

**THE HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT JAMMU**

WP(Crl) No. 62/2021

Pronounced on: 28.04.2022

Anil Singh

.... Petitioner(s)

Through:- Mr. Jagpaul Singh, Advocate,
V/s

UT of J&K and another

.....Respondent(s)

Through:- Mr. Ravinder Gupta, AAG
with Mr. Raja Mohit Bucha,
Advocate

Coram : HON'BLE MRS. JUSTICE SINDHU SHARMA, JUDGE

JUDGMENT

01. The District Magistrate, Samba vide order No. 03/PSA of 2021 dated 16.06.2021 detained the detenu under Section 8 (1)(a) of the Jammu and Kashmir Public Safety Act, 1978 in order to prevent him from acting in any manner prejudicial to the maintenance of public order.

02. The detenu has assailed the order of detention on the following grounds; (i) the impugned detention order was passed when the detenu was already in judicial custody in FIR No. 03/2021. The respondents have not disclosed any compelling circumstances which require the preventive detention of the detenu; (ii) the impugned order of detention is a verbatim copy of the police dossier, as such, there is total non-application of mind on the part of the Detaining Authority, while passing the order of detention; (iii) the detenu was arrested in FIR No. 66/2003 and was acquitted of the same vide order dated 08.01.2013, similarly the detenu was granted bail in FIR Nos. 33/2009 and 86/2010 but the respondent-Detaining Authority has not shown any awareness to this fact, therefore, there is lack of application of mind while passing the order; (iv) the detenu was not provided all the

material relied upon by the Detaining Authority while passing order of detention, as such, precluded him from his right of making effective representation; and (vi) lastly, the detenu, immediately, after his arrest on 12.07.2021 moved a representation to respondents but the same has been neither considered nor decided till date.

03. The respondents in their objections have submitted that, the activities of the detenu were prejudicial to the maintenance of law and order and tranquility, as such, detenu was detained under the Jammu and Kashmir Public Safety Act, 1978. The detenu, it is submitted, is a hardcore criminal and had attained notoriety and the common law of the land had failed to deter him from undertaking activities prejudicial to the maintenance of public order, therefore, in order to maintain peaceful atmosphere and to prevent him from spreading, expanding and continuing his criminal activities and disturbing public order, it had become necessary to detain him under Public Safety Act.

04. The respondents further submit that there is no legal or procedural infirmity in order of detention, as such, the petition deserves to be dismissed. The detenu was provided with the grounds of detention which were duly explained to him in the language he understands. He was also informed about his right to make a representation. It is urged that the grounds of detention are definite, proximate and free from any ambiguity and all Constitutional safeguards have been followed. It is also submitted that detenu was also informed about what actually weighed with the Detaining Authority while passing the order of detention under Section 8 of J&K Public Safety Act, 1978.

05. Heard learned counsel for the parties and perused the record.

06. Perusal of the detention order and the grounds of detention reveals that the Detaining Authority has not shown any awareness to the fact that the detenu was acquitted in FIR No. 66/2003 and was granted bail in FIR Nos. 33/2009, 86/2010 and 203/2019. The Detaining Authority has also failed to disclose the compelling reasons for passing order of detention when the detenu was already in custody. The Detaining Authority has, thus, failed to show compelling reasons warranting the detention of the detenu under Section 8 of the J&K Public Safety Act.

07. There is no response to the averment that the detenu was granted bail in FIR No. 33/2009, FIR No. 86/2010, FIR No. 203/2019 and acquitted in FIR No. 66/2003. The Detaining Authority was, thus, not alive to the situation and, thus, there was total non-application of mind by the Detaining Authority while passing the order of detention, as such, the impugned detention was vitiated.

08. The Supreme Court in **Anant Sakharam Raut and others V. State of Maharashtra and another, AIR 1987 SC 137**, while considering similar proposition, it has been held that:

“5..... the one contention strongly pressed before us by the petitioner's counsel is that the detaining authority was not made aware at the time the detention order was made that the detenu had moved applications for bail in the three pending cases and that he was enlarged on bail on 13-1-1986, 14-1-1986 & 15-1-1986. We have gone through the detention order carefully. There is absolutely no mention in the order about the fact that the petitioner was an under trial prisoner, that he was arrested in connection with the three cases, that applications for bail were pending and that he was released on three successive days in three cases. This indicates a total absence of application of mind on the part of the detaining authority while passing the order of detention.

“7..... that there was clear non-application of mind on the part of the detaining authority about the fact that the petitioner was granted bail when the order of detention was passed. In the result we set aside the Judgment of the Bombay High Court under appeal, quash the order of detention and direct that the petitioner be released forthwith.....”

09. The detenu, it is next submitted, moved a representation on 12.07.2021 against his detention and the same is placed on the record, but it is apparent that this representation has not been considered till date. The detenu has a statutory right to make a representation against his detention to the respondents, who are under duty to consider the same.

10. Article 22(5) of the Constitution of India provides for specific protection to under trials and detainee. Article 22(5) of the Constitution of India reads as under:-

“When any person is detained in pursuance of an order made under any law providing for preventive detention, the Authority making the order shall, as soon as may be, communicate to such person the grounds on which the order has been made and afford him an earliest opportunity of making a representation against the order, therefore, it casts a duty upon the Detaining Authority to communicate to the detenu the grounds on which the order is made and a corresponding right arising in him of making such representation against his detention.”

11. In ‘**Sarabjeet Singh Mokha V. District Magistrate, Jabalpur and others,**’ 2021 SCC Online SC 1019, it has been held that:

“22.Article 22(5) reflects a keen awareness of the framers of the constitution that preventive detention leads to the detention of a person without trial and hence, it incorporates procedural safeguards which mandates an immediacy in terms of time. The significance of Article 22 is that the representation which has been submitted by the detenu

must be disposed of at an early date. The communication of the grounds of detention, as soon as may be, and the affording of the earliest opportunity to submit a representation against the order of detention will have no constitutional significance unless the detaining authority deals with the representation and communicates its decision with expedition.”

12. The right to personal liberty is guaranteed and in order to curtail the freedom, there must be a cogent cause and strict adherence to the safeguards prescribed. The impugned detention order for the reasons stated is unsustainable in the eyes of law. The Detaining Authority has, thus, not considered the representation of the detenu till date and thus, there is violation of the valuable right of the detenu under Article 22(5) of the Constitution.

13. In view of the aforesaid discussion, the respondents have not adhered to the legal and constitutional safeguard while passing the impugned order of detention. Therefore, the order of detention is unsustainable. This petition is, accordingly, allowed and impugned detention order No. 03/PSA of 2021 dated 16.06.2021 passed by District Magistrate, Samba is quashed. The detenu is directed to be released from preventive custody forthwith, if he is not required in connection with any other case.

14. Connected application, if any, shall also stand **disposed of**.

15. Record be returned.

(Sindhu Sharma)
Judge

JAMMU
28th .04.2022
SUNIL-II

Whether the order is speaking	:	Yes/No
Whether the order is reportable	:	Yes/No