

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

**HCP No. 86/2024
CM No. 3265/2024, 3266/2024**

Narayan Sharma @ Shuna through Petitioner
Mrs. Lata Sharma (Mother)

Through: Mr. Jagpaul Singh, Advocate
vs

UT of J&K and others Respondent(s)

Through: Mr. Rajesh Kumar Thapa, AAG.

Coram: HON'BLE MR. JUSTICE JAVED IQBAL WANI, JUDGE

ORDER
29.08.2024

ORAL

1. In the instant petition filed under Article 226 of the Constitution, detention order No. 14/PSA of 2024 dated 02.05.2024 (hereinafter for short the "Impugned Order") passed by the respondent 2 herein (hereinafter for short the 'detaining authority'), under and in terms of provisions of Section 8 of the J&K Public Safety Act, 1978 (hereinafter for short the 'Act'), has been thrown challenge to by the petitioner herein.
2. Reply to the petition has been filed by the respondents, wherein the petition is being opposed on the premise that the impugned order has been passed by the respondent 2 validly and legally. **Heard learned counsel for the parties and perused the record.**
3. Learned counsel for the petitioner while making his submissions in tune with the case set up in the petition notwithstanding multiple

grounds of challenge urged in the petition would press following grounds for grant of the prayers sought in the petition:

- (i) That the detenu was not informed by the Detaining Authority that he can make a representation before the Detaining Authority in addition to making a representation before the Government against his detention;
- (ii) That a representation came to be submitted by the petitioner through his mother against the impugned order on 20.05.2024 has not been considered by the respondents;
- (iii) That the detenu came to be detained solely on the ground of his alleged involvement in FIR No. 42/2024 for possessing an unlicensed revolver;
- (iv) That the detenu came to be detained on the basis of a non-existent Istghasa (complaint) claimed to have been filed against the detenu on 10.04.2024 before the Executive Magistrate 1st Class, Vijaypur and
- (v) Lastly that the Detaining Authority while detaining the detenu referred to the breach of law and order in the grounds of detention instead of public order.

4. On the contrary, the counsel for the respondents while opposing the submissions of the counsel for the petitioner would reiterate the stand taken in the reply filed to the petition and would contend that the detenu has been detained validly and legally by the respondent 2 in

accordance with the mandate of law provided under the provisions of the Act of 1978.

5. In so far as the first ground pressed by the counsel for the petitioner, that the detenu was not informed by the Detaining Authority about his right to make a representation against his detention before the Detaining Authority is concerned, detention record produced by the counsel for the respondents belies the plea of the counsel for the petitioner, and the said record manifestly reveals that the detenu stands informed of his right to make representation by the Detaining Authority while detaining him in terms of the impugned order, pursuant to the communication dated 02.05.2024. Further perusal of the provisions of the Act of 1978 do not anywhere postulates that the Detaining Authority has to inform the detenu specifically that the detenu can make a representation before the Detaining Authority. Informing the detenu about his right to make a representation, be it before the Government or the Detaining Authority is sufficient compliance of the said requirement provided under the Act of 1978. Thus, the aforesaid ground urged by the counsel for the petitioner pales into insignificance.
6. In so far as the ground of making a representation by the detenu against his detention through his mother is concerned, a further perusal of the detention record produced by the counsel for the respondents tends to show that the said representation stands received by the respondents on 22.05.2024 and considered on 29.05.2024, thus,

manifestly suggesting that the mandate law in this regard stands adhered to by the respondents. The aforesaid plea of the counsel for the petitioner thus is found to be factually incorrect and not entertainable.

7. In so far as the next ground urged by the counsel for the petitioner that the detenu could not have been detained on the basis of his alleged involvement in the sole FIR No. 42/2024 for allegedly possessing an unlicensed revolver is concerned, law in this regard is no more *res integra* and stands settled that involvement of a person in a criminal case or registration of FIR would not be imperative for detaining a person under the preventive detention as preventive detention, in law, has been held to be preventive and not punitive in nature and a person could be detained under the preventive detention on account of his activities which may either be prejudicial to the security of the State or public order. Thus, the aforesaid ground urged by the counsel for the petitioner as well is found legally not tenable.
8. In so far as the next ground of challenge urged by the counsel for the petitioner, that the Istghasa referred in the grounds of detention is non-existent on being not available on the files of Executive Magistrate, Samba is concerned, the said ground cannot be said to vitiate the impugned order, in that, upon perusal of the grounds of detention it is manifestly demonstrated that the Detaining Authority while detaining the detenu has not relied upon the said Istghasa for the purpose of detaining the detenu, but has only referred to the same in order to

show its awareness about the facts and circumstances pertaining to the detinue. The aforesaid ground thus urged by the counsel for the petitioner as well does not lend in support to the case of the petitioner.

9. In so far as the last ground urged by the counsel for the petitioner that the Detaining Authority while detaining the detinue has referred in the grounds of detention that the activities attributed to the petitioner are against law and order and not against public order is concerned, the same as well is grossly misconceived on a deeper and closer examination of the detention record produced by the counsel for the respondents including the grounds of detention and the order of detention in explicit terms suggest that the Detaining Authority has been alive to the provisions of Section 8 of the Act of 1978, inasmuch as the power vested in it authorizing the Detaining Authority to detain a person under the provisions of the Act upon assuming subjective satisfaction that the activities of the person are either prejudicial to the security of the State or public order, and in the instant case, the activities of the petitioner have been found to be prejudicial to the public order, notwithstanding the use of expression 'law and order' at one or two places in the grounds of detention, as the Detaining Authority while summing up the grounds of detention as well as in the order of detention has specifically and without any ambiguity provided that the detinue is detained on account of his activities being prejudicial to public order clearly referring to Section 8 of the Act of 1978. Thus, this ground as well urged by the counsel for the petitioner

does not lend any support to the case of the petitioner and is, as such, held to be legally untenable.

10. It is pertinent to note here that upon perusal of the detention record produced by the counsel for the respondents, it gets revealed that the impugned order has been executed against the petitioner on 07.05.2024, whereupon the same has been approved by the Government vide Government Order No. Home/PB-V/966 of 2024 dated 07.05.2024, which information also stands furnished to the detenu upon serving the order of detention, the grounds of detention and the material relied upon by the Detaining Authority for his detention. Record also reveals that the Advisory Board has also accorded its opinion in respect of the impugned order on 29.05.2024 whereafter the order of detention stands confirmed by the Government in terms of Government Order No. Home/PB-V/1225 of 2024 dated 05.06.2024.
11. It is also significant to mention here that the concept of preventive detention is that the detention of a person is not to punish him for something he has done, but to prevent him from doing it. Its basis is the satisfaction of the executive of a reasonable probability of detenu acting in a manner similar to his past acts, and preventing him by detention from doing so. The preventive detention has been held to be an anticipatory measure resorted to when the executive is convinced that such detention is necessary to prevent a person detained from acting in a manner prejudicial to the objects specified in the Act of

1978. Law is also no more *res integra* and is settled that an order of preventive detention may be made before, during or after the criminal prosecution, inasmuch as it can be made with or without prosecution and in anticipation or after discharge or even acquittal of a person. Thus, pendency of prosecution is no bar to the passing of order of detention. So is also not an order of preventive detention has a bar to any prosecution.

The Apex Court in case titled as “**The State of Bombay vs. Atma Ram Shridhar Vaidya**” reported in **AIR 1951 SC 157** while dealing with the law of preventive detention has noticed and observed that looking into subjective satisfaction of the Detaining Authority is extremely limited and a court while examining a case of preventive detention would not act as a court of appeal and find fault with the subjective satisfaction arrived at by the Detaining authority for detaining a person.

12. The judgments in case titled as **Sarabjeet Singh Mokha vs. District Magistrate, Jabalpur and others** reported in **(2021) 20 SCC 98** and in case titled as **Pritam Singh vs. Union Territory of Jammu and Kashmir and others** reported in **2022 (1) JKJ[HC] 352** referred to and relied upon by the counsel for the petitioner are found quite distinguishable and not applicable to the instant case.
13. Having regard to what has been observed, considered and analysed hereinabove, the impugned order of detention seemingly has been

passed by the respondents validly and legally, as such, does not warrant any interference.

14. Resultantly, **the petition fails and is accordingly dismissed.**
15. Record produced by the counsel for the respondents is directed to be returned back to the counsel for the respondents.

**(JAVED IQBAL WANI)
JUDGE**

Jammu
29.08.2024
Sahil Padha

Whether the order is speaking: Yes/No.
Whether the order is reportable: Yes/No.

