(2022) 05 J&K CK 0026

Jammu And Kashmir High Court (Srinagar Bench)

Case No: Writ Petition (Criminal) No. 272 Of 2021

Assadullah Parray	APPELLANT
Vs	
Union Territory Of J&K & Anr	RESPONDENT

Date of Decision: May 11, 2022

Acts Referred:

- Constitution Of India, 1950 - Article 22(5)
- Jammu And Kashmir Public Safety Act, 1978 - Section 8(a), 8(4)
- Indian Penal Code, 1860 - Section 426
- Prevention Of Damage To Public Property Act, 1984 - Section 3, 4
- Sabotage Act, 1965 - Section 03

Hon'ble Judges: M.A.Chowdhary, J

Bench: Single Bench

Advocate: Mian Tufail, Avtar Singh Sodhi

Final Decision: Dismissed

Judgement

M. A. Chowdhary, J

1. By virtue of Order No. 07/DMB/PSA of 2021 dated 22.09.2021 passed by District Magistrate, Bandipora -respondent No.2 (hereinafter called

â€˜impugned orderâ€™) the detenue namely Assadullah Parray S/O Haji Abdul Gani Parray R/O Syed Mohalla Hajan Bandipora, has been ordered

to be detained under preventive custody with a view to prevent him from acting in any manner prejudicial to the maintenance of public order in terms

of Clause (a) of Section-8 of J&K Public Safety Act, 1978 (hereinafter called â€˜the Actâ€™). Aggrieved of the said detention order, detenue,

through his daughter, has filed the present petition seeking quashment of the same on the grounds taken in the petition in hand.

2. Case set up by the petitioner is that the detenue, in terms of the impugned order, has been detained under the Act on false and flimsy grounds

without any justification. It is also pleaded that the grounds of detention are vague and mere assertions of the detaining authority and no prudent man

can make an effective and meaningful representation against these allegations. Further plea of the detenue is that he has not been provided the

material/documents relied upon by the detaining authority so as to make an effective representation before the detaining authority. It has been further

pleaded that the impugned order is to remain valid for a period of 12 days as provided by Section 8(4) of the Act, 1978 unless the same is approved by

the Government within the said period. It is during the period of those 12 days that a representation can be made by a detenue before the District

Magistrate. However, the detenue has not been informed that he can make a representation before the District Magistrate within a period of 12 days

from the date of passing of the impugned order, therefore, a valuable right of the detenue stands defeated. Further contention is that neither translated

copies of FIRs nor translated copies of statements of witnesses recorded in the FIRs registered against the detenue, seizure memo etc., have been

provided to the detenue so as to enable him to make an effective representation to the appropriate authority. Detaining authority, while passing the

impugned order, has relied upon the stale grounds, therefore, prayed for quashment of the impugned order on the said grounds.

3. Reply affidavit has been filed by respondent No. 2 vehemently resisting the petition. It is contended that detaining a person under the provisions of

Public Safety Act is always preventive in nature and its sole aim is to prevent a person from pursuing anti-national/anti-social activities, which are

prejudicial to the maintenance of public order etc. In the instant case there is enough material against the detenue which is highly suggestive of the

fact that the normal law of the land is not sufficient to prevent him from continuing with his anti-national activities and, it is evident that the detenue is

highly motivated and is not likely to desist from anti-national and unlawful activities.

4. Heard learned counsel for the parties and perused the detention record produced by learned counsel for the respondents.

5. The detention record, on its perusal, would indicate that as many as fourteen (14) FIRs, from the year 2005 till 2021, have been registered against

the detenue for his involvement in anti-national activities, which is suggestive of the fact that the detaining authority, in order to curb the criminal/anti-

national activities of the detenue, has detained him under the provisions of Public Safety Act.

6. It would be apt to say that right of personal liberty is most precious right, guaranteed under the Constitution. A person is not to be deprived of his

personal liberty, except in accordance with procedures established under law and the procedure as laid down in the case â€˜Maneka Gandhi vs. Union

of India, (1978 AIR SC 597)â€™, is to be just and fair. The personal liberty may be curtailed where a person faces a criminal charge or is convicted

of an offence and sentenced to imprisonment. Where a person is facing trial on a criminal charge and is temporarily deprived of his personal liberty

owing to criminal charge framed against him, he has an opportunity to defend himself and to be acquitted of the charge in case prosecution fails to

bring home his guilt. Where such person is convicted of offence, he still has satisfaction of having been given adequate opportunity to contest the

charge and also adduce evidence in his defense. However, framers of the Constitution have, by incorporating Article 22(5) in the Constitution, left

room for detention of a person without a formal charge and trial and without such person held guilty of an offence and sentenced to imprisonment by a

competent court. Its aim and object are to save society from activities that are likely to deprive a large number of people of their right to life and

personal liberty. In such a case it would be dangerous, for the people at large, to wait and watch as by the time ordinary law is set into motion, the

person, having dangerous designs, would execute his plans, exposing general public to risk and causing colossal damage to life and property. It is, for

that reason, necessary to take preventive measures and prevent a person bent upon to perpetrate mischief from translating his ideas into action.

Article 22(5) of the Constitution of India, therefore, leaves scope for enactment of preventive detention law.

7. Having glance of the grounds of detention, it is clear that right from the year 2005 till 2021, as many as 14 FIRs have been registered against the

detenue for his involvement in criminal/anti-national activities. In the year 2014, the detenue was detained under Public Safety Act and after his

release from preventive custody, the detenue did not desist himself from indulging in anti-national activities. His inclination towards secessionist

elements gave him a place in â€˜Hurriyat (G)â€™ organization, of which he was an active member. His involvement in instigation the youth of the

area for stone pelting and making the â€˜bandhâ€™ calls given by separatists successful force the authorities concerned to keep him under close

surveillance. However, the detenue did not shun the path of his nefarious and anti-national activities. Again, he was detained for his involvement in

anti-national activities in the year 2018 but was released on May, 2019, after his detention order was quashed. After his release he was again kept

under close surveillance and during the period it was noticed that the detenue has not shun the path of nefarious activities and is continuously indulging

in anti-national activities. The detenue had also been found involved in a case of sabotage on 13.08.2021, before Independence Day, when Panchayat-

Ghar Hakbara, where a function to celebrate the Day was to be organized, was set ablaze. A case vide FIR No. 58/2021 had been registered at

Police Station Hajin for the commission of offences punishable under Section 426 IPC, 04 PPD Act and 03 of Sabotage Act. The detenue was thus

found actively involved to carry on secessionist activities in Hajin area of district Bandipora. The detaining authority after keeping in view the activities

of the detenue highly prejudicial and detrimental to the maintenance of the public order, detained him under preventive custody, in terms of the

impugned order, which is under challenge in the present petition.

8. The record, produced by the State, reveals that vide communication No.Lgl/PSA-07/2021 dated 05.10.2021, the detenue was informed to make a

representation to the detaining authority as also to the Government against his detention order if the detenue so desires. In compliance to District

Magistrates detention order, the warrant was executed by Executing Officer, namely, SI Bashir Ahmad of P/S Hajin took custody of the detenue on

24.09.2021 by executing the PSA warrants at District Jail, Baramulla, against a proper receipt. Further the execution report reveals that the detenue

can make a representation to the Government as well as to the detaining authority. It is also revealed that the detention warrant and grounds of

detention have been read over and explained to the detenue in Urdu/Kashmiri/English language which the detenue understood fully and signatures of

detenue was also obtained which has been marked as â€˜Mark Aâ€™ in the Execution Report.

Thus, the contention of the petitioner for not supplying the material is not sustainable.

9. It would be apt to refer to the observations made by the Constitution Bench of the Supreme Court in the case of â€˜The State of Bombay v. Atma

Ram Shridhar Vaidya AIR 1951 SC 157â€™. Para- 5 of the said judgment lays law on the point, which is profitable to be reproduced hereunder:

â€œ5. It has to be borne in mind that the legislation in question is not an emergency legislation. The powers of preventive detention under

this Act of 1950 are in addition to those contained in the Criminal Procedure Code, where preventive detention is followed by an inquiry or

trial. By its very nature, preventive detention is aimed at preventing the commission of an offence or preventing the detained person from

achieving a certain end. The authority making the order therefore cannot always be in possession of full detailed information when it passes

the order and the information in its possession may fall far short of legal proof of any specific offence, although it may be indicative of a

strong probability of the impending commission of a prejudicial act. Section a of the Preventive Detention Act therefore requires that the

Central Government or the State Government must be satisfied with respect to any person that with a view to preventing him from acting in

any manner prejudicial to (1) the defence of India, the relations of India with foreign powers, or the security of India, or (2) the security of

the State or the maintenance of public order, or (8) the maintenance of supplies and services essential to the community ..... it is necessary

So to do, make an order directing that such person be detained. According to the wording of section 3, therefore, before the Government can

pass an order of preventive detention it must be satisfied with respect to the individual person that his activities are directed against one or

other of the three objects mentioned in the section, and that the detaining authority was satisfied that it was necessary to prevent him from

acting in such a manner. The wording of the section thus clearly shows that it is the satisfaction of the Central Government or the State

Government on the point which alone is necessary to be established. It is significant that while the objects intended to be defeated are

mentioned, the different methods, acts or omissions by which that can be done are not mentioned, as it is not humanly possible to give such

an exhaustive list. The satisfaction of the Government however must be based on some grounds. There can be no satisfaction if there are no

grounds for the same. There may be a divergence of opinion as to whether certain grounds are sufficient to bring about the satisfaction

required by the section. One person may think one way, another the other way. If, therefore, the grounds on which it is stated that the

Central Government or the State Government was satisfied are such as a rational human being can consider connected in some manner

with the objects which were to be prevented from being attained, the question of satisfaction except on the ground of mala fides cannot be

challenged in a court. Whether in a particular case the grounds are sufficient or not, according to the opinion of any person or body other

than the Central Government or the State Government, is ruled out by the wording of the section. It is not for the court to sit in the place of

the Central Government or the State Government and try to deter- mine if it would have come to the same conclusion as the Central or the

State Government. As has been generally observed, this is a matter for the subjective decision of the Government and that cannot be

substituted by an objective test in a court of law. Such detention orders are passed on information and materials which may not be strictly

admissible as evidence under the Evidence Act in a court, but which the law, taking into consideration the needs and exigencies of

administration, has allowed to be considered sufficient for the subjective decision of the Government.â€

10. In light of the aforesaid legal position settled by the Six-Judge Constitution Bench way back in the year 1951, the scope of looking into the manner

in which the subjective satisfaction is arrived at by the detaining authority, is limited. This Court, while examining the material, which is made basis of

subjective satisfaction of the detaining authority, would not act as a court of appeal and find fault with the satisfaction on the ground that on the basis

of the material before detaining authority another view was possible.

11. The courts do not even go into the questions as to whether the facts mentioned in the grounds of detention are correct or false. The reason for the

rule is that to decide this, evidence may have to be taken by the courts and that it is not the policy of the law of preventive detention.

This matter lies within the competence of the advisory board.

12. Those who are responsible for national security or for maintenance of public order must be the sole judges of what the national security, public

order or security of the State requires. Preventive detention is devised to afford protection to society. The object is not to punish a man for having

done something but to intercept before he does it and to prevent him from doing. Justification for such detention is suspicion or reasonable probability

and not criminal conviction, which can only be warranted by legal evidence. Thus, any preventive measures, even if they involve some restraint or

hardship upon individuals, as said by the Supreme Court in the case â€˜Ashok Kumar v. Delhi Administration & Ors., AIR 1982 SC 1143â€™, do not

contribute in any way of the nature of punishment.

13. Observing that the object of preventive detention is not to punish a man for having done something but to intercept and to prevent him from doing

so, the Supreme Court in the case â€˜Naresh Kumar Goyal v. Union of India & Ors., 2005 (8) SCC 276â€™, and reiterated in the judgment dated

18th July 2019, rendered by the Supreme Court in Criminal Appeal No.1064 of 2019 arising out of SLP (Crl.) No.5459 of 2019 titled â€˜Union of India

and another v. Dimple Happy Dhakadâ€™, has held that an order of detention is not a curative or reformative or punitive, but a preventive action,

acknowledged object of which being to prevent anti-social and subversive elements from endangering the welfare of the country or security of the

nation or from disturbing public tranquility or from indulging in anti-national activities or smuggling activities or from engaging in illicit traffic in narcotic

drugs and psychotropic substances, etc., preventive detention is devised to afford protection to society. The authorities on the subject have consistently

taken the view that preventive detention is devised to afford protection to society. The object is not to punish a man for having done something but to

intercept before he does it and to prevent him from doing so.

14. In the backdrop of foregoing discussion, the petition is devoid of any merit and is, accordingly, dismissed.

15. Detention record, as produced, be returned to learned counsel for respondents.