

HIGH COURT OF JAMMU AND KASHMIR AT JAMMU

WP (Crl) No. 56 /2019
CM No. 6556/2019
CrlM No. 1087/2019

Reserved on: 19.03.2020
Pronounced on: 22.04.2020

Harvinder Singh

.....Petitioner(s)

Through: Mr. Ashok Sharma, Advocate.

Vs.

State of J&K & Ors

.....Respondent(s)

Through: Mr. A. M. Malik, Dy.A.G.

CORAM: HON'BLE MR. JUSTICE SANJEEV KUMAR

JUDGMENT

1. Order No. DMR/INDEX-01 of 2019 dated 09.03.2019 passed by District Magistrate Rajouri, (for short 'the Detaining Authority' hereafter) whereby the petitioner has been detained under Section 8 of the Jammu and Kashmir Public Safety Act, 1978, with a view to preventing him from acting in any manner prejudicial to the maintenance of public order.

2. The detention has been ordered on the ground that right from the year 2013 the petitioner has been constantly indulging in criminal activities aimed at disturbing the even tempo of life. Reference in the grounds of detention has been made specifically to FIR No. 59/2013 registered for commission of offences under Sections 325/323 RPC, FIR

No. 83/2015 under Sections 341/147/323 RPC, 4/25 Arms Act, FIR No. 01/2018 under Sections 347/323 RPC, FIR No. 92/2018 under Sections 336/147/148/435/506 RPC and FIR No. 04/2019 under Sections 353/336/323/504/506/341 RPC, all registered in Police Station Budhal. From the activities of the petitioner alleged in the aforesaid FIRs, the Detaining Authority has concluded that the criminal acts and activities of the petitioner have created feelings of enmity, hatred and disharmony amongst sections of the society and, therefore, such activities of the petitioner have posed a serious threat to the maintenance of public order in Khawas area.

3. The impugned order of detention passed on the grounds of detention aforesaid, though passed by the Detaining Authority on 09.03.2019, has been executed on the petitioner on 04.07.2019.

4. The petitioner challenges the impugned order aforesaid *inter alia* on the following grounds:

- (i) That the allegations contained in the FIRs relied upon by the Detaining Authority to find its order are false, frivolous and trivial in nature and, therefore, do not constitute any threat to the public order which would warrant the detention of the petitioner under the Public Safety Act.
- (ii) That the delay in executing the order of detention has not been explained. Inasmuch as, the order of detention was passed on 19.03.2019 but the same was executed only on 04.07.2019 and, therefore, there is unexplained delay of four months in executing the detention order.

- (iii) That the impugned detention order was required to be approved by the Government within a period of 12 days from the date of its issuance and the same has not been done.
- (iv) That the name of the petitioner does not figure in the Challan filed in reference to FIR No. 11/2019, which has been relied upon by the Detaining Authority, and thus, speaks volumes about the non-application of mind by the Detaining Authority.
- (v) That the material relied upon by the Detaining Authority, particularly FIRs which were in Urdu, were not translated in Hindi or English, the languages known to the petitioner and, therefore, he was disabled from making an effective representation against his detention.

5. The Detaining Authority has filed its counter affidavit and has stated that, indulgence of the petitioner in criminal activities over very many years clearly makes out a case, that in case the petitioner is not detained in preventive custody, he may pose serious threat to the maintenance of public order in Khawas area of Tehsil Budhal. It is thus submitted that on the basis of the material supplied by the Senior Superintendent of Police of the District in the shape of dossier and after applying its mind, the Detaining Authority arrived at his satisfaction that it was necessary to place the petitioner under preventive detention with a view to restrain him from indulging in activities prejudicial to the maintenance of public order. The allegation of the petitioner, that safe - guards provided under the Jammu and Kashmir Public Safety Act, 1978 (

for short, 'the Act of 1978' hereafter), were not followed, have been strongly refuted by reference to the original record produced in the Court.

6. Having heard learned counsel for the parties and perused the record, I am of the view that this petition is entitled to be allowed on the solitary ground that despite there being a specific allegation with regard to delayed execution of the detention order, the Detaining Authority, in its affidavit, has made no endeavour to explain such delay.

7. It is not the case of the respondents pleaded anywhere in the counter affidavit that the detention order issued on 09.03.2019 could not be executed till July, 2019 for the acts or omissions attributed to the petitioner. That apart, from the detention order, it clearly transpires that the activities, the petitioner is allegedly indulging in, may have the potential of vitiating law and order which is required to be taken care of by the substantive law of the land. As is apparent from the grounds of detention, the challans in FIR No. 59/2013, FIR No. 83/2015 and FIR No. 01/2018 are already presented in the competent Court of law and the petitioner is facing trial. The FIR Nos. 92/2018 and 04/2019, which are of slightly recent origin, are being investigated. Interestingly, there is no whisper in the grounds of detention with regard to the custodial status of the petitioner in the FIRs which are challaned and the FIRs which are being investigated; whether the petitioner was ever arrested in the aforesaid FIRs, and if arrested, whether he was bailed out; and, if bailed out, on what terms and conditions. Apart from two FIRs of 2018 and FIR No. 04/2019, the earlier two FIRs pertain to period of the year 2013 and

2015 and, therefore, could not have been taken into account being stale and irrelevant. (See Aruna Sama vs. State of Telengana, 2018 (12) SCC 150).

7. Otherwise also, as noted above, the activities of the petitioner detailed in the impugned order may constitute law and order problem but could not be construed to be prejudicial to the maintenance of public order. The distinction between the terms, 'law and order', and 'public order' has been succinctly drawn by Hon'ble the Supreme Court in number of cases and to refer the one, The Supreme Court in the case of **Commissioner of Police vs. C. Anita, 2004 (7) SCC, 467** dealt with the issue in the following manner:-

“The crucial issue is whether the activities of the detenu were prejudicial to public order. While the expression 'law and order' is wider in scope inasmuch as contravention of law always affects order. 'Public order' has a narrower ambit, and public order could be affected by only such contravention which affects the community or the public at large. Public order is the even tempo of life of the community taking the country as a whole or even a specific locality. The distinction between the areas of 'law and order' and 'public order' is one of the degree and extent of the reach of the act in question on society. It is the potentiality of the act to disturb the even tempo of life of the community which makes it prejudicial to the maintenance of the public order. If a contravention in its effect is confined only to a few individuals directly involved as distinct from a wide spectrum of public, it could raise problem of law and order only. It is the length, magnitude and intensity of the terror wave unleashed by a particular eruption of disorder that helps to distinguish it as an act affecting 'public order' from that concerning 'law and order'. The question to ask is, “Does it lead to disturbance of

the current life of the community so as to amount to a disturbance of the public order or does it affect merely an individual leaving the tranquillity of the society undisturbed”? This question has to be faced in every case on its facts.

“Public order” is what the French call ‘order publique’ and is something more than ordinary maintenance of law and order. The test to be adopted in determining whether an act affects law and order or public order, is: Does it lead to disturbance of the current life of the community so as to amount to disturbance of the public order or does it affect merely an individual leaving the tranquility of the society undisturbed? (See *Kanu Biswas v. State of West Bengal*, AIR 1972 SC 1656.

“Public order” is synonymous with public safety and tranquillity: “ it is the absence of disorder involving breaches of local significance in contradistinction to national upheavals, such as revolution, civil strife, war, affecting the security of the State”. Public order if disturbed, must lead to public disorder. Every breach of the peace does not lead to public disorder. When two drunkards quarrel and fight there is disorder but not public disorder. They can be dealt with under the powers to maintain law and order but cannot be detained on the ground that they were disturbing public order. Disorder is no doubt prevented by the maintenance of law and order also but disorder is a broad spectrum, which includes at one end small disturbances and at the other the most serious and cataclysmic happenings (See *Dr. Ram Monthar Lohia vs. State of Bihar and ors*, 1966 (1) SCR 709.”

8. Additionally, the impugned order is also vitiated for the reason that the Detaining Authority, while conveying the petitioner that he has a right

to make representation before the Government, has conspicuously omitted to make the petitioner aware of his right to make representation to the Detaining Authority itself. The petitioner has thus been deprived of his right to make a representation to the District Magistrate. A Division Bench of this Court in **Tariq Ahmad Dar vs. State of J&K and ors, 2017 (3) JKJ (HC) 684**, relying upon the judgment of Hon'ble the Supreme Court in the case of **State of Maharashtra vs. Santosh Shankar Acharya, 2000 (7) SCC 463**, while considering this issue, in paragraph nos. 12 and 15 has held as under:-

“12. On examining the Supreme Court decision in the case of Santosh Shankar Acharya (supra), we find that that the relevant provisions of the Maharashtra Prevention of Dangerous Activities of Slumlords, Bootleggers, Drug- Offenders and Dangerous Persons Act, 1981 are in pari materia to the provisions of the Jammu and Kashmir Public Safety Act, 1978. For example, Section 3 of the Maharashtra Act is almost identical to Section 8 of the J&K Act, Section 8 of the Maharashtra Act corresponds to Section 13 of the J&K Act and, similarly Sections 14 and 21 of the Maharashtra Acts correspond to Sections 19 and 21 of the J&K Act.

13.

14.

15. From a reading of the said decision, it is abundantly clear that non-communication of the fact that the detenu can make a representation to the Detaining Authority, till the detention order is not approved by the Government, would constitute an infraction of a valuable Constitutional right guaranteed under LPAHC No. 43/2017 Page 10 of 11 Article 22(5) of the Constitution of India as also of the right under Section 13 of the Jammu and Kashmir Public Safety Act, 1978. Failure of such non-communication would invalidate the order of detention.”

8. In view of the discussion made above and having found the order of detention vitiated in law on the grounds discussed hereinabove; I do not

think it proper and desirable to deal with other grounds of challenge urged by the learned counsel for the petitioner.

9. In the premises, this petition is allowed. The impugned order bearing No. DMR/INDEX-01 of 2019 dated 09.03.2019 is quashed. The respondents are directed to set the petitioner at liberty from the preventive detention if not required in any other case.

10. The original record produced by the learned counsel for the respondents be returned against proper receipt.

**(Sanjeev Kumar)
Judge**

JAMMU:

22.04.2020

A. Raina, Adtl.Registrar/Secy

Whether the order is speaking: Yes

Whether the order is reportable: Yes