



HIGH COURT OF JAMMU & KASHMIR AND LADAKH AT SRINAGAR

Reserved on : 18.03.2024

Pronounced on : 03.04.2024

Case:- WP(Crl) No. 790/2022

**Mohsin Qadir Rather, Aged 21 years,
S/o Ghulam Qadir Rather,
R/o Kurhama Budgam.
Through his father
Ghulam Qadir Rather, Aged 61 years.**

....Petitioner(s)

Through: Mr. R. A. Khan, Advocate

Vs

- 1. UT of J&K through Additional Chief Secretary, Home Department, J&K Govt. Civil Sectt., Srinagar/Jammu.**
- 2. District Magistrate, Budgam**

.... Respondent(s)

Through: Mr. Faheem Shah, GA

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

JUDGMENT

- Heard the learned counsel for both sides. Perused the writ pleadings and the record therewith and also the detention record.
- The petitioner has come up with the filing of the present writ petition on 15.12.2022 by acting through his father Ghulam Qadir Rather, feeling aggrieved of his preventive detention custody which left him deprived of his personal liberty, for seeking restoration of which the writ jurisdiction of this Court under article 226 of the Constitution of India came to be invoked.



3. In the estimate of the Sr. Superintendent of Police (SSP), Budgam, the petitioner's alleged activities were of objectionable nature posting threat to the security of the UT of Jammu & Kashmir and, accordingly, a dossier came to be submitted through letter No.Legal/Dos/2022/6628-31 dated 21.11.2022 to the respondent No. 2 – District Magistrate, Budgam.

4. The respondent No. 2 – District Magistrate, Budgam on his part came to draw a subjective satisfaction that the case was made out whereby the petitioner's alleged reported activities are of the nature prejudicial to the security of the UT of Jammu & Kashmir and, therefore, passed the preventive detention order No. DMB/PSA/54 of 2022 dated 22.11.2022.

5. The operative facts which came to play in the alleged framing of a dossier against the petitioner related to FIR No. 101/2020 registered by the Police Station Magam for alleged commission of offences under section 18, 23, 39 of Unlawful Activities (Prevention) Act, 1967 and 7/25 of the Arms Act, 1959 in which the petitioner came to figure as one of the accused persons along with three other accused persons. A Final Police Report under Section 173 Cr. PC, 1973 came to be submitted for booking the petitioner and three other accused persons for criminal trial before the Special Judge, Srinagar.



6. The special Judge Srinagar, by virtue of an order dated 22.10.2022, came to admit not only the petitioner but also the three other accused persons, namely, Abid Ahmad Rather, Owais Ahmad Malik & Ifshan Ahmad Ganie booked in FIR No. 101/2020 to bail.

7. It is after this development of grant of bail in favour of the petitioner and three other accused persons that the Sr. Superintendent of Police (SSP), Budgam had come forward with a dossier against the petitioner resulting in passing of the impugned detention order against the petitioner which came to be executed against the petitioner on 24.11.2022 lodging him in the Central Jail Kotbhalwal, Jammu.

8. The petitioner acting through his father came to submit his representation dated 10.12.2022 which came to be forwarded by the respondent No. 2 – District Magistrate, Budgam through his letter No. DMB/PSA/022/251-55 dated 10.12.2022 to the Financial Commissioner (Additional Chief Secretary) to Govt., Home Department, UT of J&K for consideration.

9. The petitioner's preventive detention case came to be submitted to the Advisory Board under the Jammu & Kashmir Public Safety Act, 1978 which came forward to tender its opinion on 20.12.2022 justifying the preventive detention of the petitioner and compliance of the procedure, as a result whereof the Govt. of



UT of Jammu & Kashmir came to confirm the preventive detention of the petitioner by passing a Govt. Order No. Home/PB-V/3308 dated 30.12.2022 without stating anything in the said order about the fate of the representation of the petitioner.

10. It is in this backdrop of the facts and circumstances that the petitioner came forward to file the present writ petition to which the respondent came forward to submit its counter affidavit on 13.02.2023.

11. In the grounds of detention formulated by the respondent No. 2 – District Magistrate, Budgam, the petitioner came to be referred to be working as OGW with Lashker-I-Toiba terrorist outfit providing shelter, logistic support to the active terrorists of LeT outfit in the area in order to promote terrorism in the area, by staying in touch with them and simultaneously motivating the youth of the area in anti-national activities. In this context the petitioner's involvement in FIR No. 101/2020 has been highlighted to portray that the petitioner's antecedents are of the nature which profile him to be acting as cohort of terrorists.

12. The preventive detention of the petitioner has been challenged on the ground that the allegations against the petitioner have no nexus with the exercise of preventive detention jurisdiction and is just a guise to inflict punishment upon the



petitioner overreaching the criminal trial set in effect against him and other co-accused by virtue of their alleged involvement in FIR No. 101/2020. The petitioner has highlighted it as a ground of challenge that the fact of his being admitted to bail was deliberately screened away from being referred to in the dossier and consequently in the grounds of detention otherwise the same would have an impactful effect on the decision making on the part of the respondent No. 2 – District Magistrate, Budgam in the matter of exercise of jurisdiction under the Jammu & Kashmir Public Safety Act, 1978 and that renders the impugned detention of the petitioner illegal.

13. When this Court examines the grounds of detention, it comes across with a stark fact that neither the Sr. Superintendent of Police (SSP), Budgam nor the District Magistrate, Budgam have exhibited any sense of awareness about the fact as to what was the state of the criminal case born out of FIR No. 101/2020 registered by the Police Station Magam, in a sense, if the Final Police Report was presented against the petitioner and other accused persons for the sake the full disclosure of the said Final Police Report to be made in the dossier as well as in the grounds of detention and also as to any bail granted or denied, the basis for denial or grant if any of the said bail along with an order to said effect be provided so as to stay in notice of all relevant facts which are and were



indispensable in proposing and granting the preventive detention order against the petitioner. For the reasons best known to the Sr. Superintendent of Police (SSP), Budgam as well as to the respondent No. 2 – District Magistrate, Budgam, this Court holds that they have stayed away from acting in a true and full disclosure and knowledge of facts, thereby vitiating the preventive detention order.

14. There is no denial to the fact from the respondents end that the representation was made by the petitioner against his preventive detention which came to be duly forwarded to the Govt. for consideration way back on 10.12.2022. Counter affidavit came to be filed to the present writ petition on 13.12.2023 wherein there is no whisper of reference from the Govt.'s end as to what fate the representation of the petitioner came to be subjected to.

15. If this Court is not being apprised of the status of consideration accorded to the said representation of the petitioner, then it does not require any stretch of mind to imagine as to how the petitioner could be expected to know about the fate of his said representation, meaning thereby that making of the representation by the petitioner against his preventive detention in the eyes and estimate of the Govt. of UT of J&K was a matter of mechanical exercise not meant to bother application of mind at its end and that is the reason that even in the counter affidavit



the outcome of the said representation has been left unstated. This has been done by the Govt. at its own risk and cost and, thus, rendering the preventive detention of the petitioner vitiated with illegality.

16. Accordingly, the preventive detention of the petitioner is held to be illegal. The preventive detention order No. DMB/PSA/54 of 2022 dated 22.11.2022 passed by the respondent No. 2-District Magistrate, Budgam 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, Budgam to ensure that the petitioner does not suffer delay in earning his release from the Jail where he is being detained under the quashed detention order.

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

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

(RAHUL BHARTI)
JUDGE

SRINAGAR

03.04.2024

Muneesh

Whether the order is speaking : Yes

Whether the order is reportable: Yes