IN THE HIGH C0URT 0F JAMMU & KASHMIR AND LADAKH
AT SRINAGAR

WP (Crl) No. 105/2021

Reserved on 09.11.2021
Pronounced on 12.11.2021

Muntazir Ahmad Bhat …Petitioner(s)

Through: Mr. G. N. Shaheen, Adv.

Vs.

Union Territory of JK & Anr. ...Respondent(s)

Through: Mr. Mir Suhail, AAG

CORAM:

HON'BLE MR JUSTICE TASHI RABSTAN, JUDGE

J U D G M E N T

1. District Magistrate Pulwama by order No. 27/DMP/PSA/21 dated 12.07.2021 has placed one Muntazir Ahmad Bhat S/o Abdul Gani Bhat R/o Qasbayar Tehsil Rajpora District Pulwama (hereinafter referred to as the 'detenu') under preventive detention with a view to prevent him from acting in any manner prejudicial to the security of the State and has been lodged in Central Jail Kot Balwal Jammu. It is this order, the father of the detenu is aggrieved of and seeks quashment of the same on the grounds taken in the petition in hand.

2. Case set up by the petitioner is that the detenu was arrested and detained under Section 8 of the J&K Public Safety Act, 1978 on a false and flimsy grounds without any justification in terms of the impugned detention order. It is also contended that the grounds of detention are vague and mere assertions of the detaining authority and no prudent man can make an effective representation against these allegations. Further it is contended that the detenu has not been provided the material/documents relied upon by the detaining authority so as to make an effective representation before the detaining authority.

3. Counter affidavit has been filed by respondent No. 2 vehemently resisting the petition.

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4. Heard learned counsel for the parties and perused the xerox copy of the detention record produced by the learned counsel for the respondents.

5. Prior to adverting to case in hand, it would be apt to say that right of personal liberty is most precious right, guaranteed under the Constitution. It has been held to be transcendental, inalienable and available to a person independent of the Constitution. A person is not to be deprived of his personal liberty, except in accordance with procedures established under law and the procedure as laid down in ***Maneka Gandhi v. Union of India, (1978 AIR SC 597),*** is to be just and fair. The personal liberty may be curtailed, where a person faces a criminal charge or is convicted of an offence and sentenced to imprisonment. Where a person is facing trial on a criminal charge and is temporarily deprived of his personal liberty owing to criminal charge framed against him, he has an opportunity to defend himself and to be acquitted of the charge in case prosecution fails to bring home his guilt. Where such person is convicted of offence, he still has satisfaction of having been given adequate opportunity to contest the charge and also adduce evidence in his defence. However, framers of the Constitution have, by incorporating Article 22(5) in the Constitution, left room for detention of a person without a formal charge and trial and without such person held guilty of an offence and sentenced to imprisonment by a competent court. Its aim and object are to save society from activities that are likely to deprive a large number of people of their right to life and personal liberty. In such a case it would be dangerous for the people at large, to wait and watch as by the time ordinary law is set into motion, the person, having dangerous designs, would execute his plans, exposing general public to risk and causing colossal damage to life and property. It is, for that reason, necessary to take preventive measures and prevent a person bent upon to perpetrate mischief from translating his ideas into action. Article 22(5) Constitution of India, therefore, leaves scope for enactment of preventive detention law.

6. The essential concept of preventive detention is that detention of a person is not to punish him for something he has done, but to prevent

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him from doing it. The basis of detention is satisfaction of the executive of a reasonable probability of likelihood of detenu acting in a manner similar to his past acts and preventing him by detention from doing the same. The Supreme Court in ***Haradhan Saha v. State of W.B. (1975) 3 SCC 198,*** points out that a criminal conviction, on the other hand, is for an act already done, which can only be possible by a trial and legal evidence. There is no parallel between prosecution in a Court of law and a detention order under the Act. One is a punitive action and the other is a preventive act. In one case, a person is punished to prove his guilt and the standard is proof, beyond reasonable doubt, whereas in preventive detention a man is prevented from doing something, which it is necessary for reasons mentioned in the Act, to prevent.

7. Acts or activities of individual or a group of individuals, prejudicial to the security of the State or public order, have magnitude of across-the-board disfigurement of societies. No court should tune out such activities, being swayed by passion of mercy. It is an obligation of the Court to constantly remind itself the right of society is never maltreated or marginalised by doings, an individual or set of individuals propagate and carry out.

8. Article 22(5) of the Constitution of India and Section 13 of the J&K Public Safety Act, 1978, guarantee safeguard to detenu to be informed, as soon as may be, of grounds on which order of detention is made, which led to subjective satisfaction of detaining authority and also to be afforded earliest opportunity of making representation against order of detention. Detenu is to be furnished with sufficient particulars enabling him to make a representation, which on being considered, may obtain relief to him.

9. Glance of grounds of detention reveals that the detenu met with various terrorists of banned organisation called as *Jaish-e-Mohammad (JeM)* under whose influence the detenu developed radical ideology. The said organization has motivated the detenu to work for their unlawful organization and extended all possible logistic support to the terrorists enabling them to carry out the terrorist attack in the area successfully.

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The detenu is a close accomplice of active terrorist namely Yasir Ahmad Parray S/o Ghulam Mohammad Parray R/o Qasbayar, Rajpora. The detenu along-with the said Yasir Ahmad Parray have purchased a Maruti car in the year 2019 and on the instructions of one terrorist, a foreign original namely Junaid Bhat R/o Pakistan loaded the said Maruti car with IED and exploded it on the road near Arihal Village of District Pulwama by targeting patrolling vehicle of 44 RR and also indulged in indiscriminate firing upon the said army patrolling party with the motive and intention to kill them, resulting into martyrdom of 1 army person and injuries to various army personnel. Accordingly, FIR No. 125/2019 under Sections 302, 307-RPC, 7/27 Arms Act and 4/2015 Expl. Sub. Act was registered. Further FIR No. 54/2019 under Sections 121-IPC, 18, 20 & 39 UA(P) Act was registered in Police Station Rajpora, Pulwama. However, in both the FIRs, the detenu was released on bail by the competent court, but after releasing the detenu, he continued to carry out subversive activities in the area. The said fact is corroborated that on 11th May 2020 on detenue's instance, 1 HE-36 hand grenade was recovered from the compound of detenue's house situated at Qasbayar. In this regard, FIR No. 29/2020 under Sections 7/25 of Arms Act and 23 UA(P) Act was registered. Again, the detenu has been released by the court. Thereafter, the detenu was apprehended just to prevent him from acting in any manner prejudicial to the security of the State. Further there is a likelihood of his recycling into subversive activities. As such, it will make difficult for the security forces to maintain the public order and safeguard the security of the State and to return the normalcy in the valley.

10. The record so produced by the State reveals that in terms of Order dated 12th July 2021, a notice was issued under Section 13 of the J&K Public Safety Act whereby the detenu was informed to make a representation to the detaining authority as also to the Government against his detention order if the detenu so desires. In compliance to District Magistrates detention order, the warrant was executed by Executing Officer, namely, SI Sonaullah No. 03/T/EXK- No. 832114 of DPL Pulwama who has executed and took custody of the detenu on 15th July

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2021 by executing the PSA Warrants at Central Jail Kot Balwal Jail Jammu, whereby the detenu was handed over total 41 leaves on 15.07.2021 against a proper receipt in which the detention order, notice of detention, ground of detention, dossier of detention, copies of FIR, Statement of witnesses and all other relevant material relied in the grounds of detention totalling 41 leaves have been supplied. Further the execution report reveals that the detenu can make a representation to the Government as well as to the detaining authority. It is also revealed that the detention warrant and grounds of detention has been read over and explained to the detenu in Urdu/Kashmiri language which the detenu understood fully and signatures of detenu was also obtained which has been marked as Mark A in the Execution Report. Thus, the contention of the petitioner for not supplying the material is not sustainable.

11. Germane to mention here that if one looks at the acts, the J&K Public Safety Act, 1978, is designed for, is to prevent, they are all these acts that are prejudicial to security of the State or maintenance of public order. The acts, indulged in by persons, who act in concert with other persons and quite often such activity has national level ramifications. These acts are preceded by a good amount of planning and organisation by the set of people fascinated in tumultuousness. They are not like ordinary law and order crimes. If, however, in any given case a single act is found to be not sufficient to sustain the order of detention that may well be quashed, but it cannot be stated as a principle that one single act cannot constitute the basis for detention. On the contrary, it does. In other words, it is not necessary that there should be multiplicity of grounds for making or sustaining an order of detention. The said views and principles have been reiterated by the Supreme Court in Gautam Jain v. Union of India another AIR 2017 SC 230.

12. In the above milieu, it would be apt to refer to the observations made by the Constitution Bench of the Supreme Court in the case of ***The State of Bombay v. Atma Ram Shridhar Vaidya AIR 1951 SC 157.*** The

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paragraph 5 of the judgement lays law on the point, which is profitable to be reproduced infra:

> "5. It has to be borne in mind that the legislation in question is not an emergency legislation. The powers of preventive detention under this Act of 1950 are in addition to those contained in the Criminal Procedure Code, where preventive detention is followed by an inquiry or trial. By its very nature, preventive detention is aimed at preventing the commission of an offence or preventing the detained person from achieving a certain end. The authority making the order therefore cannot always be in possession of full detailed information when it passes the order and the information in its possession may fall far short of legal proof of any specific offence, although it may be indicative of a strong probability of the impending commission of a prejudicial act. Section a of the Preventive Detention Act therefore requires that the Central Government or the State Government must be satisfied with respect to any person that with a view to preventing him from acting in any manner prejudicial to (1) the defence of India, the relations of India with foreign powers, or the security of India, or (2) the security of the State or the maintenance of public order, or (8) the maintenance of supplies and services essential to the community ..... it is necessary So to do, make an order directing that such person be detained. According to the wording of section 3, therefore, before the Government can pass an order of preventive detention it must be satisfied with respect to the individual person that his activities are directed against one or other of the three objects mentioned in the section, and that the detaining authority was satisfied that it was necessary to prevent him from acting in such a manner. The wording of the section thus clearly shows that it is the satisfaction of the Central Government or the State Government on the point which alone is necessary to be established. It is significant that while the objects intended to be defeated are mentioned, the different methods, acts or omissions by which that can be done are not mentioned, as it is not humanly possible to give such an exhaustive list. The satisfaction of the Government however must be based on some grounds. There can be no satisfaction if there are no grounds for the same. There may be a divergence of opinion as to whether certain grounds are sufficient to bring about the satisfaction required by the section. One person may think one way, another the other way. If, therefore, the grounds on which it is stated that the Central Government or the State Government was satisfied are such as a rational human being can consider connected in some manner with the objects which were to be prevented from being attained, the question of satisfaction except on the ground of mala fides

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> cannot be challenged in a court. Whether in a particular case the grounds are sufficient or not, according to the opinion of any person or body other than the Central Government or the State Government, is ruled out by the wording of the section. It is not for the court to sit in the place of the Central Government or the State Government and try to deter- mine if it would have come to the same conclusion as the Central or the State Government. As has been generally observed, this is a matter for the subjective decision of the Government and that cannot be substituted by an objective test in a court of law. Such detention orders are passed on information and materials which may not be strictly admissible as evidence under the Evidence Act in a court, but which the law, taking into consideration the needs and exigencies of administration, has allowed to be considered sufficient for the subjective decision of the Government."

13. In the light of the aforesaid position of law settled by the Six-Judge Constitution Bench, way back in the year 1951, the scope of looking into the manner in which the subjective satisfaction is arrived at by the detaining authority, is limited. This Court, while examining the material, which is made basis of subjective satisfaction of the detaining authority, would not act as a court of appeal and find fault with the satisfaction on the ground that on the basis of the material before detaining authority another view was possible.

14. The court do not even go into the questions whether the facts mentioned in the grounds of detention are correct or false. The reason for the rule is that to decide this, evidence may have to be taken by the courts and that it is not the policy of the law of preventive detention. This matter lies within the competence of the advisory board.

15. Those who are responsible for national security or for maintenance of public order must be the sole judges of what the national security, public order or security of the State requires. Preventive detention is devised to afford protection to society. The object is not to punish a man for having done something but to intercept before he does it and to prevent him from doing. Justification for such detention is suspicion or reasonable probability and not criminal conviction, which can only be warranted by legal evidence. Thus, any preventive measures, even if

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they involve some restraint or hardship upon individuals, as said by the Supreme Court in ***Ashok Kumar v. Delhi Administration and others AIR 1982 SC 1143,*** do not partake in any way of the nature of punishment. There is no reason why the Executive cannot take recourse to its power of preventive detention in those cases where the Court is genuinely satisfied that no prosecution could possibly succeed against detenu because he is a dangerous person who has overawed witnesses or against whom no one is prepared to depose.

16. Besides what has been discussed above, extremism, radicalism, terrorism have become the most worrying features of the contemporary life. Though violent behaviour is not new, the contemporary extremism, radicalism, terrorism in its full incarnation have obtained a different character and poses extraordinary threats to civilized world. The basic edifices of a modern State, like democracy, State security, public order, rule of law, sovereignty and integrity, basic human rights, etcetera, are under attack of such extreme, radical and terror acts. Though phenomenon of extremism, radicalism, fanatism or terrorism is complex, a terrorist or such like an act is easily identifiable when it does occur. The core meaning of the term is clear even if its exact frontiers are not.

17. The threat that we are facing is now on an unprecedented global scale. Terrorism has become a global threat with global effects. It has become a challenge to the whole community of civilized nations. Terrorist activities in one country may take on a transnational character, carrying out attacks across one border, receiving funding from private parties or a government across another, and procuring arms from multiple sources. Terrorism in a single country can readily become a threat to regional peace and security owing to its spill over ramifications. It is, therefore, difficult in the present context to draw sharp distinctions between domestic and international terrorism. Many happenings in recent past caused international community to focus on the issue of terrorism with renewed intensity. Anti-fanatism, anti-extremism, antiterrorism activities in the global level are mainly carried out through bilateral and multilateral cooperation among nations. It has, in such

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circumstances, become our collective obligation to save and protect the State and its subjects from uncertainty, melancholy and turmoil.

18. Personal liberty is one of the most cherished freedoms, perhaps more important than the other freedoms guaranteed under the Constitution. It was for this reason that the Founding Fathers enacted the safeguards in Article 22 in the Constitution so as to limit the power of the State to detain a person without trial, which may otherwise pass the test of Article 21, by humanising the harsh authority over individual liberty. In a democracy governed by the rule of law, the drastic power to detain a person without trial for security of the State and/or maintenance of public order, must be strictly construed. However, where individual liberty comes into conflict with an interest of the security of the State or maintenance of public order, then the liberty of the individual must give way to the larger interest of the nation. These observations have been made by the Supreme Court in ***The Secretary to Government, Public (Law and Order-F) and another v. Nabila and another, 2015 (12) SCC 127.***

19. The satisfaction of detaining authority that detenu is already in custody and he is likely to be released on bail and on being released, he is likely to indulge in the same prejudicial activities is the subjective satisfaction of the detaining authority. The Supreme Court in the case of ***Senthamilselvi v. State of T.N. and another, 2006 (5) SCC 676,*** has held that satisfaction of detaining authority, coming to conclusion that there is likelihood of detenu being released on bail is "subjective satisfaction", based on materials and normally subjective satisfaction is not to be interfered with.

20. Observing that the object of preventive detention is not to punish a man for having done something but to intercept and to prevent him from doing so, the Supreme Court in the case of ***Naresh Kumra Goyal v. Union of India and others, 2005 (8) SCC 276,*** and ingeminated in the judgement dated 18th July 2019, rendered by the Supreme Court in Criminal Appeal No.1064 of 2019 arising out of SLP (Crl.) no.5459 of 2019 titled ***Union of India and another v. Dimple Happy Dhakad,*** has

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held that an order of detention is not a curative or reformative or punitive action, but a preventive action, avowed object of which being to prevent antisocial and subversive elements from imperilling welfare of the country or security of the nation or from disturbing public tranquillity or from indulging in antinational activities or smuggling activities or from engaging in illicit traffic in narcotic drugs and psychotropic substances, etc. Preventive detention is devised to afford protection to society. The authorities on the subject have consistently taken the view that preventive detention is devised to afford protection to society. The object is not to punish a man for having done something but to intercept before he does it, and to prevent him from doing so.

21. The judgment of the Supreme Court relied upon by the learned counsel for the petitioner in the case reported as ***AIR 2021 SC 3656 Banka Sneha Sheela vs. State of Telengana & Ors*** is not applicable in the present case.

22. In the backdrop of foregoing discussion, the petition is *shorn* of any merit and is, accordingly, **dismissed**.

23. Xerox copy of the detention record be returned to learned counsel for respondents.

(TASHI RABSTAN)
JUDGE

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Whether the order is reportable? Yes

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