

HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT SRINAGAR
(Through Virtual Mode)

WP(Crl) No. 743/2022

Reserved on: 01.04.2024

Pronounced on: 30.04.2024

Tariq Ahmad Napa

...Petitioner(s)

Through: Mr. N. H. Shah, Sr. Advocate.

V.

Union Territory of J&K & Anr.

...Respondent(s)

Through: Mr. Jahangir Ahmad Dar, GA.

CORAM: HON'BLE MR. JUSTICE RAJESH SEKHRI, JUDGE

JUDGMENT

1. Challenge in this petition has been thrown to a Detention order No.76/DMB/PSA/2022 dated 15.09.2022, passed by District Magistrate Baramulla-respondent No.2, vide which, the petitioner, namely, Tariq Ahmad Napa ['the detainee'] came to be detained and lodged in Central Jail, Kotbalwal, Jammu.

2. The petitioner has invoked writ jurisdiction of this Court to question the impugned detention order, *inter-alia* on the grounds that the grounds of detention being vague in nature, no prudent man can make an effective representation against said grounds; that representation dated 22.09.2022 filed by him has not been accorded consideration; that procedural safeguards prescribed under Jammu and Kashmir Public Safety Act, 1978 ('PSA', for short), and Articles 21 and 22 of the Constitution of India have not been

followed; that neither any reference pertaining to his detention has been made to the Advisory Board within the prescribed period under PSA nor Board has made any report with respect to sufficiency of the material; that grounds of detention are unreasonable and suffers from non-application of mind; that he has not been apprised of his right to make representation; that he was neither served with detention order nor with the material referred to in the grounds of detention; that grounds of detention were supplied to him in a language not understandable or intelligible to him and that there is no nexus between the alleged prejudicial activity attributed to him and the security of the State sought to be achieved by his detention.

3. *Ex adverso*, the detaining authority, in the counter affidavit, is affront with the contention that no legal, fundamental or statutory right of the detainee has been infringed in the present case, as respondents have complied with all the statutory and constitutional provisions and followed the requisite formalities before passing of the impugned detention order.

4. It is contention of the respondents that detainee came to be detained under the provisions of PSA, by virtue of the impugned detention order issued by District Magistrate, Baramulla-respondent No.2, after due adherence of statutory requirements and constitutional guarantees, as also keeping in mind the object of lawful preventive detention, which is preventive in nature and not punitive. The grounds of detention, order of detention and the relevant material relied upon by the detaining authority was furnished to the detainee within statutory period provided under Section 13 of PSA. In compliance to the order passed by the detaining authority, detention order/warrant came to be executed by the concerned police on 17.09.2022, by virtue of which the detainee was handed over to the Assistant Superintendent Central Jail Jammu

Kotbalwal, for lodgement. According to the respondents, the contents of the detention order/warrant and the grounds of detention were read over and explained to the detainee in a language, which he fully understands, and in lieu whereof the detainee subscribed his signatures on the execution report. It is also contended that the detainee was well informed about his right to make representation to the detaining authority or to the Government against his detention, however, he did not choose to do so. It is further contention of the respondents that the detention case of the detainee was referred to Advisory Board for its opinion, in terms of Section 15 of the PSA, and the said Board, constituted under Section 14 of PSA, considered the material placed before it, and the Board, in terms of Section 16 of PSA, has opined that there is sufficient cause of detention of the detainee and it was only after the report/opinion of the Advisory Board, the impugned detention order came to be confirmed by the Government vide order No. Home/PB-V/2341 of 2022 dated 30.09.2022.

5. On the factual front, it is allegation of the respondents that the detainee namely Tariq Ahmad Napa, through his fiery speeches at every available opportunity exhorted the general public to raise voice against the Government duly established by law. He is mainly responsible for organising anti-Government protests and is instigating the youth of Baramulla town to create an atmosphere of fear among the peace loving people of the area. He is reportedly one of the active members of the separatists' grid and can play a vital role in implementing their antinational programmes on ground. He is nurturing the secessionist ideology and in-fact is motivating others to follow the suit. It is the allegation of respondents that detainee has indulged in various antinational activities which facilitated strengthening of network of

antinationa grid of district Baramulla. It is also alleged that the detenu conceives the secessionist strategy and has potential to implement it on ground. According to the respondents, as per the reports received from field formation, the aim and objective of the detenu is to secede the UT of Jammu & Kashmir from the Union of India and his remaining at large will pose a threat to the maintenance of security of the State.

6. As per the respondents, on account of and in view of aforesaid facts and circumstances, the detaining authority found it necessary and imperative to invoke the provisions of PSA and to detain the detenu in order to preclude him from indulging in activities prejudicial to the security of the State.

7. Heard rival contentions of the parties and perused the detention record.

8. While learned counsels for the parties have reiterated their respective pleadings in arguments, learned counsel for the petitioner has relied (i) *Jitendra v. District Magistrate Barabanki & Ors.*; 2004 CRI.L.J. 2967 (ii) *Sajad Ahmad Bhat v. Union Territory of J&K & Anr.*; 2023(1) SLJ 244(HC) (iii) *Imran Qadir v. Union Territory of J&K & Anr.*; 2023 (4) JKJ 207 (HC) (iv) *Sushanta Kumar Banik v. State of Tripuri & Ors.*; 2023(3) JKJ 181 (SC) and (v) *Ab. Majeed Dar v. Union Territory of J&K & Anr.*; 2023(6) JKJ 77 (HC).

9. The petitioner, at the foremost, has questioned the impugned order on the ground that procedural safeguards prescribed under the provisions of PSA and guaranteed under Articles 21 and 22 of the Constitution of India, have not been complied with, by the respondents. It is also contention of the petitioner that neither any reference, pertaining to his detention has been made to the Advisory Board within the prescribed time nor Board has made any report with respect to sufficiency of the material to warrant his detention.

10. The detaining authority, in terms of sub-section-4 of Section-8 of PSA, is obliged to report the fact to the Government together with the grounds on which detention order is made, including other particulars those in his opinion have a bearing on the matter, and it is provided that no such order shall remain in force for more than twelve days after making thereof, unless in the interregnum, it has been approved by the Government.

11. It appears from the detention record that in the present case, the detaining authority endorsed a copy of the detention order dated 15.09.2022 to the Home Department for approval, as envisaged under sub-section-4 of Section-8 PSA and perusal of the record also reveals that the Financial Commissioner (ACS) Home, vide order No. Home/PB-V/2255 of 2022 dated 21.09.2022, has approved the order of detention. Therefore, it is manifest that the detaining authority, immediately upon issuance of the impugned detention order, reported the matter to the Government, and the Home Department has approved the impugned detention order. It is, thus, evident that mandatory provisions of PSA have been strictly complied with by the detaining authority.

12. Further contention of learned counsel for the petitioner is that the detinue has neither been served with detention order nor material referred to in the ground of detention which prevented him from making effective representation against his detention. It is also urged by learned senior counsel for the petitioner that the detinue has not been provided an opportunity of making representation within prescribed period of law nor he was informed of his right to make representation.

13. The aforesaid ground of challenge made use by learned senior counsel for the petitioner being specious is liable to be turned down for the simple reason that the respondents in their reply affidavit has confuted preference of

any representation by the detenue and its receipt by them. In the circumstances, the petitioner was obliged to make an endeavour to refute the said contention of the respondent-detaining authority and controvert the reply affidavit by filing rejoinder which the petitioner did not choose to do. Therefore, stand of the respondents, qua non-receipt of representation by it, remained un-rebutted on part of the petitioner.

14. Next ground raised by learned counsel for the petitioner to question the impugned detention order is that neither translated script of the detention order in Kashmiri or Urdu language was furnished to the detenue nor grounds of detention were read over and explained to him in the language understood by him, which according to the petitioner is reflection of non-application of mind on the part of the detaining authority.

15. Section-13 of PSA, indeed provides that when a person is detained in pursuance of a detention order, the authority making the order shall, as soon as may be, but ordinarily not later than five days and in exceptional circumstances, for the reasons to be recorded in writing not later than ten days from the date of detention, communicate to him, in the language understandable to him, the grounds on which the order has been made and shall afford him the earliest opportunity to make a representation against the detention order.

16. It is, indeed, settled position of law that communication, as envisaged by Section 13 PSA means bringing home to detenue effective knowledge of facts and grounds on which detention order is made and to a person who is not conversant with English language, the grounds of detention must be given in a language which he understands and in a script that he can read, in order to satisfy the requirements of the law.

17. Perusal of the detention record, however, would show that it came to be executed upon the detainee on 17.09.2022 i.e. within five days from the date of passing the detention order. Notice of detention was given to the detainee and contents of the detention warrant as also the grounds of detention were read over and explained to the detainee in Urdu/Kashmiri languages, fully understood by him, and his signatures were obtained as an acknowledgment of this fact on the receipt of the grounds of detention and other related record. Perusal of the said receipt would also reveal that copy of detention order (01 leaf), notice of detention (01 leaf), grounds of detention (01 leaf), dossier of detention (nil), copies of FIR, statements of witnesses and other related relevant documents (nil), (total 03 leaves), were not only received by the detainee but same were read over and explained to him in the language which he fully understands. In addition, detainee has been informed of his right to make representation to the Government as well as detaining authority against his detention order, if he so desires.

18. As already stated, the petitioner has failed to refute the contents of this receipt by filing any rejoinder to the counter affidavit, therefore, it implies that respondents have scrupulously adhered to the statutory and constitutional obligations, pre and post passing of the detention order, impugned in the present writ petition.

19. Be that as it may, the petitioner has assailed the impugned order of detention, primarily on the ground of vagueness of grounds of detention. According to the petitioner, the grounds of detention being vague, no prudent man could make an effective representation against said allegations. It is contention of learned counsel for the petitioner that since the grounds of detention are vague in nature, it prevented the petitioner from making an

effective representation, as a result whereof fundamental rights of the petitioner, guaranteed in terms of Article 22(5) of the Constitution of India, has been infringed.

20. The import of Article 22(5) of Constitution of India arose for discussion before six Judges Bench of Hon'ble Supreme Court of India, way back in 1951 in *State of Bombay v. Atma Ram Shridhar Vaidya* reported in **1951 AIR SC 157**. It reads as under:-

“22(5). 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 shall afford him the earliest opportunity of making a representation against the order.”

21. It is manifest on a plain reading of Article 22(5) of Constitution of India that it consists of two parts. While first part gives a right to a detainee to be furnished with grounds on which the order has been made as soon as may be, the second part provides a right to the detainee to be afforded earliest opportunity of making representation against the order of detention.

22. Hon'ble Supreme Court in **Atma Ram** has observed that though both the rights are separate, to be exercised at different times, however, they are connected with each other and it may not be possible for the detainee to make representation against the detention order without getting information, sufficient to make an effective representation, otherwise, it was held that right will be illusory one and not real one. It was further observed by the Apex Court that detainee may be able to make representation only if he has knowledge of the grounds on which the authorities conveyed that they were satisfied about the necessity of making detention order.

23. Relevant excerpt of the judgment captured in Para-14 reads as under:-

“14. The contention that the grounds are vague requires some clarification. What is meant by vague? Vague can be considered

as the antonym of 'definite.' If the ground which is supplied is incapable of being understood or defined with sufficient certainty it can be called vague. It is not possible to state affirmatively more on the question of what is vague. It must vary according to the circumstances of each case. It is, however, improper to contend that a ground is necessarily vague if the only answer of the detained person can be to deny it. That is a matter of detail which has to be examined in the light of the circumstances of each case. If, on reading the ground furnished it is capable of being intelligently understood and is sufficiently definite to furnish materials to enable the detained person to make a representation against the order of detention it cannot be called vague. The only argument which could be urged is that the language used in specifying the ground is so general that it does not permit the detained person to legitimately meet the charge against him because the only answer which he can make is to say that he did not act, as generally suggested. In certain cases that argument may support the contention that having regard to the general language used in the ground he has not been given the earliest opportunity to make a representation against the order of detention. It cannot be disputed that the representation mentioned in the second part of Art. 22(5) must be one which on being considered may give relief to the detained person.”

Later Hon’ble Supreme Court in *Jahangir Khan Fazal Khan Pathan v. Police Commissioner & Anr.* reported in (1989) 3 SCC 590, where allegations against the detainee was that he was a prohibited bootlegger, doing illegal activity of selling English and Deshi liquor and he along-with his associates was showing deadly weapons, like Rampuri knife to the innocent persons and was beating innocent persons who opposed his activity of liquor etc. has held that said statements are vague as detainee could not make an effective representation against said allegations. Relevant excerpt of the judgment reads as under:-

“8. The other grounds regarding the vagueness of the averments made in the grounds about the petitioner indulging in criminal activities apart from the five criminal cases lodged under the Prohibition Act and mentioned in the ground of detention do not satisfy the requirements envisaged in Section 3(1) of the PASA Act inasmuch as the said five specific criminal cases have no connection with the maintenance of public order. The aforesaid criminal activity does not appear to have disturbed the even tempo of life of the people of Ahmedabad City or of the particular locality. Furthermore the averments have been made in the grounds are; Accordingly, upon careful perusal of complaint and papers enclosed with the proposal it appears that you are a prohibition bootlegger, doing illegal activity of selling English and Deshi liquor. You and your companion are bearing and showing deadly weapons like Rampuri knife to the innocent persons

passing through the said locality on the premise of being of police „Batmider“ of Police. And you are beating innocent persons who oppose your activity of liquor etc. These statements are vague and without any particulars as to what place or when and to whom the detenue threatened with Rampuri knife and whom he has alleged to have beaten. These vague averments made in the grounds of detention hereinbefore are bad inasmuch as the detenue could not make an effective representation against the impugned order of detention. As such the detention order is illegal and bad.”

24. It is manifest from the aforesaid observations of the Supreme Court that if grounds of detention furnished by the detaining authority are not capable of being intelligently understood and sufficiently definite, so as to enable the detenue to make an effective representation, the grounds of detention may be termed as vague. In other words, the detenue may be able to make an effective representation if the details of the facts, on the basis of which conclusion is drawn by the detaining authority, are furnished to him.

25. If the present case is approached with the aforesaid principle of law, in mind, what comes to the fore is that the grounds of detention provided to the detenue, in the present case, are not only vague but there is no proximity between the acts attributed to the detenue and apprehension of the detaining authority.

26. Allegations against the detenue, as they emerge from the grounds of detention are as follows:

“You were born at your native place and is approximately 49 years of age. You availed education upto 10th Class from Govt. Boys Higher Secondary School Baramulla. At present, you are working as Khateeb/Imaam of Masjid Madina Dargah Aallah Baramulla.

You reportedly, through your fiery speeches, at every available opportunity exhorts the general public to raise a voice against the government duly established by law. You are mainly responsible for organizing the anti government protests and is also instigating the youth of town Baramulla to create an atmosphere of fear among the peace loving people of the area.

Your activities posed a major threat to the maintenance of security of state. Needless to mention that you are reportedly one of the active member of separatist grid and can play a vital role in Implementing their anti national/anti social programmes

on ground. It has been closely observed that you are nurturing the secessionist Ideology and In fact is motivating others to follow the suit.

You have contact with some anti-social/anti-national elements. You have indulged yourself in various anti-national activities which facilitated strengthening of network of anti-national grid in District Baramulla & to provide logistic support to their operative(s) In the area. Your activities are highly objectionable as it has been established that you are adamant to disturb peace & tranquility in Baramulla and its adjoining areas.

You reportedly, conceives the secessionist strategy and has the potential to Implement it on the ground. As per the reports received from field formations your aim and objective is to secede the U.T of J&K from Union of India and to motivate the youth towards secessionist Ideology. Your remaining at large at this point of time may adversely affect the maintenance of the Security of State.

In order to stop you from Indulging in activities which are prejudicial to the maintenance of security of State, your detention under the provisions of Public Safety Act-1978 has become Imperative at this stage. Normal law which has been Invoked against you has not proved sufficient to stop you from indulging in activities, which are prejudicial to the maintenance of security State."

(Underlining for emphasis)

27. The first allegation against the detainee is that through his fiery speeches, at every available opportunity he exhorts the general public to raise voice against the Government duly established by law. It is also alleged that detainee is responsible for organising anti-Government protests and is instigating the youth of Baramulla to create an atmosphere of fear among the peace loving people of the area. However, the detaining authority has failed to provide relevant details, as to when and where the detainee made such speeches and organised anti-Government protests.

28. Another allegation against the detainee is that he is an active member of separatists' grid and can play a vital role in implementing anti-national/anti-social programmes on ground. Again, detaining authority has failed to provide specific details of separatists' organisation, outfit or the grid, with which detainee is associated.

29. Next allegation against the detainee is that he has contacts with anti-social/anti-national elements and has involved himself in various anti-national activities which facilitated strengthening of anti-national grid of district Baramulla. Here again the impugned detention order is conspicuously silent about the anti-social/anti-national elements, with which detainee is associated.

30. On the basis of aforesaid allegations, the detaining authority has concluded that detainee conceives the secessionist strategy and his aim and object is to secede the UT of J&K from Union of India.

31. On first blush, a plain reading of grounds of detention would suggest that detainee has indulged in various anti-national/anti-social activities and he is an active member of separatists' organizations or militant outfits, however, it is surprising to note that not even a single FIR has been registered against him for any activity alleged to have been committed by him in the past. Since allegations against the detainee are general in nature, therefore, I find legal force in the submission of learned senior counsel, appearing for the petitioner, that detainee was prevented from making an effective representation against his detention. The allegations against the detainee, being devoid of specific details, he was left with no option but to make general denial of the allegations that he is not involved in any such activity alleged to have been committed by him. The detaining authority has not furnished any detail on the basis of which it formulated the opinion that normal law of land did not prove sufficient to dissuade the detainee from indulging in activities prejudicial to the security of the State.

32. It appears that the grounds of detention furnished to the detainee in the present case are mere conclusions drawn by the detaining authority based on some material or reports received from the field agency, however, detaining

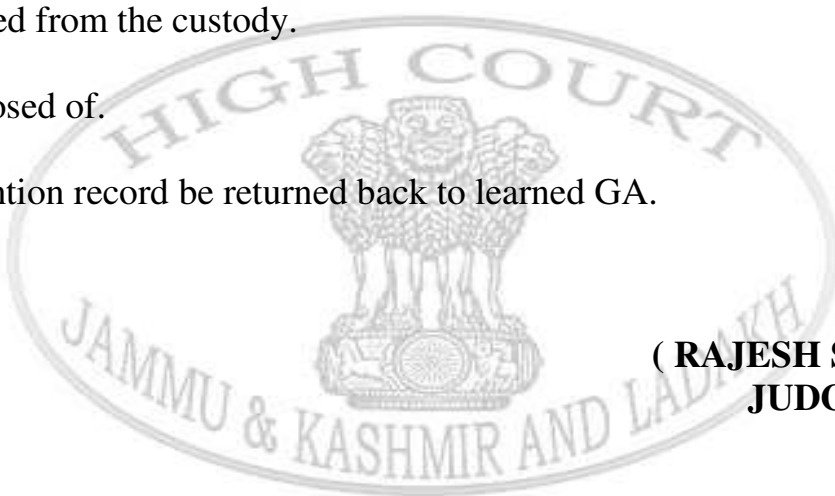
authority has withheld said details for the reasons best known to it, but it prevented the detainee from making an effective representation, which is violative of Article 22(5) of the Constitution of India.

33. Having regard to what has been observed and discussed above, the impugned detention order due to vagueness of allegations does not sustain in the eyes of law. Hence, present petition is allowed and impugned detention order is set aside. As a result, detainee, namely, Tariq Ahmad Napa is directed to be released from the custody.

34. Disposed of.

35. Detention record be returned back to learned GA.

Srinagar
30.04.2024
Muzammil. Q (Secy.)



(**RAJESH SEKHRI**)
JUDGE

<i>Whether the Judgment/Order is Reportable:</i>	Yes
<i>Whether the Judgment/Order is Speaking:</i>	Yes