HIGH COURT OF JAMMU AND KASHMIR AT SRINAGAR

HCP No. 74/17	Date of Decision: 21.06.2017
Tanveer Ahmad Gojree	**v** **State and ors**

Coram:

Hon'ble Mr. Justice Ali Mohammad Magrey, Judge

Appearing counsel:	
For Appellant/Petitioner(s):	Mr. M. Tufail, adv.
For Respondents:	Mr. Asif Maqbool, GA
Whether to be approved for law journal:	Yes
Whether to be approved for press:	Yes

The *detenu*, Tanveer Ahmad Gojree son of Nazir Ahmad Gojree resident of Singhpora, Pattan, District Baramulla, through his brother seeks quashment of detention order no. 262/DMB/PSA/2017 dated 22.02.2017, purporting to have been passed by District Magistrate Baramulla, with consequent prayer for release of the *detenu* forthwith.

The detention order, *inter alia*, is challenged on the grounds:

a) That there are no compelling reasons given in the order or the grounds of detention to take the detenue in preventive detention, moreso in view of the fact that as on the date of passing of the aforesaid order of detention, the detenue was already in custody;

b) That the detenue has not been provided the material forming basis of the detention order, to make an effective representation against his detention order;

c) That the grounds of detention have not been furnished to the detenue in a language which he understood.

Pursuant to notice respondents appeared through their learned counsel and filed the counter affidavit stating therein that the detention order is well founded, in fact and law, and seeks dismissal of the Habeas Corpus Petition.

Heard learned counsel for the parties and perused the records.

Learned counsel for petitioner submitted that the grounds taken in the detention order and the material referred to and relied upon has no relevance because the detenue was already in custody, therefore, there was no possibility that the detenue would indulge in activities prejudicial to the maintenance of public order. It is submitted that in absence of material the detention order is passed on mere *ipsi dixit* of detaining authority, therefore, the detention order is bad in law. In support of his submissions learned counsel referred to and relied upon the law laid down in case reported as (2006) 2 SCC 664 delivered in case titled T. V. Sravanan alias S.A.R. Prasana v. State through Secretary and anr.

Learned counsel for the petitioner further submitted that the detaining authority has not applied its mind while issuing the impugned order, for, it

refers to the activities of the detenue being prejudicial to the security of the State and in the grounds of detention it is mentioned that the activities of the detenue are prejudicial to the maintenance of public order.

The learned counsel for petitioner would further submit that the detenue has not been provided the material referred to in the grounds of detention resultantly the right of making effective representation against the impugned order of detention, as enshrined under Article 22 (3) of the Constitution, has been violated.

Mr. Asif Maqboo, GA, on the other hand submitted that the impugned order of detention is well founded and there is nothing bad about it. He submitted that the detenue has been provided the material relied upon by the detaining authority while detaining him. He further submitted that the detenue has also been informed about his right of making representation against his detention. He submitted that the detaining authority has fully applied its mind while issuing the detention order and there is nothing on record to controvert it. Learned State Counsel referred to and relied upon the law laid down in 2011 (2) JKJ 213; 2012 (1) JKJ, 332 and 20123 (I) SLJ 303.

Perusal of the records would reveal that the detenue has been furnished the grounds of detention along with the requisite material. He has also been informed about his right of making representation against his detention, but the detenue has chosen not to make the representation, therefore, the fault, if any, is attributable to the detenue and not to the detaining authority. Thus, the ground raised vis-à-vis non-furnishing of material to the detenue is rejected.

In terms of the provisions of the Jammu and Kashmir Public Safety Act, 1978, for short as Act, the detention order, once passed by the Detaining Authority, has to be approved by the Government and confirmed only after the Advisory Board furnishes its opinion. In the instant case the order of detention has been issued on 22.02.17 which is approved by the Government within time, complying thereby the mandate of sub section (4) of Section 8 of the Act. It is to be borne in mind that preventive detention has been held to be a necessary evil, and liberty of an individual is curtailed, within reasonable bounds, for the good of the people. However, there are certain safeguards to be fulfilled while detaining a person under the law providing for such detention. Chapter IV of the Act deals with the power to make an order detaining a person. Section 8 reads as follows:-

> "8. Detention of certain persons:

The Government may –

(a) If satisfied with respect to any person that with a view to preventing him from acting in any manner prejudicial to –
(i) The security of the State or the maintenance of the public order;

(a-1) if satisfied with respect to any person that with a view to preventing him from_

(i)…

(ii)…

(iii)…

(iv)…

(v)…
(b)…

it is necessary so to do, make an order directing that such person be detained.

Any of the following officers, namely__

Divisional Commissioners

District Magistrate,

may, if satisfied as provided in sub-clauses (i) and (ii) of clause (a) or (a-1) of sub-section (1) exercise the powers conferred by the said sub-section.

(3)…

(4)…"

From a reading of the aforesaid provision it becomes axiomatic that the Government can detain a person when it is satisfied that, with a view to preventing that person from acting in any manner prejudicial to the security of the State or maintenance of the public order, it may do so. Section 8(2)

of the Act also confers such power on the Divisional Commissioners/ the District Magistrates.

The condition precedent [rather the sole condition of lawful detention, as held by the Supreme Court in A. K. Gopalan v. State of Madras, AIR 1950 SC 27, para 23, (a six Judges Bench judgment)] for the exercise of such power of preventive detention conferred on the prescribed authorities in terms of Section 8 of the Act is the satisfaction of such authority, that the person has to be detained for a purpose reflected in the relevant Act. This satisfaction, which is fundamental to the detention of a person, is relatable to the facts set out in the grounds on which such satisfaction is arrived at. This results in an order of detention which, *inter alia*, is served with a warrant of arrest for the detention.

When a detenue approaches the Court with a habeas corpus petition challenging such an order, he actually challenges his detention questioning the basis for the detention and the satisfaction of the detaining authority. The Court examines whether the requisite satisfaction has been arrived at by the authority on proper application of mind and in accordance with the settled principles of law. It may be mentioned here that courts by judicial decision have carved out areas within which the validity of subjective satisfaction is tested judicially. If the court find that there is no such

satisfaction accorded or that the satisfaction recorded in the detention order could not have been arrived at on the basis of the grounds of detention and the material referred to therein, the condition precedent to the exercise of the power is not fulfilled. Consequently, the exercise of the power would be bad and the detention of the person concerned will be illegal and unlawful.

Then, Section 15 of the Act provides that in every case, where a detention order has been made under the Act, the Government shall, within four weeks from the date of detention under the order, place it before the Advisory Board, constituted by it under Section 14 of the Act, the grounds on which the order has been made, the representation, if any, made by the person affected by the order and, in case where the order has been made on a report by an officer, the report by such officer under sub-section (4) of Section 8. When the Advisory Board, after considering the requisite material, including the representation made by the detenue, makes a report (within six weeks from the date of detention) that, there is, in its opinion, sufficient cause for such detention, the opinion of the Advisory Board in effect decides the representation of the detenue for or against him. But the detenue need not necessarily challenge the opinion as it relates to the satisfaction initially arrived at by the detaining authority. However, the

official respondents would have to satisfy the Court that the constitutional safeguard has been duly and strictly fulfilled and followed.

Section 17 of the Act provides that in a case where the Advisory Board has reported that there is, in its opinion, sufficient cause for the detention of a person, the Government may confirm the detention order and continue the detention of the person concerned for such period as it thinks fit. This communication provided under Section 17 of the Act is an approval both to the detention and the satisfaction originally attained by the detaining authority. In the event also a fresh order comes into existence yet it will be open to the detenue to raise any issue on this in the pending Heabus Corpus petition. The need to challenge the same on any ground is detenue's option.

We come to Section 18 of the Act which is the bone of contention presently. Section 18 prescribes the maximum period of detention for which a citizen can be detained. Since the controversy relates to an order passed pursuant to this Section, it would be appropriate to refer to this Section, in so far as it is relevant.

"18. Maximum period of detention.

(1) the maximum period for which any person may be detained in pursuance of any detention order which has been confirmed under section 17, shall be

(a) three months in the first instance which may be extended up to twelve months from the date of detention in the case of person acting in any manner prejudicial to the maintenance of public order;

(a-1)…

(b)

(2) Nothing contained in this section shall affect the powers of the Government to revoke or modify the detention order at any earlier time, or to extend the period of detention of a foreigner in case his expulsion from the State has not been made possible."

Before adverting to the above provision, it be mentioned here that once an authority mentioned in sub-section (2) of Section 8 of the Act exercises the power conferred on it there under and fulfils the procedural safeguards of furnishing grounds of detention and the relevant relied upon material to the detenue, such authority has limited role vis-à-vis the detention of the concerned, as the purpose of conferment of the power under Section 8 stands accomplished. This becomes clear from Section 19 of the Act as well. Thereafter, all other safeguards enshrined in Article 22 (5) of the Constitution of India and requirements prescribed by the relevant law have to be fulfilled by the Government.

The perusal of the record would further reveal that the grounds of detention have been explained to the detenue in the language he understands and the copy has been handed over to him along with the records and the detenue has been informed about his right of making representation against his detention. This would mean that the requirement of Section 25 of the Act has been fulfilled.

The next contention of the learned counsel for petitioner that the impugned order is an outcome of non-application of mind is also belied by the records produced by the learned State Counsel. The records would show as to how the detenue has been uncontrollable despite having been framed in as many as seven different FIRs allegedly for committing various offences including the unlawful activities. The detailed grounds of detention and the records referred to the detaining authority were sufficient to derive satisfaction as regards the detention of detenue under the provisions of the Act. Thus the order does not appear to be suffering from non-application of mind.

As per the settled position of law if a detention order is issued on more than one ground independent of each other, the detention order will survive even if one of the grounds is found to be unfound or legally unsustainable. In the present case the detention order is issued on more

than one ground independent of each other, therefore, the detention order does not get vitiated even if one of the grounds taken in support of the petition is turns affirmative. My this view is fortified by a law laid down by the Supreme Court in case titled Gautam Jain v. Union of India and anr., reported as 2017 (1) Jammu Kashmir Law Times, Vol. 1 (SC) p. 1.

The next ground taken by the detenue that the detaining authority did not record as to under which compelling reasons the detenue is required to be kept in custody under preventive laws when he was already in jail and was not granted bail.

Since the court has already held that the detention survives even if one of the grounds taken in support of the petition remains unexplained or proves to be bad in law, therefore, the detention order can be maintained in absence of any explanation on this count by the respondents.

For all what has been said hereinbefore and having regard to the law laid down and noted hereinabove the petition fails and is dismissed as such. The impugned detention order, accordingly, sustains and is maintained. Record is returned to the learned State Counsel in the open court.

(Ali Mohammad Magrey)
Judge

Srinagar
21.06.2017
Ayaz