

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

Reserved on : 01.08.2024

Pronounced on : 06.08.2024

Case:- HCP No. 4/2024

**Hamid Mohd, aged 31 years,
S/o Hussain Mohd.
R/o Sungal Tehsil Akhnoor, District Jammu
through his brother
Shoukat Mohd., aged 22 years
S/o Hussain Mohd.
R/o Sungal, Tehsil Akhnoor, District Jammu**

.....Petitioner

Through: Mr. A. P. Singh, Advocate

Vs

- 1. Union Territory of Jammu & Kashmir
Through Financial Commissioner
(Additional Chief Secretary)
Home Department
Civil Secretariat, Jammu.**
- 2. The District Magistrate, Jammu.**
- 3. The Superintendent Central Jail,
Kot Bhalwal, Jammu.**

..... Respondents

Through: Mr. Rajesh Thappa, AAG

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

JUDGMENT

01. Heard Mr. A. P. Singh, learned counsel for the petitioner and Mr. Rajesh Thappa, learned AAG. Perused the writ pleadings

along with the annexed documents. Perused the detention record produced by Mr. Rajesh Thappa, learned AAG.

02. The respondent No. 2 – District Magistrate, Jammu by virtue of an order No. PSA-25 of 2023 dated 06.11.2023 ordered preventive detention of the petitioner under section 8(1)(a) of the Jammu & Kashmir Public Safety Act, 1978 holding his alleged activities prejudicial to the maintenance of public order thereby warranting the preventive detention and lodgment in Central Jail, Kot Bhalwal, Jammu. The detention order came to be executed by Sub Inspector – Suraj Parkesh of Police Station Akhnoor on 09.11.2023.

03. Against the preventive detention so slapped upon him by virtue of the aforesaid order thereby depriving him of his personal liberty, the petitioner, acting through his brother, came forward with the present writ petition filed on 29.12.2023 challenging the detention order along with the basis thereof so as to retrieve his lost personal liberty by earning quashment of the detention order and his consequent release from the Central Jail, Kot Bhalwal, Jammu.

04. The case for seeking preventive detention of the petitioner was mooted to the respondent No. 2 – District Magistrate, Jammu by the Sr. Superintendent of Police (SSP), Jammu vide

communication No.CRB/Dossier/2023/48/DPOJ dated 02.11.2023 thereby forwarding a dossier against the petitioner narrating his alleged state of activities rendering him a prospect for preventive detention under the Jammu & Kashmir Public Safety Act, 1978 for the sake of maintenance of public order. The dossier was accompanied with requisite documents related to the petitioner's alleged prejudicial activities.

05. Acting upon the said dossier, the respondent No. 2 – District Magistrate, Jammu came to formulate the grounds of detention thereby drawing a subjective satisfaction therefrom that a case was made out against the petitioner for his preventive detention under section 8(1)(a) of the Jammu & Kashmir Public Safety Act, 1978 for the purpose of maintenance of public order.

06. In the grounds of detention, the petitioner came to be referred as a hardcore criminal, desperate character and history sheeter and habitual of indulging in smuggling of bovine animals with potential to promote feeling of enmity and disharmony among communities. The petitioner is referred to be involved in numerous criminal activities of serious and heinous nature over a period of time thereby spreading a reign of terror amongst the peace loving people of the area by which anti-social activities the maintenance of public order was found to be a risk.

07. With respect to the antecedents of the petitioner, following FIRs came to be set out in the grounds of detention being drawn from the dossier itself.

- a) FIR No. 194/2017 u/s 341/323/506 P/s Akhnoor.
- b) FIR No. 132/2020 u/s 188 IPC 11 PCA Act P/s Sunderbani.
- c) FIR No. 02/2021 u/s 188 IPC P/s Khour.
- d) FIR No. 69/2021 u/s 188 IPC 11 PCA Act P/s Nowshera.
- e) FIR No. 88/2021 u/s 188 IPC 11 PCA Act P/s Manjakot.
- f) FIR No. 281/2021 u/s 332/147 IPC P/s Akhnoor.
- g) FIR No. 319/2021 u/s 188 IPC 11 PCA Act P/S Akhnoor.
- h) FIR No. 04/2022 u/s 188 IPC 11 PCA Act P/s Dharamsala.
- i) FIR No. 290/2022 u/s 188 IPC 11 PCA Act P/S Akhnoor.
- j) FIR No. 23/2023 u/s 188 IPC 11 PCA Act P/S Khour.
- k) FIR No. 119/2023 u/s 188 IPC 11 PCA Act P/S Akhnoor.

08. The Home Department, UT of Jammu & Kashmir by virtue of Govt. Order No. Home/PB-V/2586 of 2023 dated 10.11.2023 acting under section 8(4) of the Jammu & Kashmir Public Safety Act, 1978, came to lend its approval to the preventive detention Order No. PSA 25 of 2023 dated 06.11.2023 passed by the respondent No. 2 – District Magistrate, Jammu

forwarding the case for Advisory Board's opinion which came forward in terms of an Opinion Report dated 22.11.2023 justifying the detention of the petitioner, as a result whereof by virtue of Govt. Order No. Home/PB-V/2709 of 2023 dated 28.11.2023, the Govt. came to confirm the preventive detention Order No. PSA 25 of 2023 dated 06.11.2023 and ordered the detainment of the petitioner for a period of three months at the first instance with his place of detainment in the Central Jail, Kot Bhalwal, Jammu.

09. The petitioner on his part came forward with a written representation dated 04.12.2023 seeking withdrawal of the preventive detention Order No. PSA 25 of 2023 dated 06.11.2023 against him. This representation was duly addressed to Financial Commissioner (Additional Chief Secretary), Home Department, Govt. of UT of Jammu & Kashmir duly submitted through Assistant Superintendent, Central Jail Kot Bhalwal, Jammu. This representation of the petitioner came to be forwarded by the Home Department, UT of Jammu & Kashmir to Special DGP CID J&K vide communication No. Home/PB-V/592/2023 dated 07.12.2023 for seeking comments on the contents of the said representation of the petitioner.

10. The detention period of the petitioner originally fixed for a period of three months came to be extended by another period of

three months on the recommendations of the Special DGP CID J&K by virtue of Govt. Order No. Home/PB-V/248 of 2024 dated 01.02.2024 which period was to expire on 08.05.2024 and on the basis of reference from the Special DGP CID J&K the petitioner's detention came to be further extended for a period of three months lasting up to 08.08.2024 by virtue of Govt. Order No. Home/PB-V/946 of 2024 dated 03.05.2024 which period is yet to expire.

11. During all this course of period, the representation of the petitioner has remained unanswered in terms of its consideration by the Govt. of UT of Jammu & Kashmir acting through its Home Department. None of the aforesaid Govt. orders in terms of confirmation of preventive detention Order No. PSA 25 of 2023 dated 06.11.2023 read with two extension orders above referred seems to have been apprised to the petitioner for enabling him to know as to for how long he is due for preventive detention.

12. A bare perusal of the grounds of detention would show that it has two parts, firstly the alleged profiling of the petitioner by the respondent No. 2 – District Magistrate, Jammu reading the petitioner to be a hard-core criminal, desperate character and history sheeter and habitual of indulging in illegal smuggling of bovine animals with potential to promote feeling of enmity and disharmony among communities and the other portion is

reference to the antecedents of the petitioner in the context of the FIRs.

13. Obviously, the FIRs referred in the grounds of detention are the feeding support to the characterization of the petitioner as formulated by the respondent No. 2 – District Magistrate, Jammu. The objective of the preventive detention order against the petitioner is with respect to maintenance of public order. If the FIRs are to be reckoned into consideration then by no stretch of reasoning the alleged offences in which the petitioner is alleged to be involved and undergoing trial can be said to be related to maintenance of public order. By his alleged involvements, the petitioner may be a pain in the neck with respect to law and order maintenance but for that situation to be dealt with the legal course of action to deal with the petitioner is through Code of Criminal Procedure, 1973. J&K Public Safety Act, 1978 is not a tool in the hands of preventive detention authority to make a short-cut of the Code of Criminal Procedure, 1973 which is actually meant for convicting or acquitting an accused person charge-sheeted for alleged commission of offences be it a solitary case or in a series of cases decided or pending against a particular accused person.

14. In the grounds of detention, the very fact that in almost in all the cases related to the FIRs registered against the

petitioner, it is the offences under section 188 Indian Penal Code read with offence under the Prevention of Cruelty to Animals Act, 1960 which are involved and that is a pointer to the fact that the same are not relatable in any manner to maintenance of public order. On record there is not even an single incident referred or reported that by alleged involvements of the petitioner in anyone of the said FIRs, the so called communal tension or disharmony came to take place on such and such occasion which led to the law and order enforcement agency suffering a difficult time in bringing under control the disturbed public order so as to show-case the petitioner to be a threat to maintenance of public order.

15. The “Public Order” as a concept in distinction to “Law and Order” has been considered by the Hon’ble Supreme Court of India in a long line of cases. In the case of **“K. K. Saravana Babu Vs State of Tamil Nadu and another” (2008)9 SCC 89**, the Hon’ble Supreme Court of India has recapitulated the case law on the said aspect in which the Security of the State followed by the Public Order and last by “Law and Order” has been set up in an hierarchy. The “Public Order” has been read to be even the tempo of the life of the community taking the country as a whole or even a specified locality. Disturbance of Public Order is meant to be distinguished from acts directing against individuals which do not

disturb the society to the extent of causing a general disturbance of public tranquility.

16. By reference to a case of **“Arun Ghosh Vs State of West Bengal,” (1970)1 SCC 1998**, the Hon’ble Supreme Court of India has laid emphasis on the potentiality of the act to be a determining factor to compartmentalize an act to be one disturbing public order or a law and order problem. It has been observed that an act by itself is not determinant of its own gravity as in its quality it may not differ from another but in its potentiality it may be very different.

17. The Hon’ble Supreme Court of India in a case titled as **“Sama Aruna Vs State of Telangana and another” (2018)12 SCC 150** in paras 17 & 23 has held as under:-

“17. A detention order which is founded on stale incidents, must be regarded as an order of punishment for a crime, passed without a trial, though purporting to be an order of preventive detention. The essential 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.

23. A detaining authority must be taken to know both, the purpose and the procedure of law.”

18. “Maintenance of Public Order” as being one of the grounds of subjecting a person to preventive detention is not to be

easily assumed to be readily available by a just reference to series of FIRs reporting crimes against a particular individual which would at the most render him to be branded as a habitual offender for which the Code of Criminal Procedure, 1973 in itself has conceived a preventive measure under section 110 which enlists a number of categories for an Executive Magistrate to take cognizance and bind a person so as to prevent him from indulging in repeat of the alleged activities. What is meant to be effectively cured and dealt with under section 110 of the Code of Criminal Procedure, 1973 cannot be diverted to be dealt with by the application of prevention detention mode of J&K Public Safety Act, 1978 by depriving a person of his personal liberty for any given period of time. A preventive detention cannot be resorted to by the debunking ordinary criminal procedure and trial of cases.

19. Sr. Superintendent of Police (SSP), Jammu in his dossier did not serve the respondent No. 2 – District Magistrate, Jammu with full picture of facts with respect to the petitioner, which is born out from the very fact that the state of trials of the FIRs starting from FIR No. 194/2017 and ending with FIR No. 119/2023 relating to the petitioner was kept withheld from being known and disclosed meaning thereby that state of trial of the cases was of no interest be told and disclosed by the Sr. Superintendent of Police (SSP), Jammu and consequently of no

interest to be known by the respondent No. 2–District Magistrate, Jammu.

20. In view of the aforesaid facts and circumstances of the case, the preventive detention of the petitioner is held to be unwarranted and misconceived and illegal. Accordingly, the preventive detention Order No. PSA-25 of 2023 dated 06.11.2023 passed by the respondent No. 2 – District Magistrate, Jammu read with consequent approval and confirmation order passed by the Govt. of UT of Jammu & Kashmir are hereby set aside and the petitioner is directed to be restored to his personal liberty.

21. The respondent No. 2 – District Magistrate, Jammu as well as the Superintendent of the concerned Jail to ensure release of the petitioner from the preventive custody unless the petitioner's custody is warranted in some other case be it pending trial or investigation.

22. *Disposed of.*

23. Detention record to be returned back to Mr. Rajesh Thappa, learned AAG by the Registrar Judicial, Jammu.

(RAHUL BHARTI)
JUDGE

JAMMU
06.08.2024
Muneesh

Whether the order is speaking : **Yes**
Whether the order is reportable : **Yes**