HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT SRINAGAR

WP(Crl) No. 52/2023

Reserved On: 21st July 2023
Pronounced on: 8th August 2023

Amir Farooq Dar.

….. Petitioner(s)

Through: Mr. Wajid Mohammad Haseeb, Advocate.

V/s

Union Territory of JK & Anr.

…..Respondent(s)

Through: Mr. Taha Khaleel, Assisting Counsel vice
Mr. Mohsin S. Qadri, Sr. AAG.

CORAM:

HON'BLE MR. JUSTICE RAJESH SEKHRI, JUDGE.

JUDGMENT

1. The petitioner (detenue, for short) through his mother has invoked writ jurisdiction of this Court for the issuance of appropriate writs in the nature of Certiorari, for quashment of detention order, No. DMS/PSA/ 03/2023 dated 2nd January 2023, passed by Respondent No. 2 (the Detaining Authority, for short) and Mandamus, commanding the respondents to release his person and pay compensation of Rs. 2.00 lacs for illegal detention.

2. The detenue has assailed the impugned order of detention on multiple grounds, however, learned counsel for the detenue has confined his argument primarily on the grounds that allegations attributed to him in the grounds of detention may be a law and order problem but do not qualify

to fall within the definition of Public Order under Section 8 of the J&K Public Safety Act, 1978 (PSA, for short), the grounds of detention are vague, as there is no specific allegation regarding his involvement in the unlawful activities attributed to him and that respondents have failed to consider his representation.

3. The respondents in their counter affidavit are affront with the contention that since activities of the detenue were found prejudicial to the maintenance of Public Order, his preventive detention was recommended by the concerned police station, a Dossier duly, supported by relevant material, was submitted to the District Magistrate, Srinagar who on careful examination of the same, has concluded that preventive detention of the detenue was necessary. Therefore, impugned detention order has been passed, with the sole object to deter the detenue from acting in any manner prejudicial to the maintenance of Public Order. The warrant was executed by the Executing Officer and detenue was handed over to Superintendent Central Jail, KotBhalwal, Jammu, for his lodgement, where contents of detention order/warrant and grounds of detention were read over and explained to him in the language understood by him and he subscribed his signatures on the execution order in support thereof. Detenue was provided copies of the detention order along with grounds of detention against proper receipt and he was also informed of his right to make a representation. Later, the impugned detention order came to be approved and confirmed by the Government vide order dated 6th January 2023. According to the respondents, the detention of the detenue in the present case is precise and proximate and since all statutory, constitutional provisions and legal formalities of PSA have been followed, there is no vagueness in the grounds of detention.

4. According to the respondents, detenue was found involved in various anti-national and nefarious activities in order to disturb public peace and prejudicial to the maintenance of Public Order. The satisfaction expressed by the detaining authority is a result of thoughtful deliberation, rendering the impugned detention order lawful and well founded.

5. Having heard rival contentions, I am of the considered view that impugned detention order is not sustainable in the eyes of law for the following reasons.

6. Before a closer look at the grounds of challenge urged in the petition, it shall be apt to have an overview of the background facts.

7. The detention in the present case traces the genesis to FIR No. 94/2022 for offences under sections 341, 392, 506 and 120-B of Police Station Zakura. The allegations to form basis for the impugned detention order, are that detenue came into contact with instigators and disgruntled elements, who motivated him to indulge in extortion and other anti-national/illegal activities, bearing a threat to the maintenance of Public Order. He formed a gang of other disgruntled elements in district Srinagar and started hatching a conspiracy with the object to threaten common people and forcibly extort their hard earned money by illegal means, which created a sense of fear amongst the masses, resulting into a feeling of insecurity and resentment for the police and administration. It is also alleged that after the said gang was busted by District Police Srinagar, with great strategy and hard work, the general public heaved a sigh of relief. It is pertinent to underline that on the basis of this allegation, the detenue was booked in the aforesaid FIR and has been put under preventive detention on

the apprehension that he will be enlarged on bail, which is a cause of concern for the concerned police.

8. In view of the background facts, detailed in the preceding para, a question to be discoursed and squared offis whether allegations mentioned in the grounds of detention, on the basis of which single FIR came to be lodged against the detenue, would constitute an act having potentiality to disturb public order within the meaning of Section 8 of PSA and if the answer is "No", the impugned detention order is not only illegal, but unconstitutional and is liable to be struck down. It is because if relevant provisions of the penal code are sufficient to deal with the allegations of extortion against the detenue and ordinary law of the land can deal with a criminal activity, recourse to PSA or preventive detention laws shall be illegal. I am fortified in my opinion by an observation made by a Coordinate Bench of this Court in **"Abdul Hamid Dar vs UT of JK & Ors" [WP(Crl) No. 325/2022],** relevant excerpt whereof reads thus:

> ***".....Mere contravention of law such as indulging in cheating or criminal breach of trust certainly affects 'Law and Order' but before it can be said to affect public order, it must affect the community or public at large. The nature of criminal act, the manner in which it is committed and its impact are some of the factors that determine whether a particular act would fall within the realm of "Public Order" or "Law and Order". What is alleged in the FIR, which is sole basis of putting the detenue under preventive detention, clearly falls within the ambit of term "law and order". Unless the criminal act attributed to the detenue has the effect of disturbing the even tempo of life of community or public at large, it would remain in the realm of "Law and Order" and thus cannot be made the basis of preventive detention."***

9. It is manifest from the aforequoted observation of this Court that there is marked difference between the terms "Public Order" and "Law and Order". They operate in different fields. While in the former case, public at large is affected by a criminal activity of a person, however, a particular individual or individuals are affected by a particular criminal activity of a person in the later case. Mere breach of law by indulging in a criminal activity can be termed as a law-and-order problem but does not have the potentiality of disturbing the Public Order.

10. Back to the case, detenue in the present case has been detained on the apprehension that he may succeed to secure bail from the Court, which is a cause of concern for the concerned police.Be it noted, that an accused has a right to seek his enlargement on bail from a competent Court of law, and if chooses to exercise this right, prosecution is also well within its right to oppose the plea at the motion stage and if accused succeeds in his endeavour, the prosecution or State or Union Territory, as the case may be, has efficacious remedy under ordinary law of the land to seek cancellation of his bail, even by approaching the higher forum. It goes without saying that even grant of bail to an accused in a criminal case, does not debar the Detaining Authority to pass an order of preventive detention, if his preventive detention is necessitated by law.

11. What has been said, held and laid down regarding the issue by Hon'ble Supreme Court in **Banka Sneha Sheels vs. State of Telangana & Ors** reported as **(2021) 9 SCC 415,** is significant and important to be discoursed off. It reads thus:

> ***"There can be no doubt that what is alleged in the five FIRs pertain to the realm of "Law and Order" in that various acts of cheating are ascribed to the Detenu which are punishable***

under the three sections of the Indian Penal Code set out in the five FIRs. A close reading of the Detention Order would make it clear that the reason for the said order is not any apprehension of widespread public harm, danger or alarm but is only because the Detenu was successful in obtaining anticipatory bail/bail from the Courts in each of the five FIRs. If a person is granted anticipatory bail/bail wrongly, there are well-known remedies in the ordinary law to take care of the situation. The State can always appeal against the bail order granted and/or apply for cancellation of bail. The mere successful obtaining of anticipatory bail/bail orders being the real ground for detaining the Detenu, there can be no doubt that the harm, danger or alarm or feeling of security among the general public spoken of in Section 2(a) of the Telangana Prevention of Dangerous Activities Act is make believe and totally absent in the facts of the present case."

12. It is manifest from aforequoted proposition of law enunciated by the Apex Court that a person cannot be put under preventive detention on mere apprehension that he may succeed in securing a bail in his favour. The case law cited at Bar by learned counsel for the respondent-UT is distinguishable on facts and circumstances of the present case for the following reasons.

13. In **Muntazir Ahmad Bhat vs Union Territory of JK &Anr**, detenue was released on bail in a case for offences under Sections 302, 307 RPC read with Section 7/22 Arms Act and 4/5 Explosive Substances Act. He continued to engage in subversive activities, prejudicial to the security of the State and was again arrested in second FIR for offences under Section 121 of IPC read with Sections 18, 20 and 39 UA(P) Act, in which he was again admitted to bail. He was also found involved in other FIR in respect of offence 7/25 Arms Act and 23 UA(P) Act. It is in this backdrop

that learned Division Bench has concluded that from the conduct of the detenue, it could be reasonably inferred that he would continue to engage in prejudicial acts after his release on bail, which warranted his preventive detention under the Act. In the present case, as already stated, there is single FIR registered against the detenue with respect to allegations of extortion and there is no other case registered against him with respect to any subversive activity prejudicial to the Security of the State.

14. The detenue in the present case has been booked in sole FIR and there is nothing to suggest that ordinary law of the land is not competent to deal with the situation. The allegations levelled against the detenue may be a serious law-and-order problem but certainly do not fall within the category of 'Public Order'. The apprehension of the Detaining Authority or the cause of concern of the concerned police that enlargement of the detenue will have an impact upon public faith, is unfounded and cannot form basis for putting him under preventive detention. The prosecution wing of the Union Territory is well within its competence to oppose the bail of an accused at the relevant stage and in the event of grant of bail, to have recourse to the remedies available to it under law, even by approaching higher forums for cancellation of bail. The impugned order is liable to be quashed on this ground alone.

15. The detenue has also assailed the impugned order on the ground of vagueness of allegations that there is no specific allegation in the grounds of detention of his involvement in the unlawful activities attributed to him. Allegations against the detenue in the grounds of detention are as follows:

> ***"…With the passage of time you came into contact with instigators and disgruntled elements, who motivated you to***

indulge in extortion and other anti-national/illegal activities which are bearing a threat to the maintenance of Public Order also. You got motivated rapidly and organized/formed a gang of other disgruntled elements in district Srinagar and started hatching a conspiracy,whose objective was to threaten the common people and forcibly extort their hard earned money by various illegal means. This created sense of fear amongst the masses, which resulted into a feeling of insecurity and resentment for police and administration. However, after busting the said gang by the District Police Srinagar with great strategy and hard work, general public have a sigh of relief and also appreciated the action taken against you by District Police."

16. On the basis of these vague and general allegations, detenue has been booked in the solitary FIR. There is no other case registered against him. Had the detenue been a chronic miscreant/ instigator/ extortionist or a propagator of public nuisance, as claimed by the Detaining Authority in the grounds of detention, he would have been booked under multiple cases and could be dealt with in accordance with the ordinary law of land. These general allegations as also apprehension of the Detaining Authority that detenue may succeed to obtain a bail order in his favour, do not satisfy the requirements envisaged under Section 8 of PSA, inasmuch as such allegations and unfounded apprehension of the Detaining Authority have no connection with the maintenance of Public Order. The sole criminal activity attributed to the detenue does not appear to have disturbed normal life of the people of Kashmir in general and Srinagar city in particular.

17. Hon'ble Supreme Court, in a similar fact situation, in **Jahangirkhan Fazalkhan Pathan vs Police Commissioner, Ahmedabad**

&Anr reported as **(1989) 3 SCC 590**, in which detenue was involved in illegal activity of bootlegging, by showing deadly weapons like Ram Puri knife and beating innocent persons, who oppose his activity of bootlegging etc.has made following observation:

> ***"These statements are vague and without any particulars as to what place or when and to whom the detenu threatened with Rampuri knife and whom he has alleged to have beaten. These vague averments made in the grounds of detention hereinbefore are bad in as much as the detenu could not make an effective representation against the impugned order of detention. As such the detention order is illegal and bad…."***

18. It is evident from the afore quoted observation of Hon'ble Supreme Court that Detaining Authority is obliged to give details of all the criminal activities attributed to the detenue. In the present case, Detaining Authority has failed to provide particulars as to at what place or when and whom the detenue instigated, or extorted money from and propagated public nuisance. Therefore, in view of vagueness of allegations made in the grounds of detention, detenue was prevented to make an effective representation against the impugned order of detention.

19. The detenue has also challenged the impugned detention order on the ground of non-consideration of his representation. It is contention of the detenue that post detention, he submitted a representation to Respondent No. 2, however, same was not accorded consideration and, therefore, he could not make an effective representation, before the Government and to the Advisory Board. This contention of the detenue runs contrary to his submissions made in the preceding paras of the petition that post execution he was not given any opportunity to make representation and he was not

informed that he has a right to make representation. Although, copy of representation has been placed on record and receipt is also there to confirm delivery on 9th February 2023, however, record bears testimony to the fact that impugned order of detention came to be passed on 2nd January 2023 and approved by the Government on 6th January 2023 and confirmed by the Advisory Board on 23rd January 2023. In these circumstances any representation made by the detenue after approval and confirmation of the detention order by the Government is of no consequence.

20. In the context of what has been observed and discussed above, it is held that if ordinary law of the land is competent enough and sufficient to deal with the criminal activity of a person, recourse to PSA or preventive detention laws shall be illegal and unconstitutional. A person cannot be put under preventive detention on mere apprehension that he may be enlarged on bail by a competent Court of law. The Detaining Authority is obliged to provide in clear terms the complete particulars of the criminal activity attributed to the detenue.

21. Having regard to the aforesaid, the present petition is allowed and impugned order of detention being illegal and unconstitutional, is quashed. Consequently, detenue is directed to be immediately released from detention, provided he is not involved in any other case.

22. **Disposed** of.

(Rajesh Sekhri)
Judge

SRINAGAR:
08.08.2023
"Hamid"

i. Whether the Judgment is Speaking? **Yes**
ii. Whether the Judgment is Reportable? **Yes**