalid. Where the order of detention is founded on distinct and separate grounds, if any one of the grounds is vague or irrelevant the entire order must fall. The satisfaction of detaining authority being subjective, it is impossible to predicate whether the order would have been passed in the absence of vague or irrelevant data. A ground is said to be irrelevant when it has no connection with the satisfaction of the authority making the order of detention. Irrelevant grounds, being taken into consideration for making detention order, are sufficient to vitiate it. One irrelevant ground is sufficient to vitiate the order as it is not possible to assess, in what manner and to what extent, that irrelevant ground operated on the mind of appropriate authority, and contributed to his satisfaction that it was necessary to detain the detenu in order to prevent him from acting in any manner prejudicial to maintenance of public order. Reference in this regard is made to ***Mohd. Yousuf Rather v. State of J&K and others, AIR 1979 SC 1925***; and ***Mohd. Yaqoob v. State of J&K &ors, 2008 (2) JKJ 255 [HC]***.

6. For the foregoing reasons, the petition is disposed of and detention Order no.DMS/PSA/125/2019 dated 18.09.2019, passed by District Magistrate, Srinagar, quashed. Respondents, including Jail Superintendent concerned, are directed to release the detenu

forthwith, provided he is not required in any other case. **Disposed of.**

7. Registry to return detention record to learned counsel for respondents.

**(TashiRabstan)
Judge**

Srinagar

.04.2020

Ajaz Ahmad, PS

Whether the order is reportable: No.

