

Sr. No.1

Regular

IN THE HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT SRINAGAR

LPA No. 185/2022 in
[WP(Crl) No. 107/2022]

Reserved On: 26.12.2023
Pronounced On: 30.12.2023

Shabir Ahmad Najar

...Petitioner(s)/appellant(s)

Through: Mr. B. A. Tak, Advocate

Vs.

Union Territory of J & K & Anr.

...Respondent(s)

Through: Mr. Zahid Qais Noor, GA.

CORAM:

HON'BLE THE CHIEF JUSTICE

HON'BLE MR. JUSTICE M. A. CHOWDHARY, JUDGE

ORDER

26.12.2023

N. Kotiswar Singh, C.J.:

1. Heard Mr. B. A. Tak, learned counsel for the Appellant and also Mr. Zahid Qais Noor, learned GA for the respondents.
2. The present Appeal has been preferred against the Judgment and Order dated 31.08.2022 passed in WP (Crl) No. 107/2022 titled "Shabir Ahmad Najar vs Union Territory of J & K & Ors.", whereby the learned Single Judge dismissed the writ petition challenging the detention of the petitioner-appellant under Detention Order No. 03/DMP/PSA/2022 dated 03.03.2022, passed by the District Magistrate, Pulwama.
3. Background facts of the case leading to the detention and present proceedings are stated briefly hereunder.

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4. The detainee was arrested on 07.08.2021 by the Police in connection with FIR No. 52/2021, registered under Sections 18, 20 & 38 ULAP Act of the Police Station, Khrew. After the detainee was bailed out in connection with the aforesaid case, he was taken into preventive detention vide impugned detention order dated 03.03.2022. The said police case was registered against him after the detainee was apprehended with the assistance of security forces from Khrew, as he was found hiding in a truck bearing registration No. JK13-2357, from which, a huge quantity of arms and ammunition/explosive material was recovered. The detainee was released on bail in connection with the said case. However, before being released on bail, the detention order was served upon him.
5. Learned Single Judge after considering the rival contentions of the parties held that the detention under the J&K Public Safety Act, 1978 had been passed on the subjective satisfaction of the Detaining Authority to prevent the detainee from acting in a manner prejudicial to the Security of State, and, it is not by way of punishment and referred to a decision of Hon'ble Supreme Court in *Haradhan Saha v. State of W. B. (1975) 3 SCC 198*.
6. Learned Single Judge, on perusal of the detention record produced by the authorities also observed that it was made known that the Detention Order was made on proper application of mind based on the facts mentioned therein and, at the time of execution of the Detention Order, all the materials and grounds of detention were furnished to the petitioner-appellant, and was also informed that he had a right to represent against his preventive detention, and the grounds and documents had been read over and explained to the detainee in Kashmiri language, which he fully

understood, in acknowledgement of which, he put his signature unto the Execution report. Accordingly, the learned Single Judge negated the contention of the Detenue that he was not informed that he had a right to file representation against the detention.

7. Learned Single Judge also observed that the grounds of detention are definite, proximate and free from any ambiguity and the Detenue was informed with sufficient clarity of what actually weighed with Detaining Authority while passing the Detention Order by narrating the facts mentioned in the grounds of detention to the effect that the Detenue had developed secessionist and separatist ideology from the teen age and was a sympathizer of the elements who followed the same ideology, and, in the year 2017, he came in contact with a foreign terrorist who motivated him as Over Ground worker (OGW) and that he joined the banned terrorist organization, Hizb-ul-Mujahedeen (HM), and was categorized as “C” category terrorist of HM outfit vide ZPHQ letter No. ZPHQ/PS/Cat/Part-VI/21/21/16732-35 dated 22.08.2021, and, that he was arrested with the assistance of Security Forces from Khrew on 08.08.2021, while travelling in a truck in which arms and ammunition/explosive material were recorded from him.
8. The Detenue was stated to have managed his release on bail. However, as per inputs from reliable sources, the Detaining Authority was satisfied that as the Detenue was likely to formulate a strategy to vitiate the atmosphere, issued the Detention Order. Accordingly, the learned Single Judge was of the view that it cannot be said that subjective satisfaction of Detaining Authority was wrongly arrived at or the grounds of detention are self-

contradictory or vague. The learned Single Judge also referred to a decision of Hon'ble Supreme Court in *The State of Bombay v. Atma Ram Shridhar Vaidya AIR 1951 SC 157*. The learned Single Judge held that the scope of examining the subjective satisfaction by the Detaining Authority is limited and the learned Single Judge after perusing the materials on record was satisfied that the subjective satisfaction arrived at by the Detaining Authority does not suffer from any deficiency or defect.

9. The learned Single Judge also held that the decisions relied upon by the petitioners in *Abdul Latief v. B. K Jha & Anr. (1987) 2 SCC 22; and A.K. Roy v. Union of India, (1982)*, extremely distinguishable from the facts of the present case and do not bolster his case, and, accordingly, dismissed the petition by upholding the Detention Order.
10. Learned counsel for the Appellant before us has taken three grounds in challenging to decision of the learned Single Judge.
11. Firstly, it has been submitted that the Detenue was not supplied with the material documents including the dossier which formed the basis of passing the Detention Order and submits that Detention Order suffers from this irregularity which renders it illegal. In support of his contention, learned counsel has referred to the decision in *Sophia Gulam Mohad. Bham v. State of Maharashtra & Ors 1999(7) Supreme 407*, and *Rayees Ahmad Sofi v. U T of J & K & Others in LPA No. 184/2022* decided by this Court on 31.12.2022.
12. The second ground taken by the learned counsel for the Appellant before us is that the fact that the Detenue was granted bail in FIR No. 52/2021 was

not mentioned in the grounds of the case and because of non-mentioning of the said fact, the detention order suffers from non-application of mind by the Detaining Authority. In this regard, learned counsel for the Appellant has relied upon a decision of the Hon'ble Supreme Court in ***Anant Sakharam Raut v. State of Maharashtra & Another reported as AIR 1987 SC 137.***

13. Thirdly, it has been submitted that the Detaining Authority was aware that the Detenue was a Tailor and an illiterate person, but it is seen that the grounds of detention were written in English, which the Detenue does not understand and, as such, non supply of the documents in the language he understands i.e., Kashmiri, would render the detention illegal. Learned counsel for the Appellant in this regard has relied upon a decision of the Hon'ble Supreme Court in ***Smt. Raziya Umar Bakshi v. Union of India & Others AIR 1980 SC 1751.***

14. It has been further pleaded that the impugned Judgment mentions that the preventive detention order was issued in order to prevent the Detenue from acting in any manner prejudicial to the maintenance of Public Order. On the other hand, the Detention Order states that the Appellant has been detained with a view to prevent him from acting in any manner prejudicial to the Security of the State. Accordingly, it has been submitted that there was non-application of mind by the learned Single Judge, rendering the impugned Judgment unsustainable in law.

15. In response, Mr. Zahid Qais Noor, learned Government Advocate (GA) for the respondents submitted that it is not correct that the Detenue was not supplied with the materials of detention. In fact, the grounds of detention, order of detention, as well as entire material relied upon by the Detaining Authority were provided to the detenue well within the statutory period and, it has been held by the Hon'ble Supreme Court in *Vijay Kumar v. Union of India & Others (1988) SCC 57*, that the satisfaction of the Detaining Authority can be based on the grounds of detention and the connected facts therein. The said satisfaction of the Detaining Authority cannot be reached on extraneous matters. The need to put the person under preventive detention depends only upon the grounds of detention. In the present case, the grounds of detention have been furnished to the detenue and, it had been explained as to why he was being detained under the Public Safety Act.
16. Further, in response to the plea taken by the Appellant that his release on bail was not mentioned in the detention order, it has been submitted that the Detenue has not taken this plea before the Writ Court nor in the LPA, and, as such, he cannot raise this plea at the time of hearing at the appellate stage.
17. Learned counsel for the respondents has referred to a decision of Hon'ble Supreme Court in *Union of India & Another v. Dimple Happy Dhakad, AIR 2019 SC 3428*. Relying on it, it has been submitted that the purpose of detaining a person under preventive detention is clearly to safeguard the interest of State and not to punish the person concerned. The liberty of an individual is important, however, it has to be subordinated within

reasonable bounds to the good of the people, and, if the Detaining Authority recorded a finding that the act of the Detenue will have a serious impact on the security of the nation, the need to prevent the Detenue from engaging in such similar acts cannot be interfered by the Court.

18. Heard learned counsel for the parties and also perused the documents produced before us.
19. Coming to the first limb of the argument of learned counsel for the Appellant that the Detenue was not supplied with the material documents including the dossier which formed the basis for passing of the detention order, which renders the detention order unsustainable, we have observed that the Detenue never submitted any representation though, he was given opportunity to do so. It has been clearly mentioned at the time of serving the detention order and the grounds of detention to the Detenue, that the Detenue can make a representation to the Government as well as to the detaining authority. Similarly, while approving the detention order issued by the District Magistrate, Pulwama on 03.03.2022, it was also mentioned that he can make a representation against his detention. However, the Detenue opted not to submit any representation against his detention order. If the Detenue does not submit any representation, it is difficult to accept this plea at this stage that he was prevented from submitting the representation because of lack of material documents. At least he could have made a representation that he is not able to make effective representation because of lack of materials.

20. Further it has also been submitted by the learned counsel for the Appellant that at time of execution of Detention Order and furnishing of material documents, the same were not translated/explained to him in the language which he understood i.e., Kashmiri, as the Detaining Authority knew that he was a Tailor by profession and illiterate person, which accordingly, has vitiated the detention order. In this regard, learned counsel for the Appellant has also replied upon the decision in *Smt. Raziya Umar Bakshi versus Union of India and others 1980 AIR (SC) 1751*, decided on 23.06.1980. However, it may be noted that the fact situation of the aforesaid case *Smt. Raziya Umar Bakshi versus Union of India and others* was different. It has been clearly mentioned in the said judgment that the detinue therein had made a representation to the Government and also prayed for supply of documents, in order to make more effective representation which were supplied to him on 27.03.1980.
21. However, in the present case, it is seen that the petitioner-Detenué never made any representation either complaining of lack of furnishing of relevant material documents and also that the said order of detention as well as grounds of detention were in English and not in Kashmiri as he did not understand the English. However, on perusal of the relevant records which has been produced before us, it can be seen that the Detenué himself had put his signature at the time of execution of the detention order and furnishing of grounds of detention.
22. Accordingly, it will be difficult for us to accept the plea now, that the Detenué did not understand any language except Kashmir and Urdu. In the

said execution report, it has been clearly mentioned that the notice of detention and contents of detention, warrant and grounds of detention have been read over to Detenue and explained to him in Urdu/Kashmiri which he understood fully, in support of which, his signature had been obtained and marked as Annexure “A” in the execution report. If the petitioner-Detenue had put his signature on the said document if he had made any representation or protestation to the authorities to the effect that the same was put forcibly without making him understand, the matter could have been otherwise. However, since he never choose to submit any representation or expressed his grievance about the lack of furnishing of proper documents or lack of understanding of the grounds of detention, it will be difficult for us to accept the said plea at this stage. The mater would have been otherwise if he had submitted a representation to the effect that the authority concerned has prevented the Detenue from making an effective representation on account of non-furnishing of material documents and on account of inability of him to understand the documents or that he was coerced to put his signature by the executing agency.

23. We are of the view that the petitioner ought to have submitted a representation stating that he would require more better particulars and also that he did not understand the contents of the documents being furnished to him in order to submit his representation or that he was compelled to put his signature at the time of execution of the Detention Order which he did not do.

24. The third ground taken by the appellant is that though the Detenue was granted bail in FIR case No.52/2021 in which he was arrested, the same was not reflected in the grounds of detention and as such, the detention order is vitiated due to non-application of mind. As regards this, on perusal of the grounds of detention, it is seen that it is clearly mentioned in the Detention Order that after arrest, he managed to get himself bailed out in the instant case. Therefore, it is not correct that the detaining authority was not aware of the fact that he was released on bail in connection with aforesaid FIR case, in which he was arrested as the same is mentioned in the Detention Order.
25. The grounds of detention clearly mentions that the Detenue had been a member of banned terrorist organization, Hizb-ul-Mujahedeen (HM) which organization came into being with the object and aim to separate Jammu and Kashmir from the Union of India and annex it with Pakistan and the said organization has virtually waged war against the State, as a consequence of which, there has been a loss of lives of hundreds of people including Security of State/Police personnel.
26. It has been mentioned in the grounds of detention that the Detenue in the year 2017, had came in contact with a foreign terrorist who motivated him to worked as Over ground worker (OGW). Later on, he formally joined the banned terrorist organization, Hizb-ul-Mujahedeen (HM).
27. It has been also mentioned in the grounds of detention that he was apprehended with the assistance of security forces from Khrew, hiding in a truck bearing registration No. JK13-2357, in which, a huge quantity of

arms and ammunition/explosive material was recovered from his possession and accordingly, FIR No. 52/2021 under Sections 18, 20 & 38 ULAP Act was registered in the Police Station, Khrew, and investigation was taken up. In course of the investigation, it was divulged that the Detenue had been actively working with the terrorists of the said banned terrorist organization, Hizb-ul-Mujahedeen (HM) and accordingly, the Detenue was categorized as “C” category terrorist of HM outfit.

28. We have also perused the material documents which have been produced before us. The grounds of detention clearly mention about his involvement in the aforesaid FIR case and record also reveals that a large number of arms and ammunitions were recovered from the truck, in connection with which, the aforesaid FIR case was registered and that he was also granted bail by the concerned Court in connection with the said FIR case which recorded in the grounds of detention.
29. Under the circumstances, if the detaining authority comes to subjective satisfaction that because of his involvement with the aforesaid banned terrorist organization, Hizb-ul-Mujahedeen (HM), which is based on the aforesaid FIR case, this Court cannot at this stage, in these proceedings examine the correctness or sufficiency of the materials which formed the basis for passing the detention order. There appears to be a material basis for arriving at the subjective satisfaction if the Detaining Authority that the Detenue requires to be in preventive detention because of his proximate prejudicial activities which pose a threat to the security of State and accordingly, required to be detained under Public Safety Act (PSA).

30. Accordingly, for the reasons discussed above, we do not find any reason to interfere with the judgment of the learned Single Judge and the appeal is **dismissed.**

(M. A. CHOWDHARY)
JUDGE

(N. KOTISWAR SINGH)
CHIEF JUSTICE

SRINAGAR
26.12.2023
Hilal Ahmad

