

HIGH COURT OF JAMMU AND KASHMIR
SRINAGAR

Case No: HC(w) 185/2016

Dated : 15th Nov, 2016

HASSAN BABAR NEHRU

VERSUS

STATE & ORS

ORDER SHEET

CORAM:

HON'BLE *MR. JUSTICE MUZAFFAR HUSSAIN ATTAR- JUDGE*

Whether approved for reporting : yes

FOR THE PETITIONER/s : *WIFE OF THE PETITIONER PRESENT*

FOR THE RESPONDENT/s: *MR. B.A.DAR, AAG*

(ORAL)

1/ The Court took cognizance of this petition on 07th September, 2016. Matter came up before the Court on 24th October, 2016. On that date, two weeks' time was granted to learned counsel for the respondents for filing Reply Affidavit. It was also directed that record shall be produced on next date of hearing.

2/ Reply Affidavit has not been filed. At this stage, Mr. B.A.Dar, learned AAG, submitted that he has received the reply and other documents, but he could not file the same. He produced the reply Affidavit, which is signed by the concerned Deputy Commissioner (DC), and is taken on record along with connected documents. Mr. Dar also produced copy of Government order No. Home/PB-V/673 of 2016 dated 23rd August, 2016, to show that the Government has approved the detention order passed by the DC, Doda, in respect of the petitioner – detainee. The said copy of the order is also taken on record.

3/ Learned counsel for the respondents vehemently argued and prayed for dismissal of the writ petition, inter alia, on the ground that the detainee, due to his activities, has caused threat to the public order. Mr. Dar, learned AAG, while referring to the Reply Affidavit and the material enclosed therewith, submitted that the provisions of

the J&K Public Safety Act of 1978 (for short Act of 1978) have been complied with in all fours. Learned counsel also referred to the allegations made against the detainee to show that his (detenue's) remaining at large had caused serious threat to public order and in the over all facts and circumstances of this case, the Detaining Authority was left with no option but to invoke the provisions of the Act of 1978 to order for his detention. Learned counsel submitted that the entire record, upon which the Detaining Authority has relied, has been provided to the detainee. Mr. Dar further submitted that bail has been granted to the detainee by the Court of competent jurisdiction in the F.I.Rs, which stand registered against him. Learned counsel submitted that there being complete compliance with the provisions of the article 22 of the Constitution of India and the Act of 1978, this petition would merit dismissal and, accordingly, prayed for its dismissal.

4/ Though the grounds of detention contain serious allegations against the detainee, for which he has been booked in different F.I.Rs but since the said allegations have not to be proved or disproved in these proceedings, as such, their veracity cannot be adjudged here in these proceedings. It is always on the basis of presumptive conclusions that the statutory authority invokes the provisions of the Act of 1978 for ordering detention of a person under the said Act.

5/ Preventive Detention Laws seriously impinge upon liberty of a person, which is his birth right and is recognized by article 21 of the Constitution of India. A person, if there are allegations against him of commission of criminal offence/s, can be prosecuted in a Criminal Court of Law and on successful completion of trial, he can be convicted and sentenced by the Court of law.

6/ The Preventive Detention Laws can be invoked to prevent a person from indulging in such activities, which activities, on subjective satisfaction of the Detaining Authority, constitute potential threat to the public order or to the security of the State. Since the power to detain a person, on the grounds, which are not to be proved or disproved in a Court of law, give omnibus power for depriving a person of his liberty, the Constitution makers have provided effective safeguards, which would ensure that such power is not abused or misused and the person is not, unnecessarily, deprived of his personal liberty, which right is protected by the Courts of law.

7/ Assuming that in the facts and circumstances of this case, there is compliance with the provisions of the Act of 1978, in as much as, the entire material has been provided to the detenue, upon which the Detaining Authority has relied, while ordering his detention and he has been also informed that he can file representation against his detention, still, in view of the law laid down by Hon'ble the Supreme Court in case titled G.M.Shah versus State of J&K, reported in (1980) 1 Supreme Court Cases 132, this petition is to be allowed. Paragraph (9) of the said judgement, which is relevant to the facts of this case is taken note of :

"...As observed by Hidayatullah, J (as he then was) in Dr. Ram Manhar Lohia vs. State of Bihar one has to imagine three concentric circles, in order to understand the meaning and import of the above expression. 'Law and order' represents the largest circle within which is the next circle representing "public order" and the smallest circle represents "security of State". It is then easy to see that an act may affect law and order but not public order just as an act may affect public order but no security of State. It is in view of the above distinction, the Act defines the expressions "acting in any manner prejudicial to the security of the State" and "acting in any manner prejudicial to the maintenance of public order" separately. An order of

detention made either on the basis that the detaining authority is satisfied that the person against whom the order is being made is acting in any manner prejudicial to the security of the State or on the basis that he is satisfied that such person is acting in any manner prejudicial to the maintenance of public order but which is attempted to be supported by placing reliance on both the bases in the grounds furnished to the detenu has to be held to be an illegal one vide decisions of this Court in Bhupal Chandra Ghosh vs. Arif Ali and Satya Brata Ghose vs. Arif Ali.”

8/ In order to show that the aforesaid judgement, in all fours, covers this case, the detention order dated 14th August, 2016, impugned herein, is also taken note of :

“OFFICE OF THE DISTRICT MAGISTRATE, DODA

NO. 20-28/PSA/DM/Doda/2016

Dated : 14.08.2016

1/ Whereas, I, District Magistrate, Doda am satisfied with a view to prevent Hassan Babar Nehru S/O Zaffarullah Nehru r/O Nehru Chowk, Doda, city, Tehsil and District Doda, from acting in a manner prejudicial to the security of the State as well as to the maintenance of public order, as it is necessary to do so.

2/ Now, therefore, in exercise of the powers conferred on me, under section 8 of the J&K Public Safety Act, 1978, I, District Magistrate, Doda, do hereby order that Hassan Babar Nehru S/O Zaffarullah Nehru r/O Nehru Chowk, Doda, city, Tehsil and District Doda, be detained in Central Jail, Kot Bhalwal Jammu for the period, to be determined by the Advisory Board.

Sd/

***District Magistrate,
Doda (J&K)”***

9/ Order dated 23rd August, 2016, passed by the Government, whereunder the aforesaid order of detention has been approved, is also taken note of :

***“Government of Jammu & Kashmir
Civil Secretariat, Home Department
Jammu/Srinagar.***

Sub : Detention under the Jammu and Kashmir Public

Safety Act, 1978.

Government order No. Home/PB-V/673 of 2016

Dated : 23-08-2016

Whereas District Magistrate, Doda, in exercise of powers conferred u/s 8(1)(a)(i) of the J&K Public Safety Act, 1978, vide order NO. 20-28/PSA/DM/Doda/2016 dated 14-08-2016 has ordered the detention of Hassan Babar Nehru S/O Zaffarullah Nehru R/O Nehru Chowk, Doda City, Tehsil and district Doda with a view to prevent him from acting in any manner prejudicial to the maintenance of public order and directed his lodgement in, Central Jail Kot Bhalwal Jammu ; and

Whereas, District Magistrate, Doda , endorsed a copy of order dated 14-08-2016 to Home Department for approval as envisaged under sub section (4) of section 8 of the Act ; and

Whereas, the grounds of detention were examined and considered by the Government ; and

Whereas, the detenue has also been endorsed a copy of grounds of detention and the material relied upon by the detaining authority to enable him to make a representation against his detention order as provided under the Jammu and Kashmir Public Safety Act, 1978.

Now, therefore, in exercise of powers conferred by sub section (4) of section 8 of the Jammu and Kashmir Public Safety Act, 1978, the Government hereby approve the aforesaid detention order NO.20-28/PSA/DM/Doda/2016 dated 14-08-2016 passed by the District Magistrate, Doda. The period of detention shall be determined on the basis of opinion of State Advisory Board.

By order of the Government of Jammu and Kashmir.

Sd/-

*Principal Secretary to Government
Home Department."*

10/ In the detention order, the Detaining Authority has stated that it is satisfied with the view "*to prevent Hassan Babar Nehru S/O Zaffarullah Nehru r/O Nehru Chowk, Doda, city, Tehsil and District Doda, from acting in a manner prejudicial to the security of the State*

as well as to the maintenance of public order, as it is necessary to do so" , which order has been approved by the Government in terms of order dated 23rd August, 2016.

11/ Hon'ble the Supreme Court in G.M.Shah's case supra has held the order of the like nature to be illegal. This Court, in view of law laid down by the apex Court, which is binding on all, in terms of

article 141 of the Constitution of India, has no option but to declare the impugned order of detention to be illegal.

12/ The subsequent order of approval is only a statutory consequential order and it only approves what has been done by the Detaining Authority. Even this order suffers from lack of application of mind, in as much as, in the opening paragraph of the said Government order, it is mentioned that the District Magistrate, Doda, in exercise of powers conferred upon him u/s 8(1)(a)(i) of the J&K Public Safety Act 1978, has ordered detention of the detainee with a view to prevent him from acting in any manner prejudicial to the maintenance of public order, when, as a matter of fact, order of detention has been passed to prevent the detainee from acting in any manner prejudicial to the security of the State as well as maintenance of public order.

13/ This court is duty bound to follow the law handed down by Hon'ble the Supreme Court and to uphold the basic human right of "***Right to Personal Liberty***", recognized by article 21 of the Constitution of India.

14/ For the above stated reasons, this writ petition is disposed of in the following manner :

"By issuance of writ of Certiorari, order NO. 20-28/PSA/DM/Doda/2016 dated : 14.08.2016, issued by respondent No.2 is quashed with further direction to the respondents to release the person of Shri Hassan Babar Nehru S/O Zaffarullah Nehru R/O Nehru Chowk, Doda, city, Tehsil and District Doda forthwith from preventive detention."

15/ Disposed of along with Cr.MPs.

TARIQ MOTIA
SRINAGAR,
14-02-2012

(MUZAFFAR HUSSAIN ATTAR) J

