

Sr.
No.103

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

HCP No.32/2024
CM No.1342/2024

Reserved on: 07.05.2024
Pronounced on: 10.05.2024

Kapil Sharma @ Jimmy aged 38 years Son of Sh. Kamal Sharma, R/o New Plot Bakshi Nagar, Jammu. At present near RM Public School, Chowadi Sainik Colony, Tehsil Bahu District Jammu. At present lodged in Central Jail, Kot Bhalwal, Jammu. Through father Mr. Kamal Sharma Aged 68 years Son of Lal Muni Sharma R/o H. No. 146 Near Gita Mandir, Bakshi Nagar, Jammu. ...Petitioner(s)

Through :- Mr. Sunil Sethi, Sr. Advocate with
Mr. Mohsin Bhat, Advocate.

V/s

1. Union Territory of J&K through Principal Secretary, Home Department, Civil Secretariat, Jammu/Srinagar.Respondent (s)
2. District Magistrate, Jammu.
3. Superintendent, Central Jail, Kot Bhalwal, Jammu.

Through :- Mr. Pawan Dev Singh, Dy. AG.

Coram:

HON'BLE MR. JUSTICE SANJAY DHAR, JUDGE

JUDGMENT

1. The petitioner, by the medium of instant petition, has challenged Order No.PSA-04 of 2024 dated 30.01.2024 issued by District Magistrate Jammu (for brevity 'Detaining Authority') whereby Kapil Sharma @ Jimmy son of Sh. Kamal Sharma R/o New Plot Bakshi Nagar, Jammu (hereinafter referred

to as 'detenue') has been placed under preventive detention with a view to prevent him from acting in any manner prejudicial to the maintenance of public order.

2. It has been contended by the petitioner that the impugned order of detention has been passed by the detaining authority without application of mind and without proper evaluation of the dossier sent by the Senior Superintendent of Police Jammu to him. It has been further contended that allegations made in the grounds of detention against the petitioner are concocted and motivated. The impugned order of detention has further been challenged on the ground that whole of the material formulating grounds of detention has not been furnished to him, as a result of which, the petitioner could not make an effective representation against the detention order. It has also been contended that translated version of the material forming basis of the impugned order of detention has not been furnished to the petitioner thereby violating his vital statutory and constitutional right.
3. The respondents have resisted the petition by filing counter affidavit. In their counter affidavit, the respondents have submitted that all the safeguards have been adhered to and complied with by the detaining authority and that the order has been issued validly and legally. It has been submitted that petitioner is a habitual criminal, who is involved in as many as nine FIRs mention whereof has been made in the grounds of detention. It has been contended that ordinary criminal law could not deter the petitioner from indulging in criminal activities, which compelled the detaining authority to pass the impugned order of detention. It has been submitted that whole of the material forming grounds of detention has been supplied to the petitioner and the grounds of detention were read over and explained to him in the language he understands.

According to the respondents, the grounds urged by learned counsel for the petitioner are legally misconceived, factually untenable and without any merit. In order to support their contentions, the respondents have produced the detention record.

4. I have heard learned counsels for the parties and perused the material on record including the detention record.
5. Although a number of grounds have been urged by learned Senior counsel appearing for the petitioner, yet during the course of arguments, he has laid much emphasis on the ground that there has been lack of application of mind on the part of the detaining authority inasmuch as the detaining authority was not sure as to whether alleged acts of the petitioner fall under the category of acts prejudicial to the maintenance of public order or prejudicial to the security of the State.
6. In the above context, if we have a look at the grounds of detention, the detaining authority has in para (3) of the grounds of detention recorded that conduct of the petitioner is promoting a feeling of hatred and mischief in the community and that the same poses a grave threat to the security of the State. Again in para (5) of the grounds of detention, it has been recorded that criminal misadventure of the petitioner is imminent threat to the peaceful existence of society. In para (7) of the grounds of detention, it has been recorded by the detaining authority that repeated offences committed by the petitioner inflict major harm and injury to the public and that the same is not only prejudicial to public safety and public order but also has the potential to sky ball and impact over all security of the State. In para (8) of the detention order, the detaining authority has gone on to record that the preventive detention of petitioner is necessary for the purpose of preventing and

combating activities prejudicial to security of State, maintenance of public safety. After recording aforesaid observations in the grounds of detention, the detaining authority has passed the impugned order of detention on the ground of maintenance of public order. Thus, the detaining authority has used different expressions at different places in the grounds of detention.

7. The expressions “security of the state” and “public order” are quite distinct from each other, inasmuch if contravention of law affects the community or public at large, it amounts to disturbance of public order whereas if the disturbance of public order is of grave nature which affects the security of the state, then the same constitutes an act that would affect the security of the state. Thus, every act which is prejudicial to the security of the state would qualify to be an act prejudicial to the public order but reverse is not true. It is only the acts prejudicial to the public order which are of grave nature that would qualify to be termed as acts prejudicial to the security of the state. The concept has been explained by the Supreme Court in the case of **Dr. Ram Manohar Lohia v. State of Bihar and others, 1966 AIR SC 740**, by observing as under:

“51. We have here a case of detention under Rule 30 of the Defence of India Rules which permits apprehension and detention of a person likely to act in a manner prejudicial to the maintenance of public order. It follows that if such a person is not detained public disorder is the apprehended result. Disorder is no doubt prevented by the maintenance of law and order also but disorder is a broad spectrum which includes at one end small disturbances and at the other the most serious and cataclysmic happenings. Does the expression "public order" take in every kind of disorder or only some? The answer to this serves to distinguish "public order" from "law and order" because the latter undoubtedly takes in all of them. Public order if disturbed, must lead to public disorder. Every breach of the peace does not lead to public disorder. When two drunkards quarrel and fight there is disorder but not public disorder. They can be dealt with under the powers to maintain law and order but cannot be detained on the ground that they were disturbing public order. Suppose that the two fighters were of rival communities and one of them tried to raise communal passions. The

problem is still one of law and order but it raises the apprehension of public disorder. Other examples can be imagined. The contravention of law always affects order but before it can be said to affect public order, it must affect the community or the public at large. A mere disturbance of law and order leading to disorder is thus not necessarily sufficient for action under the Defence of India Act but disturbances which subvert the public order are. A District Magistrate is entitled to take action under Rule 30(1)(b) to prevent subversion of public order but not in aid of maintenance of law and order under ordinary circumstances.

52. It will thus appear that just as "public order" in the rulings of this Court (earlier cited) was said to comprehend disorders of less gravity than those affecting "security of State", "law and order" also comprehends disorders of less gravity than those affecting public order". One has to imagine three concentric circles. Law and order represents the largest circle within which is the next circle representing public order and the smallest circle represents security of State. It is then easy to see that an act may affect law and order but not public order just as an act may affect public order but not security of the State. By using the expression "maintenance of law and order" the District Magistrate was widening his own field of action and was adding a clause to the Defence of India Rules."

From the above enunciation of law, it is clear that the acts affecting public order and those affecting security of the state are different in nature and the detaining authority while framing an order of detention has to be absolutely clear in its mind as to the nature of the acts that are alleged to have been committed by the detenu.

8. Adverting to the facts of the present case, which have been noted hereinbefore, it is clear that the detaining authority has used the expressions 'security of State', 'public order' and 'law and order' interchangeably as per his will and wish. While summing up grounds of detention, the detaining authority has concluded that alleged acts of the petitioner are prejudicial to the security of the State, but while making impugned order of detention, it has been ordered that petitioner is required to be taken into preventive detention in order to prevent him from acting in any manner prejudicial to the maintenance of 'public order'. This clearly indicates that the detaining authority has not applied its mind and that it was unsure as to under what category the alleged

acts of the petitioner fall. On this ground alone, the impugned order of detention becomes unsustainable in law. (Refer “**G. M. Shah Vs. State of J&K**”, AIR 1980 SC 494).

9. In view of what has been discussed hereinabove, the petition is **allowed** and the impugned order of detention is **set aside**. The respondents are directed to release the petitioner from custody provided he is not needed in any other case.
10. Detention record be returned to the concerned.

(**Sanjay Dhar**)
Judge

JAMMU
10.05.2024
Narinder

Whether the order is reportable? **Yes**

