

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

**WP(Crl) No. 562/2022**

*Reserved On: 19.04.2024*  
*Pronounced on: 30 . 04.2024*

**Suhail Ahmad Shah @ Sahil ( Aged 21 Years)**  
**S/O Zahoor Ahmad Shah**  
**R/O Shah Mohalla, Panzinara, Srinagar through his**  
**Father Zahoor Ahmad Shah** .....Petitioner(s)

Through: Mr.R.A.Khan, Advocate.  
V/s

- 1. UT of J&K through Principal Secretary,  
Home Department, Civil Sectt; Srinagar.**
- 2. District Magistrate, Srinagar**
- 3. Senior Superintendent Police, Srinagar**
- 4. Superintendent Central Jail Jammu**
- 5. S.P.CID CIK, Srinagar**

..... Respondent(s)

Through: Mr.Faheem Shah, GA vice  
Mohsin Qadiri, Sr.AAG

**CORAM: HON'BLE MR. JUSTICE M.A.CHOWDHARY, JUDGE**

**JUDGMENT**

1. District Magistrate, Srinagar (hereinafter called 'Detaining Authority') in exercise of powers under Section 8 of the Jammu & Kashmir Public Safety Act, 1978, passed the detention Order No. DMS/PSA/72/2022 (*for short 'impugned order'*) on 27.06.2022, in terms whereof the petitioner namely Suhail Ahmad Shah @ Sahil S/O Zahoor Ahmad Shah R/O Shah Mohalla Panzinara, Srinagar (*for short 'detenue'*) was ordered to be detained and lodged in Central Jail, Jammu with a view to prevent him from acting in any manner prejudicial to the maintenance of Security of the State .

2. The impugned detention order has been challenged through the medium of the instant petition, being in breach of the provisions of Article 22(5) of the Constitution of India read with Section 13(1) of the J&K Public Safety Act, 1978.
3. Petitioner has contended that the Detaining Authority has passed the impugned detention order mechanically without application of mind, inasmuch as the grounds of detention are mere reproduction of the dossier submitted by the Senior Superintendent of Police concerned. It has been further contended that the Constitutional and Statutory procedural safeguards have not been complied with in the instant case. It has been also urged that the allegations made against the detainee in the grounds of detention are vague and that the translated version of the documents/grounds of detention in the language understood by him, has not been provided to the detainee. It has also been contended that the petitioner has not been informed before whom he had to make a representation against his detention. Further it is contended that the material which formed basis of the grounds of detention has not been provided to the detainee.
4. The respondents, in their counter affidavit, have disputed the averments made in the petition and stated that the provisions of J&K Public Safety Act have been followed. It is contended that the detainee has been detained only after following due procedure; that the grounds of detention were read over to the detainee in the language which he fully understood; that there has been proper application of mind for detaining the detainee and that the detainee has been provided all the material. The learned

counsel for the respondents also produced the detention record to lend support to the stand taken in the counter affidavit.

5. Heard learned counsel for both the sides at length, perused the record and considered.
6. Learned counsel for the petitioner, while seeking quashment of the impugned order, projected various grounds but the main ground that has prevailed during arguments is that the detainee has been disabled from making an effective representation against his detention as the material forming basis of the grounds of detention has not been supplied to him.
7. The detaining authority while passing the order of detention had forwarded the same for execution to the SSP concerned with a direction to give notice to the detainee on one hand and on the other hand a copy of the communication to detainee made by the detaining authority directed to be forwarded to Superintendent Central Jail Jammu, to be communicated to the detainee, the grounds of detention/Copy of FIR and letter addressed to the detainee against proper receipt. On perusal of record it has been found that the execution report has been prepared by one ASI Azhar Khaliq of Police Station Shalteng that the grounds of detention and other relevant record has been furnished to the detainee against proper receipt. It is noticed that the detainee has dilated on a matter with regard to execution of the detention order and serving all the material which based the detention order. The execution report reveals that one leaf each of detention order and notice of detention, two leaves of grounds of detention and one leaf of copy of FIR, statement of witnesses and other related documents were served upon the detainee. It appears that the executing officer was not even sure as to what was being served upon the detainee. The report also reveals that the

dossier was not supplied to the detainee. It is also to be noted that there was no FIR registered against the detainee as is revealed from the grounds of detention, therefore, supplying copy of FIR makes no sense.

8. On perusal of the detention record produced by learned counsel for the respondents, the ground regarding non-supply of relevant material appears to have substance as there is nothing in the said record to show that the whole of the relevant material has not been supplied to the detainee. The execution report in the record reveals that the detainee has been supplied only grounds of detention, detention order and notice of detention. It appears that the detainee has not been provided copy of the dossier, Statement of witnesses and other relevant material. Thus, the contention of the petitioner that whole of the material relied upon by the detaining authority while framing the grounds of detention, has not been supplied to him, appears to be well-founded. Obviously, the petitioner has been hampered by non-supply of the relevant material in making an effective and meaningful representation against his detention before the concerned authority/Government.
9. The requirement of law is that whole of the record, on which the detention order is based, has to be made available to the detainee in the language that he understands. There is nothing like execution report/Receipt of grounds of detention on the record to suggest that the whole material relied upon to base detention has been furnished to the detenu, so as to make an effective representation. The failure on the part of the detaining authority to supply material to the detainee renders detention illegal and unsustainable.

The Hon'ble Apex Court in the judgment rendered in the case of “**Sophia Gulam Mohd. Bham V. State of Maharashtra & Ors. (AIR 1999 SC 3051)**”, has held as under:

“The right to be communicated the grounds of detention flows from Article 22(5) while the right to be supplied all the material on which the grounds are based flows from the right given to the detenu to make a representation against the order of detention. A representation can be made and the order of detention can be assailed only when all the grounds on which the order is based are communicated to the detenu and the material on which those grounds are based are also disclosed and copies thereof are supplied to the person detained, in his own language.”

Learned counsel for the petitioner has also placed reliance on cases of *Thahira Haris Etc. v. Government of Karnataka, AIR 2009 SC 2184*; *Union of India v. Ranu Bhandari, 2008, Cr. L. J. 4567*; *Dhannajoy Dass v. District Magistrate, AIR 1982 SC 1315*; and *Syed Aasiya Indrabi v. State of J&K & ors, 2009 (I) S.L.J 219* to buttress his arguments.

10. The detenu in view of the impugned detention order has been shown as an OGW/LeT/TRF and it has been recorded that he was deeply influenced by radical ideology and had also come into contract with active terrorists and OGWs of LeT/TRF (banned Outfits) who motivated him for providing logistic support. The detenu was also shown to have been bound down in terms of Section 107/151 Cr.P.C on 24.6.2022, a couple of days before detention order was passed. The grounds of detention do not specifically state, in what activities he was involved prejudicial to the security of the State. The detenu had been shown having radicalized thoughts in short span of time and that he became staunch OGW of the area, besides preaching and spreading, propagating terrorist ideology in the area and motivated youth for joining unlawful activities in the area. Nevertheless there is no specific instance(s) as to what he had preached or propagated, at

what time and amongst whom , therefore, the grounds of detention are general in nature and appears to be bald and vague against which no prudent man can make an effective and meaningful representation against his detention. I am fortified to take this view, by the judgments of the Supreme Court in the case of ***Jahangir khan Fazal Khan Pathan vs. Police Commissioner, Ahmadabad, (1989) 3 SCC 590, Abdul Razak Nanekhan Pathan v. Police Commissioner, Ahmadabad, AIR 1989 SC 2265.***

11. As observed and noticed hereinabove, the detaining authority while detaining the detenu has been negligent in observing the safeguards as are available constitutionally and statutorily, by not furnishing whole of the material/record, on which detention order was based, incapacitated the detenu to make an effective and meaningful representation. Besides the detention order is based on vague grounds, which shows non-application of mind to reach subjective satisfaction for passing the same to curtail the cherished right of liberty of the detenu. Such grounds and the material also incapacitated detenu to file representation against his detention, for revoking the detention. The impugned order thus suffers from non-application of mind by the detaining authority is not sustainable and is liable to be quashed.
12. For the foregoing reasons and the law stated hereinabove, this petition is allowed and detention Order No.DMS/PSA/72/2022 dated 27.06.2022, passed by District Magistrate, Srinagar is quashed. Respondents, including Jail Superintendent concerned, are directed to release the detenu forthwith, provided he is not required in any other case(s). Xerox copy of the Detention record, as produced, be returned to the learned GA.

13. Disposed of.

Srinagar  
30 .04.2024

( M. A. CHOWDHARY )  
JUDGE

*Mujtaba*

<i>Whether the order is speaking:</i>	<b>Yes/No</b>
<i>Whether the order is reportable:</i>	<b>Yes/No</b>

