



HIGH COURT OF JAMMU & KASHMIR AND LADAKH AT SRINAGAR

Reserved on : 23.02.2024

Pronounced on : 02.04.2024

Case:- WP(Crl) No. 275/2023

**Aftab Hussain Dar, Age 22 years,
S/o Ab Gani Dar
R/o Avindgund Tehsil Rajpora
District Pulwama**

**Through his father
Ab Gani Dar, Aged 58 years,
S/o Late Ghulam Ahmad Dar,
R/o Avindgund Tehsil Rajpora
District Pulwama.**

....Petitioner(s)

Through: Mr. G. N. Shaheen, Advocate

Vs



1. Union Territory of Jammu & Kashmir, through Principal Secretary, Home Department, J&K Govt., Civil Sectt., Srinagar/ Jammu.
2. District Magistrate, Pulwama.
3. Senior Superintendent of Police, Pulwama.
4. Superintendent Central Jail Kotbhalwal Jammu.

..... Respondent(s)

Through: Mr. Zahid Noor, GA

Coram: HON'BLE MR. JUSTICE RAHUL BHARTI, JUDGE

JUDGMENT

1. Heard the learned counsel for both sides. Perused the writ pleadings and the record therewith and also the detention record.
2. The petitioner, who is under preventive detention custody, has come forward with the present writ petition filed



through his father – Ab. Gani Dar for seeking a writ of habeas corpus so as to earn his release from the preventive detention custody which the petitioner alleges to be illegal and unconstitutional. This writ petition came to be filed on 13.07.2023.

3. The respondent No. 2 – District Magistrate, Pulwama directed the preventive detention of the petitioner by passing an order No. 36/DMP/PSA/23 dated 23.06.2023 directing detention and detainment of the petitioner holding his alleged activities being prejudicial to the security of the State being amenable for preventive detention under section 8 of the Jammu & Kashmir Public Safety Act, 1978.

4. The respondent No. 2 – District Magistrate, Pulwama came to pass the aforesaid preventive detention order against the petitioner upon being approached by the respondent No. 3- Sr. Superintendent of Police (SSP), Pulwama with a dossier submitted vide letter No. CS/PSA/DPO/23/83-86 dated 15.06.2023 purportedly bearing the material on the basis of which petitioner's preventive detention was solicited and came to be granted by the respondent No. 2 – District Magistrate, Pulwama.

5. In the grounds of detention, the petitioner is referred to be a 22 years old person having done his B. Sc. in the year 2022



and preparing for an entrance examination for Master's Degree in Geology subject. The petitioner is alleged to have come in contact with some prominent OGWs of banned terrorist outfits of Rajpora-Pulwama areas under whose influence the petitioner is alleged to have agreed to work of Jeish-e-Muhammad (JeM) terrorist outfit as its OGW under which role the petitioner is alleged to have been indulging in providing assistance at all conceivable angles to the terrorists operating in the area who brief the petitioner about the plans and targets of the JeM terrorist outfit and the working of other OGWs. The petitioner is alleged to be a fundamentalist in nature having provided all logistic support to the terrorist operating in the area, providing information about the movement of security forces to the terrorist of JeM operating in the area and thereby becoming instrumental in promoting terrorism in the area and being a cause for keeping terrorism alive and surviving in the area which otherwise would have been extinguished.

6. The petitioner is alleged to have been in alliance with Pak handlers Yousuf Blouch R/o Pakistan and also a JeM terrorist Ashaq Nengroo R/o Hanjan Bala, Rajpora Pulwama operating from Pak through various social media networking apps. The petitioner is alleged to have been getting instructions from his Pak handlers through different means of communication



and then pass it on to the next for the nefarious plans. The petitioner is alleged to be a member of LeT terrorist outfit.

7. With this background the petitioner is alleged to have been even booked and bound down under section 107/151 Cr.PC for maintaining a good behavior but even that not deterring him from allegedly indulging in his objectionable mode of activities thereby leaving no other option for the District Police as well for the District Magistrate, Pulwama but to order the preventive detention of the petitioner being a case whose personal liberty is prejudicial to the security of the State.

8. The petitioner has challenged his preventive detention and captivity by outrightly terming it as illegal, misconceived, frivolous and baseless without any factual basis whatsoever.

9. This Court has no iota of doubt as to the fact that the respondent No. 3 - Sr. Superintendent of Police (SSP), Pulwama and the respondent No. 2 – District Magistrate, Pulwama have resorted to exercise of jurisdiction under the Jammu & Kashmir Public Safety Act, 1978, taking it as a matter of plaything, which is oozing out from the very tone and tenor of the so-called grounds of detention which are nothing but emptied verbosity having nothing in the name of contents therein for the petitioner to understand as to by reference to which particular act or event



referable to him he has been so profiled by the respondent No. 2 – District Magistrate, Pulwama as if the petitioner was himself a live terrorist having landed in the hands of the District Police Pulwama thereby divulging all the details of his alleged misdeeds wherefrom the respondent No. 3 – Sr. Superintendent of Police (SSP), Pulwama and the respondent No. 2 – District Magistrate, Pulwama were able to draw out so alarming reference and profile against the petitioner.

10. If the alleged antecedents of the petitioner was so disturbing and alarming, as are made to sound in the grounds of detention, then surely those would not have been found fit only for a proceeding under section 107/151 Cr.PC against the petitioner and that too about which nothing has been stated and referred to by the respondent No. 2 – District Magistrate, Pulwama as to at whose instance the proceedings under section 107/151 Cr.PC came to be so initiated and what is the final order of which Executive Magistrate passed against the petitioner and how the bond if any executed by the petitioner and his surety same came to be breached by them by allegedly re-engaging in the alleged course of activities so as to warrant visitation of preventive detention order against him.



11. This Court cannot escape notice of the fact that the petitioner was a student pursuing his dream for higher education which came to be derailed by his preventive detention carried out just on baseless, frivolous and sensationalizing profiling of the petitioner. This Court is left wondering from the reading of the grounds of detention as to what was in the name of the fact/s cited in the grounds of detention by the respondent No. 2 – District Magistrate, Pulwama to form a basis to draw the conclusion about the petitioner being a person so profiled in the grounds of detention.

12. Thus, this preventive detention of the petitioner is nothing but a gross misuse and abuse of jurisdiction under the J&K Public Safety Act, 1978 at the end of the respondent No. 3 – Sr. Superintendent of Police (SSP), Pulwama as well as the respondent No. 2 – District Magistrate, Pulwama which warrants quashment of the petitioner's preventive detention by being held as illegal *per-se* entitling him to compensation.

13. In addition, the petitioner's preventive detention is legally flawed on account of the fact that as the preventive detention order of the petitioner recites the fact that the personal liberty of the petitioner is prejudicial to the security of the State being one of the statutory basis for subjecting a person to suffer



preventive detention under section 8 of the Jammu & Kashmir Public Safety Act, 1978.

14. A perusal of the Jammu & Kashmir Public Safety Act, 1978 as it has come to be in its amended form post the Jammu & Kashmir Re-Organization Act, 2019 would show that “security of the State” ceased to be a statutory ground for subjecting a person to suffer loss of personal liberty by a mode of preventive detention. State of Jammu & Kashmir as a political entity came to be put to an end by the J&K Reorganization Act, 2019 resulting in creation of two Union Territories i.e. Union Territory of Jammu & Kashmir and Union Territory of Ladakh. Accordingly, section 8 of the Jammu & Kashmir Public Safety Act, 1978 came to be correspondingly amended in exercise of powers under the J&K Re-Organization Act, 2019 when by virtue of S.O. 1229(E) of 2020 dated 31.03.2020 issued under the J&K Reorganization (Adaptation of State Laws) Order, 2020 the “Security of the State” under section 8(1)(a)(i) came to be substituted by the statutory ground of “security of the Union Territory of Jammu & Kashmir” meaning thereby if any person is intended to be detained under section 8(1)(a)(i) holding his activities prejudicial to the security of the UT of Jammu & Kashmir then there is no occasion for a District Magistrate/Divisional Commissioner or even for the Govt. of UT of Jammu & Kashmir to employ the expression “security of



the State" as a ground of preventive detention in a preventive detention order and, therefore, an order so passed with the said expression "Security of the State" being retained as it technically disqualifies to be a valid order of preventive detention against a detenu.

15. The reason for this disqualification is obvious and that is the J&K Public Safety Act, 1978 is a preventive detention jurisdiction the exercise of which is hedged in procedural safeguards for the sake of benefit of society as well as that of a prospective detenu. Therefore, there cannot be any deviation from following the letters of any given preventive detention law so as to serve the spirit of said law.

16. In the present case, when the petitioner came to be read over the order of detention, the petitioner was made to understand that he was being detained in order to prevent him from acting in a manner prejudicial to the security of the State obviously of meaning State of Jammu & Kashmir. State of Jammu & Kashmir has ceased to be an entity for the Govt. as well as for the citizens of the Union Territory of Jammu & Kashmir and it cannot lie at the disposal of any side to still say and understand that the State of Jammu & Kashmir is in



existence for whose safety and security detention order under J&K Public Safety Act, 1978 can be passed.

17. The petitioner in his writ petition has claimed compensation for illegal deprivation of his fundamental right to personal liberty by being subjected to unwarranted and misconceived preventive detention at the end of the respondents. This Court considers and reckons that this is a fit case to award compensation of an amount of Rs. 2 lac payable in faovur of the petitioner by the respondents for invasion of fundamental right of the petitioner of his personal liberty as guaranteed under article 21 of the Constitution of India. A fundamental right under the Constitution of India is a guaranteed right to a citizen of India and, therefore, its invasion and breach in an unlawful manner and on frivolous/sham basis cannot be a pass-over for a constitutional court whenever coming across with a case registered by an aggrieved citizen complaining about the injury caused to his/her fundamental right by a wrongful action at the end of the Govt./its authorities/officials. Release from illegal custody no doubt restores the fundamental right to personal liberty to an aggrieved person but it does earn him any succor for the injury received by him and to his person and for that the only remedy and relief that can be extended by a constitutional court is a compensation under public law remedy which in the present



case the petitioner is entitled to have from this Court and that is why this Court is awarding compensation of an amount of Rs. 2 lacs in favour of the petitioner payable by the respondents.

18. In view of the aforesaid facts and circumstances, the preventive detention of the petitioner is held to be illegal. The preventive detention order No.36/DMP/PSA/23 dated 23.06.2023 passed by the respondent No. 2- District Magistrate, Pulwama read with approval and confirmation order passed by the Govt. of UT of Jammu & Kashmir are hereby quashed. The petitioner is directed to be released from his custody from the concerned Jail with immediate effect for which the Superintendent of the concerned Jail as well as the respondent No. 2 District Magistrate, Pulwama to ensure that the petitioner does not suffer delay in earning his release from the Jail where he is being detained.

19. ***Disposed of*** accordingly.

20. Detention record, if any, is returned back.

(RAHUL BHARTI)
JUDGE

SRINAGAR

02.04.2024

Muneesh

Whether the order is speaking : Yes

Whether the order is reportable: Yes