HIGH COURT OF JAMMU & KASHMIR AND LADAKH AT SRINAGAR

WP(Crl) No. 684/2022

Reserved on: 24.07.2023

Pronounced on: 01.08.2023

Imran Nabi Wani

…Petitioner(s)

Through: Mr. Wajid Haseeb, Advocate.

Vs.

Union Territory of J&K & Anr.

…Respondent(s)

Through: Mr. Mohsin Qadri, Sr.AAG with
Mr. Taha Khalil, Assisting counsel.

CORAM: HON'BLE MR. JUSTICE M. A. CHOWDHARY, JUDGE

JUDGMENT

1. Petitioner Imran Nabi Wani (for short 'detenue'), in the instant case was taken into preventive custody under **Section 8 of the J&K Public Safety Act 1978** (for short 'the Act') in terms of the order of detention bearing **No. DMS/PSA/112/2022 dated 08.09.2022** (for short 'the impugned order), issued by respondent No.2- District Magistrate Srinagar (for short 'Detaining Authority').

2. The order of detention is challenged by the detenue through the medium of this petition on the following grounds:-

i. That, the allegations made in the grounds of detention are vague, non-existent and no prudent man can make a representation against such allegations and passing of detention on such grounds is unjustified and unreasonable.

ii. That, the detenue was already bailed out in FIR No. 51/2017, however, this important fact has not been reflected in the grounds of detention.

iii. That, the last alleged activity attributed to the detenue as per the grounds of detention has taken place in the year 2017 and thereafter no fresh activity has been attributed to the detenue.

iv. That the detaining authority has not prepared the grounds of detention by itself, which is a pre-requisite before passing any detention order. The detaining authority has relied only on the police dossier.

v. That, the detenue has not been provided copy of dossier and other connected material to enable him to make an effective representation by giving his version of facts attributed to him.

vi. That, post detention, the detenue submitted a representation before respondent No.2, however, same was not considered and neither the material was furnished as requested in the representation so that an effective representation could be made before the Government as well as to Advisory Board.

3. Pursuant to notices, respondents filed counter affidavit to the petition, through Detaining authority, asserting therein that the detenue came to be detained vide impugned detention order, passed by the Detaining authority, fulfilling and complying with all the statutory and constitutional guarantees; that the detenue was detained to prevent him from resorting to the illegal activities; that the grounds of detention, order of detention, as well as entire material relied upon by the Detaining authority and warrant was executed through ASI Mohammad Shaban of Police Station Nowhatta; that he was detained initially in Central Jail Jammu and later shifted to Central Jail Naini Prayagraj Uttar Pradesh vide Government order dated 25.10.2022. It was further pleaded that the detenue's case was referred to the Advisory Board

which observed that there was sufficient cause for detention of the detenue, therefore, detention order was confirmed by the Government of J&K. Respondents would take further plea that the detention order was passed by the District Magistrate, after applying mind to the facts and circumstances of the case, to prevent the society from violence, strikes, economic adversity and social indiscipline. It was, finally, prayed that the petitioner's petition be dismissed, upholding the detention order.

4. Learned counsel for the detenue pleaded that the impugned order of detention or the grounds of detention formulated by the detaining authority does not indicate any compelling reason necessitating preventive detention of the detenue after he had already been taken into custody by the police in a case registered vide FIR No. 51/2017 for alleged commission of offence under Sections 147, 139, 392, 341, 302 RPC and 13 of Unlawful Activities Prevention Act**.** Learned counsel, thus, submitted that preventive detention of the detenue is illegal for the same having been passed at a time when the detenue was released on bail in the afore-stated case, without making a mention of it.

5. One more plea taken by learned counsel for the detenue is about the vagueness in the grounds of detention incapacitating the detenue to make an effective representation in terms of Article 22(5) of the Constitution of India. However, post-detention, the detenue had filed representation which was not considered by the respondents.

6. Learned counsel for the respondents, ex-adverso, submitted that all the statutory requirements and constitutional guarantees have been fulfilled and complied with, by the Detaining authority keeping in mind the very objectives of law of preventive detention being not punitive but only

preventive, while detaining the detenue. It is further submitted that the detenue was found to be the main accused in Dy.S.P lynching case at Nowhatta. In this regard FIR 51/2017 under Sections 148, 392, 341, 302, 149 RPC and 13 Unlawful Activities Prevention Act stands registered in Police Station Nowhatta.

7. Heard, perused and considered the record.

8. Legal position in regard to preventive detention of a person, who is already in custody of the State Agencies in connection with commission of offence under substantive law allegedly committed by him is well settled. Normally, preventive detention of such a person should not be ordered. However, preventive detention of such a person can still be ordered, if the detaining authority has 'compelling reasons' to believe that he is likely to be released in the substantive offence either on bail or due to his acquittal or discharge. In ***Binod Singh v District Magistrate Dhanbad, Bihar and others, (1986) 4 SCC 416,*** Hon'ble Apex Court held that if a man is in custody and there is no imminent possibility of his being released, the power of preventive detention should not be exercised. In **Surya Prakash Sharma v State of U.P. and others, 1994 Supp (3) SCC 195**, Hon'ble Apex Court has referred to an earlier three-Judge Bench judgment in ***Dharmendra Suganchand Chelawat v Union of India, (1990) 1 SCC 746***, wherein observation has been made in following manner:

> *"The decisions referred to above lead to the conclusion that an order for detention can be validly passed against a person in custody and for that purpose it is necessary that the grounds of detention must show that (i) the detaining authority was aware of the fact that the detenue is already in detention: and (ii) there were compelling reasons justifying such detention despite the fact that the detenue is already in detention. The expression "compelling reasons" in the context of making an order for detention of a person*

> *already in custody implied that there must be cogent material before the detaining authority on the basis of which it may be satisfied that (a) the detenue is likely to be released from custody in the near future and (b) taking into account the nature of the antecedent activities of the detenue, it is likely that after his release from custody he would indulge in prejudicial activities and it is necessary to detain him in order to prevent him from engaging in such activities."*

9. The grounds of detention formulated by the detaining authority *inter alia* would show that the detenue was found to be the main accused in Dy.S.P lynching case at Nowhatta. It is further contended that on the intervening night of 22/23.06.2017 in cognizance of a gruesome incident in which an officer of the rank of Dy. Superintendent of Police was lynched to death by a mob raising slogans against the Union of India and accession of J&K State with the Union of India. It is further revealed that the said police officer of security wing of J&K Police was deployed at Jamia Masjid Srinagar in view of large gathering there on the eve of Shab-i-Qadr, to supervise the manpower which was deployed there for frisking purposes. Detenue along-with other antinational elements attacked the said officer and snatched his service pistol and thrashed him ruthlessly till he succumbed to the beating and died on spot. The accused persons didn't stop there but inhumanely dragged the dead body of the deceased out from the area adjacent to the mosque, tore his clothes and left the body without clothes and other belongings at Bata Gali Nowhatta. In this regard FIR 51/2017 under Sections 148, 392, 341, 302, 149 RPC and 13 Unlawful Activities Prevention Act was registered in Police Station Nowhatta.

10. Perusal of the record, produced by the respondents, reveals that 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 ASI Mohammad Shaban of Police Station Nowhatta, by supplying the copies of detention warrants, notice of detention, grounds of detention, dossier of detention, statement of witnesses, copy of FIR and other related documents, against a proper receipt. Further the execution report reveals that the detenue was made aware that he may file representation to the Government as well as to the detaining authority. It is also revealed that the detention warrant and grounds of detention were read over and explained to the detenue in Urdu/Kashmiri/English language which the detenue understood fully and signatures of detenue was also obtained. Thus, the contention of the petitioner for not supplying the material is not sustainable.

11. It would be apt to refer to the observations made by the Constitution Bench of the Supreme Court in the case of '**The State of Bombay v. Atma Ram Shridhar Vaidya AIR 1951 SC 157**'. **Para- 5** of the said judgment lays law on the point, which is profitable to be reproduced hereunder:

> ***"5. 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 (3) 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."

12. 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.

13. 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.

14. 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 held by the Supreme Court in the case **'Ashok Kumar v. Delhi Administration & Ors., AIR 1982 SC 1143'**, do not contribute in any way of the nature of punishment.

15. 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 held in the case **'Naresh Kumar Goyal v. Union of India & Ors., 2005 (8) SCC 276'**, and reiterated in the

judgment in a case titled **'Union of India and another v. Dimple Happy Dhakad' (AIR 2019 SC 3428),** 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. Rulings 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.

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

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

(M. A. CHOWDHARY)
JUDGE

Srinagar
01.08.2023
Muzammil. Q

Whether the order is reportable: Yes / No