

HIGH COURT OF JAMMU AND KASHMIR
AT SRINAGAR

...
WP(C) no.740/2022

Riyaz Ahmad Khan

.....Petitioner(s)

Through: Mr Aariz Ahmad, Advocate vice
Mr Gulzar Ahmad Bhat, Advocate

Versus

Union Territory of J&K and others

.....Respondent(s)

Through: Mr Sajad Ashraf, GA

CORAM:

HON'BLE MR JUSTICE VINOD CHATTERJI KOUL, JUDGE

ORDER
28.02.2023

1. Through the medium of this writ petition, challenge is thrown to the Order no.15-DMK/PSA of 2022 dated 22.04.2022, passed by District Magistrate, Kupwara, in exercise of powers conferred under Section 8 (1)(a)(i) read with clause (ii) of the J&K Public Safety Act, 1978, to place petitioner under preventive detention in view of his activities being prejudicial to the maintenance of security of the State, on the grounds made mention of therein.
2. Reply has been filed by respondents, wherein they state that petitioner has been found involved in antinational activities which are highly objectionable and threat to the security of UT of J&K. It is contended that instant petition has been filed to challenge detention order at pre-execution stage that too without any ground more particularly petitioner's case does not fall within the ambit of principles laid down by the Supreme Court in the case of *Addl. Secy. to the Govt of India v. Alka Subhash Gadia (Smt.) 1992 Supp (1) SCC 496*.
3. Heard and considered.
4. Submission of counsel for petitioner is that impugned order of detention has been passed in gross violation of principles as laid down by the Constitutional courts. It is contended that petitioner is not involved in

any kind of illegal, antinational or antisocial activities. He contends that impugned detention order has not been passed in accordance with law and violates precious rights of petitioner guaranteed under Article 14, 19, 21, and 22 of the Constitution of India inasmuch as order of detention does not disclose any activity on the basis of which the same can be passed. The detaining authority is stated to have not attributed any specific allegation against petitioner because only vague allegations have been made against him and that there is no material on record to form any basis for detaining authority to record its satisfaction.

5. On the other hand, counsel for respondents has stated that petitioner has been found involved in antinational activities and thus, prejudicial to maintenance of security of the State.
6. The case in hand relates to pre-execution stage and is awfully distinguishable from that of post-execution stage.
7. The court while exercising its power of judicial review at the instance of a detenu or any other person on his behalf does not examine the sufficiency of grounds of detention. The reason being that the detention order is passed by detaining authority on its subjective satisfaction that a person is required to be placed under preventive detention, so as to prevent him from acting in any manner prejudicial to the security of the State or public order. The Court, however, is to examine whether the grounds of detention are clear and understandable, free from any vagueness, and ambiguity, were conveyed to the detenu with supporting material if any, with proper dispatch, the detenu informed that he has a right to represent against his preventive detention and allowed to make effective and meaningful use of such right.
8. In case detention order is not executed and a person, against whom it is made not detained, the question of handing over copy of grounds of detention to him does not arise and there is no occasion to inform him that he has a right to represent against his detention and thereafter allow him to make an effective and meaningful use of such right. The ambit and scope of judicial review at pre-execution stage would not be the same as it would be in the event the detention is executed.

9. In *Alka Subhash Gadia* (supra), the Supreme Court has laid down that judicial review being a part of basic structure of the Constitution and the power of the High Court under Article 226 of the Constitution cannot be circumscribed in any way by any law including judgment of a court and that detention order can be challenged at any stage as artificial distinction between pre-decisional and post decisional challenge, is inconsistent with and alien to wide powers conferred under Article 226 and 32 of the Constitution. The Supreme Court held that self-imposed limitations must be observed by courts while exercising such jurisdiction. It was also held that limitations were to be equally observed while exercising jurisdiction in preventive detention matters, taking into account the object for which detention law is permitted by the Constitution to be enacted. The Court, underlining distinction between existence of wide powers and propriety and desirability of using them, identified following five circumstances in which the Court may interfere with the detention order even at pre-execution stage:

- (i) that the impugned order is not passed under the Act, under which it is purported to have been passed,
- (ii) that it is sought to be executed against a wrong person,
- (iii) that it is passed for a wrong purpose,
- (iv) that it is passed on vague, extraneous and irrelevant grounds, or
- (v) that the authority which passed it had no power to do so.

10. The Supreme Court emphasized that the cases where the Courts have interfered in a detention matter at pre-execution stage are only few and held that refusal by the Courts to use their extraordinary powers of judicial review to interfere with detention orders at pre-execution stage, does not amount to abandonment of said power or to their denial to proposed detenu but prevents their abuse and the perversion of the law in question.

11. The Supreme Court in the case of *Subash Popatlal Dave v. Union of India and another (2014) 1 SCC 280* did agree with the basic principles laid down by the Supreme court in *Alka Subhash Gadia's* case concerning exercise of judicial review insofar as it relates to detention order at pre-execution stage. The Supreme Court, however, held that the five

circumstances identified in paragraph 30 of *Alka Subhash Gadia* case were illustrative and not exhaustive and that over the years the Court exercised the powers in cases that did not strictly fall within ambit of abovementioned circumstances identified in *Alka Subhash Gadia* (supra). The Supreme Court as an illustration referred to judicial intervention, where detention order was made, a long interval, after the alleged occurrence or where there was no live link between the occurrence and the detention order. The principle laid down in *Alka Subhash's* case that are to govern exercise of discretionary, extraordinary and equitable jurisdiction under Article 226 of the Constitution, have not been diluted or toned down in *Subhash Popatlal Dave* (supra). It has also said that the Court, before which a detention order is questioned at pre-execution stage while exercising the power of judicial review, has to appreciate that the order is a preventive measure with a limited life span and any interference at pre-execution stage, without a justifiable ground would frustrate the very object of the order and the purpose of the Act under which order is made. The Court is also to be alive to the fact that preventive detention law lays down a mechanism for the detenu to voice his grievance against detention order.

12. The present, on its meticulous examination, case does not fall under any of the five exceptions culled out in *Alka Subhash Gadia*, for this Court to interfere. *Alka Subhash Gadia's* case indicates that it is only in these five types of instances that this Court may exercise its discretionary jurisdiction under Article 226 at pre-execution stage. Petitioner avers that order impugned is vague, extraneous and on irrelevant grounds but there is no material for making such an averment against the same. I have already discussed the judgments rendered in the cases of *Subhash Popatlal Dave* and *Alka Subhash Gadia*, on the question of ambit and scope when a Court exercises its power of judicial review, challenging detention order. The courts exercise a limited power because satisfaction of detaining authorities is always subjective. The power of judicial review is restricted to legality of subjective satisfaction. In other words, the Courts do not examine sufficiency of reasons, but existence of reasons and their connect and nexus with statutory and constitutional

preconditions which justify preventive detention. The said exercise is undertaken in a limited way as order of preventive detention does not take character of punishment, but is by way of precaution to prevent future mischief and, therefore, to some extent would always depend upon suspicion or anticipation. The power of interference under exception (iv) of *Alka Subhash Gadia* (supra) at pre-detention stage would be even narrower and more restrictive. Interference would be only justified in cases where the order is perverse or absurd. Interference at pre-detention would be correct in apparently unreasonable and arbitrary cases. The contentions and the pleas raised by petitioner do not carve out an overtly exceptional case, which would justify quashing of detention order at this stage.

13. In view of legal positions highlighted above, this is not a fit case where any interference is called for, before execution of the order of detention. Petitioner, if so advised, may first surrender pursuant to the order of detention and thereafter have his grievances examined on merits.

14. In view of above this writ petition is without any merit, and is, accordingly, **dismissed** with connected CM(s).

(Vinod Chatterji Koul)
Judge

Srinagar
28.02.2023
Ajaz Ahmad, PS

Whether approved for reporting? Yes/No