

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

HCP No. 86/2014

Date of decision: 28.05.2015

Ghulam Nabi Lone
Vs.
State of J&K & ors.

Coram:-

Hon'ble Mr. Justice Mohammad Yaqoob Mir, Judge

Appearing counsel:-

For the petitioner(s):- Mr. Mohammad Ashraf Wani, Adv.

For the respondent(s):- Mr. Asif Ahmad vice S.Gowhar,AAG.

1. By the medium of this petition quashment of the detention order bearing No. DMG/PSA/09 of 2014 dated 31.10.2009 is sought.
2. As against the detenu, two cases; one FIR No. 46/2009 under Section 379 RPC, 6 Forest Act of P/S Tangmarg and second FIR No. 63/2014 under Section 379, 353, 447 A, 147 RPC, 6 Forest Act of P/S Khag have been registered. The activities of the detenu have been noticed to be prejudicial to the forest wealth. To prevent the detenu from indulging in illicit trade of timber smuggling and colossal damage to the forests, has been detained and the detention order has been confirmed by the Government and the period of detention has been fixed as 12 months as is clear from the Government order No. Home/PB-V/1775/2014 dated 23.12.2014. Detenu is shown to have been arrested in the month of October 2014. By now he is in custody for nearly seven months.
3. The first ground as projected is that, the grounds of detention as formulated by the District Magistrate is nothing but a copy of dossier prepared by the SSP with change of words here and there, which shows that the

detaining authority has not applied its mind, when the requirement is that all material collected by the police or any other agency has to be placed before the detaining authority and on proper scrutiny thereof the detaining authority has to derive subjective satisfaction. All that the detaining authority has done is that, has simply mentioned in the grounds of detention '*whatever is mentioned in the dossier*'. This way application of mind as well as subjective satisfaction has become casualty.

4. The authorities must know that liberty of a person is precious, for curtailment of the same a solid foundation has to be laid based on which the detaining authority has to derive subjective satisfaction then to hold that prevention is essential so as to deter a person from indulging in the activities, in the instant case viz. damage to the forests.
5. First case has been registered against the detenu in the year 2009 and second in the year 2014; whether such two incidents would provide a solid base for ordering preventive detention, when nothing adverse is attributed to the detenu from the year 2009 to 2014, this aspect of the case has been overlooked.
6. In the dossier it has been recorded that in the earlier case FIR No.46/2009 petitioner has been enlarged on bail, therefore, there is every likelihood that as and when the subject is arrested in case FIR No. 63/2014, he will again get himself enlarged on bail and will again carry on with timber smuggling. In the grounds of detention, as formulated by the detaining authority, it is mentioned that in connection with FIR No. 63/2014 the detenu is evading arrest and there is every apprehension that the moment he is arrested in connection with case FIR No. 63/2014 he will again get enlarged on bail.

7. It is a strange state of affairs that the authorities simply on apprehensions, before the arrest of the detenu in connection with FIR No.63/2014, have apprehended that he can get enlarged on bail. At-least authorities concerned could contest the matter before the court and to oppose the concession of bail and then to seek cancellation of the bail as granted by the concerned authorities in connection with FIR No. 46/2009; this again shows that the authorities concerned have not applied their mind.
8. The important safeguard as against the preventive detention guaranteed to the detenu is right of representation against the detention, same is the soul of Article 22 of the Constitution of India, which in turn safeguards right of liberty as guaranteed under Article 21 of the Constitution of India. For effective representation detenu is required to be furnished all material collected and relied upon while formulating the grounds of detention. The detention record, as produced, reveals that the detenu has been supplied just two leaves of detention order which in turn would suggest that he has been deprived from making any representation.
9. Taking all the aforesaid aspects in view coupled with the fact that out of the 12 months detenu has already been in preventive custody for nearly 7 months, the order of detention bearing No. DMB/PSA/09 of 2014 dated 31.10.2014 in law is unsustainable, therefore, quashed. Detenu namely Gh. Nabi Lone S/o Gh. Rasool Lone R/o Sutharan Tehsil Khag, District Budgam, shall be released forthwith provided he is not required in any other case.
10. Petition accordingly succeeds, as such, shall stand disposed of.
11. Detention records, as produced, be returned to the learned counsel for the respondents.

(Mohammad Yaqoob Mir)

Judge

Srinagar
28.05.2015
Muzamil