

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

**Reserved on: 26.02.2024
Pronounced on: 02.04.2024**

HCP No. 3/2023

**Mohammad Shafi Dar, age about 43 years
S/o: Sonaullah Dar,
R/o: Karnie Mohalla, Shahgund,
Tehsil: Hajin, District ; Bandipora**

**By his father,
Sonaullah Dar, age about 78 years,
S/o : Ghulam Mohiuddin Dar,
R/o: Karnie Mohalla Shahgund,
Tehsil : Hajin, District : Bandipora.**

... Petitioner

Through: Mr. Mir Majid Bashir

V/s

- 1. Union Territory of Jammu & Kashmir,
Notice to be served through Financial Commissioner
(Additional Chief Secretary) to Government,
Home Department, Civil Secretariat, Srinagar/ Jammu.**
- 2. District Magistrate, Bandipora.**

... Respondents

Through: Mr. Illyas Laway, GA

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

JUDGMENT

02-04-2024

1. This is a writ petition preferred by the petitioner, acting through his father Sonaullah Dar, challenging his preventive detention ordered by the respondent No.2- District Magistrate Bandipora acting under the Jammu and Kashmir Public Safety Act, 1978. The petitioner

came to be taken under preventive detention custody on 01/05/2023 and that is still continuing.

2. The course of action which led to the preventive detention of the petitioner now under question is related to a case forwarded by the Senior Superintendent of Police, SSP, Bandipora in the form of dossier No. Lgl/PSA-20/2023/13327-33 dated 18/04/2023 seeking thereby the preventive detention of the petitioner under the Jammu & Kashmir Public Safety Act, 1978 in order to prevent him from acting in a manner prejudicial to the security of state.
3. Taking cognizance of this dossier against the petitioner, the respondent No.2-District Magistrate Bandipora came to arrive at a subjective satisfaction that a case has been made out for subjecting the petitioner to suffer loss of his personal liberty by ordering his preventive detention so as to prevent him from acting in a manner prejudicial to the security of state and thus an Order No. 02/DMB/PSA of 2023 dated 27/04/2023 came to be passed by the respondent No.2- District Magistrate Bandipora to said effect authorizing the arrest and detainment of the petitioner and his lodgment in the Central Jail Kotbhalwal Jammu. It is pursuant to this detention order that the petitioner came to be so detained on 01/05/2023.

4. In order to support his subjective satisfaction being based upon application of mind to the purported material furnished in the said dossier against the petitioner, the respondent No. 2- District Magistrate Bandipora came to put in writing the purported grounds of detention.
5. The text of the grounds of the detention is that the petitioner is found to have a natural tendency to support militancy/terrorism for which the petitioner has developed contact with local terrorist remaining in close contact with them by providing every possible support to them from time to time. The petitioner is alleged to have been a close associate of killed local terrorists namely Saleem Parray @ Bila Battery and Imtiyaz Ahmad Dar. The petitioner is alleged to be an active/chronic overground worker of Laksher-e-Toiba, a terrorist outfit "The Resistance Front" and is used to provide every logistic support to the militants operating in Hajin in particular and district Bandipora in general. The petitioner is alleged to have provided support to militant Imtiaz Ahmed Dar in execution of civilian Mohammed Shafi Lone resulting in registration of FIR 76/2021 with the Police Station Hajin in which case the involvement of the petitioner was found out to be as a prime accused.

6. By reference to the involvement of the petitioner in the illegal activities including in the crime related with the FIR No. 76/2021, the petitioner is said to have been subjected to suffer preventive detention by virtue of an order No. 11/DMB/PSA of 2021 dated 17/10/2021 under section 8 of the Jammu & Kashmir Public Safety Act, 1978 passed by the District Magistrate Bandipora which had resulted in the detainment of the petitioner in the Central Jail Kotbhalwal Jammu to be released there from only on 19/10/2023 upon expiry of the detention period but only to be arrested again by the Bandipora Police in connection with his involvement in FIR No. 76/2021` in which the petitioner is said to have earned default bail on account of failure of the Police Hajin in presenting the charge sheet against the petitioner within stipulated time.
7. By profiling the petitioner to be a potential threat at all times to the sovereignty and security of India, the petitioner's involvement in the criminal cases, i.e., FIR No. 65/2017 of the Police Station Hajin for alleged commission of offences under sections 147/148/149/336/353 Ranbir Penal Code (in short RPC); FIR No. 66/2017 of the Police Station Hajin under sections 147/148/149/336 RPC; FIR No. 08/2018 of Police Station Hajin u/s 147/148/149/336/353/427 RPC and

FIR No. 76/2021 of Police Station Hajin u/s 7/27 Arms Act, 1959, 302/34/120-B IPC has been cited.

8. The petitioner has posed a challenge to his present preventive detention, inter-alia, on the grounds that it is totally unjustified and unwarranted in the eyes of law, being in breach of safeguards provided under the Constitution of India to be followed in effecting the preventive detention of a person, violation of statutory requirements under the J&K Public Safety Act, 1978, the application of mind on the part of the respondent No. 2 – District Magistrate, Bandipora to be operating at the same level as that of Sr. Superintendent of Police (SSP), Bandipora without any shade of difference in the dossier served and the grounds of detention framed both being replica of each other and the preventive detention being unwarranted proceeding on stale grounds being used as mere excuse.
9. The respondent No. 2 – District Magistrate, Bandipora in his counter affidavit has vindicated his decision making and the order passed against the petitioner subjecting him to preventive detention.
10. Before this Court proceeds to examine the legality of the present preventive detention of the petitioner in the context of whether there was a due observance of procedure of law and due application of mind at the end

of the respondent No. 2 – District Magistrate, Bandipora, this Court needs to highlight the salient aspect of this case and which is pertaining to previous preventive detention of the petitioner which came to be slapped upon him by virtue of a detention order No. 11/DMB/PSA of 2021 dated 17.10.2021 by none other than the respondent No. 2 -the then District Magistrate, Bandipora, whereby the petitioner was detained in order to prevent him from acting in a manner prejudicial to the “Maintenance of Public Order” and the said detention proceeded on the text of dossier as well as the grounds of detention which are the text of dossier and the grounds of detention, as served in the present case without any iota of difference by reference to the same set of FIRs.

11. This previous preventive detention order No. 11/DMB/PSA of 2021 dated 17.10.2021 was questioned by the petitioner in a writ petition WP(Crl) No. 212/2021 before this Court. This Court came to quash the said preventive detention of the petitioner holding being violative of the procedure of law holding that the petitioner was not supplied with full materials by the detaining authority for enabling the petitioner to make an effective representation against his preventive detention and accordingly, the preventive detention of

the petitioner came to be quashed by virtue of judgment dated 11.10.2022, meaning thereby the petitioner was rendered entitled to be released from the preventive detention custody so imposed upon him not by virtue of the fact that the period of one year's detention prescribed upon him has expired but because the preventive detention of the petitioner had come to be quashed.

12. A seriously vitiating factor rendering the petitioner's second time (present) detention as illegal is a mis-statement on behalf of the respondent No. 2 – District Magistrate, Bandipora in his grounds of detention, wherein the respondent No. 2 – District Magistrate, Bandipora is on record saying that the preventive detention of the petitioner effected vide detention order No. 11/DMB/PSA of 2021 dated 17.10.2021 had ended upon expiry of the period of detention upon release of the petitioner on 19.10.2022. Nowhere in the grounds of detention, the respondent No. 2 – District Magistrate, Bandipora is in know of the truth that the previous preventive detention of the petitioner had not lasted for its full duration but was quashed by this Court by virtue of judgment dated 11.10.2022, whereupon the petitioner was held entitled to be released from the preventive detention custody so imposed upon him.

13. Now, if the Sr. Superintendent of Police (SSP), Bandipora as well as the respondent No. 2 – District Magistrate, Bandipora are so ignorant of such an important aspect relatable to the previous preventive detention custody of the petitioner to the extent that even the judgment of this Court passed in WP(Crl) No. 212/2021 has been overlooked with impunity at the end of the Sr. Superintendent of Police (SSP), Bandipora and the respondent No. 2 – District Magistrate, Bandipora, then one can safely imagine the poor quality of application of mind and exercise of authority at the end of the Sr. Superintendent of Police (SSP), Bandipora as well as the respondent No. 2 – District Magistrate, Bandipora in handling the matters related to personal liberty of a citizen which in the present case is the petitioner.
14. This mis-statement which can be nothing but a deliberate one on the part of the respondent No. 2 – District Magistrate, Bandipora is itself a sufficient vitiating factor for holding the preventive detention of the petitioner as being an outcome of malice in law, if not malice in fact, at the end of the Sr. Superintendent of Police (SSP), Bandipora as well as the respondent No. 2 – District Magistrate Bandipora.
15. In view of the aforesaid, the preventive detention of the petitioner shall not last any further and must come to

an end as soon as possible and that is how the preventive detention custody of the petitioner is being quashed by quashing the preventive detention order No. 02/DMB/PSA of 2023 dated 27.04.2023 read with Govt. Order No. Home/PB-V/1167 of 2023 dated 29.05.2023 confirming the said preventive detention order so passed by the respondent No. 2 – District Magistrate, Bandipora.

16. The petitioner is, thus, directed to be released to his personal liberty forthwith without any loss of time. The Superintendent of the concerned Jail as well as the respondent No. 2 – District Magistrate, Bandipora are directed to ensure immediate release of the petitioner from the preventive detention custody.

17. ***Disposed of*** accordingly.

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

(RAHUL BHARTI)
JUDGE

Srinagar
02-04-2024
N Ahmad

Whether the order is reportable: **Yes**

Whether the order is speaking: **Yes**