



2024:JKLHC-JMU:2519

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

Reserved on : 20.08.2024.

Pronounced on : 17.09.2024.

Case:- HCP No. 45/2024
CM No. 1777/2024

Talib Hussain @ Javied, Age 45 years,
S/o Nazir Hussain, R/o Naka Manjhari, Tehsil Mendhar, District Poonch
Through Father Nazir Hussain, Age 65 years, S/o Ghulam Hussain,
R/o Naka Manjhari, Tehsil Mendhar, District Poonch.

.....Petitioner

Through: Mr. Tanzir Khatana, Advocate &
Mr. Tayyab Javed Qureshi, Advocate

Vs

1. Union Territory of Jammu & Kashmir through its Commissioner/Secretary, Home Department, Civil Secretariat, Srinagar.
2. Director General of Police, J&K, Jammu.
3. District Magistrate, Poonch.
4. Sr. Superintendent of Police (SSP), District Poonch.
5. Superintendent of Police (SP), District Poonch.
6. Station House Officer, Police Station Gursai, Tehsil Mendhar, District Poonch.

..... Respondents

Through: Mr. Pawan Dev Singh, Dy. AG

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

JUDGMENT

01. Heard learned counsel for the petitioner as well as Mr. Pawan Dev Singh, learned Dy. AG for the respondents. Perused the pleadings and the record therewith. Also perused the detention record produced by Mr. Pawan Dev Singh, learned Dy. AG.



02. By referring to his profile as a committed local journalist working as a Bureau Chief of Zee News Urdu and associated with causes of common man highlighting the problems of area in general and of victims of law enforcement agencies in particular, the petitioner has come forward being in a state of preventive detention custody, with the institution of the present writ petition on 27.03.2024 assailing exercise of preventive detention jurisdiction against him to be *mala fide* in all intent and purposes, being a brain child of the SHO Police Station Gursai, tehsil Mendhar, district Poonch and is, therefore, seeking exercise of writ jurisdiction of this Court under article 226 of the Constitution of India for a writ of habeas corpus for the sake of restoration of his lost personal liberty which has remained deprived to him with effect from 10.03.2024 onwards.

03. Right to life and personal liberty enshrined under article 21 of the Constitution of India ensures guarantee to every person/citizen with or without social/professional status whatever that may be, and is, thus, concerned with person rather than with personality. A person whose fundamental right to life and liberty gets wronged at the hands of State and its functionaries is entitled to his/her remedy under the constitutional jurisdiction of this Court under article 226 of the Constitution of India and that is good enough for a constitutional Court to take notice of violation/infringement of fundamental right under article 21 of the Constitution of India and come to the rescue of a person having suffered injury to his said fundamental right.



04. With this observation as a prelude, this Court proceeds to deal with the adjudication of the present writ petition not needing to make any reference to the petitioner's social/professional calling as stated in the writ petition.

05. The petitioner is a resident of village Nakhamanjari, tehsil Mendhar, district Poonch and is 45 years old person filing this writ petition acting through his father Nazir Hussain.

06. The respondent No.4 – Sr. Superintendent of Police (SSP), Poonch came to address a letter No.CS/PSA/2024/1160 dated 29.02.2024 to the respondent No.3-District Magistrate, Poonch thereby submitting a 48 pages dossier with respect to the petitioner on the basis of which the preventive detention of the petitioner was solicited purportedly on the basis that the petitioner's activities are against order, morals and culture of society which warrants his detention to prevent from him from indulging in repeated criminal acts/anti-social activities and to maintain public order.

07. In the dossier, the respondent No.4 -Sr. Superintendent of Police (SSP), Poonch has started by reference to the adulthood of the petitioner alleging his indulgences in felonious activities including in anti-social acts etc., when despite legal and counselling measures adopted by the Police, the petitioner is alleged to have graduated into a hardcore criminal thereby posing serious threat to the health and welfare of the people of district Poonch bearing an adverse impact on peace and order in the society.



08. As per the respondent No. 4 – Sr. Superintendent of Police (SSP), Poonch, the manner in which the petitioner repeatedly commits criminal acts is a matter of great concern which has created disturbance in the peaceful living of General Public and, thus, needs to be stopped immediately. The petitioner is alleged to have let loose a reign of terror and fear psychosis amongst the Public and because of his unstoppable criminal activities he has posed a serious threat to the General Public.

09. The respondent No. 4 – Sr. Superintendent of Police (SSP), Poonch in his dossier states that many of the criminal activities carried out by the petitioner could not be documented over a period of time but the ones which are in record came to be referred by him in the dossier and in this regard reference stands made are as under:-

- FIR No. 28/2001 dated 03.05.2001 under section 452/336/147/148/323 Ranbir Penal Code registered with Police Station Gursai which resulted into presentation of a Final Police Report No.37/2001 dated 26.12.2001 for trial of the petitioner;
- FIR No.111/2003 under section 452/323/147/148 Ranbir Penal Code registered with Police Station Gursai with respect to which the petitioner is said to have been charge-sheeted before a court of criminal jurisdiction;
- FIR No. 04/2006 dated 19.01.2006 under section 324/323 of Ranbir Penal Code registered with Police



Station Gursai resulting in presentation of a Final Police Report No. 02/2006 dated 07.02.2006 before a court of criminal jurisdiction;

- FIR No. 31/2006 dated 29.04.2006 under section 323/324/336 Ranbir Penal Code registered with Police Station Gursai which resulted in presentation of a Final Police Report No.14/2006 dated 23.05.2006 before a court of criminal jurisdiction;
- FIR No.35/2010 dated 09.04.2010 under section 341/336/504/506 of Ranbir Penal Code registered with Police Station Gursai which resulted in presentation of a Final Police Report No.30/2010 dated 27.04.2010 before a court of criminal jurisdiction;
- FIR No.67/2013 dated 13.08.2013 under section 353/323/504 Ranbir Penal Code registered with Police Station Gursai resulting in presentation of a Final Police Report No. 60/2013 dated 27.09.2013 before a court of criminal jurisdiction;
- FIR No. 15/2023 dated 03.05.2023 under section 452/354/504/ 506 of Indian Penal Code registered with the Police Station Women Cell Rajouri resulting in presentation of a Final Police Report No. 15/2023 dated 01.09.2023 before a court of criminal jurisdiction and
- lastly proceedings under section 107/117 of Code of Criminal Procedure, 1973 initiated in 05.01.2024.



10. With these reported antecedents related and referable to the petitioner, the respondent No. 4 – Sr. Superintendent of Police (SSP), Poonch referred to the petitioner's activities as being against order, morals and culture of society when normal course of law against the petitioner has not been proven sufficient in order to deter him from indulging in criminal activities, due to his utter disregard on the law of the land and the societal norms, thus warranting his preventive detention under the Jammu & Kashmir Public Safety Act, 1978 to prevent him from indulging in repeated criminal acts/anti-social activities and to maintain public order.

11. Proceeding on the said dossier, the respondent No. 3 – District Magistrate, Poonch came to draw and formulate the purported grounds of detention providing subjective satisfaction to the respondent No. 3 – District Magistrate, Poonch to order the preventive detention of the petitioner in order to prevent him from acting in a manner prejudicial to public order under section 8 of the Jammu & Kashmir Public Safety Act, 1978 and, therefore, passed the Detention Order No. 02/DMP/PSA of 2024 dated 09.03.2024 directing the petitioner to be detained and kept in District Jail Poonch.

12. The respondent No. 3 – District Magistrate, Poonch, vide a communication No. DMP/JC/5054-57 dated 09.03.2024 addressed to the petitioner to apprise about the fact of preventive detention order having been passed against him and right to representation available to the petitioner against his said detention.



13. Simultaneously, vide a communication No. DMP/JC/5058-66 dated 09.03.2024, the respondent No. 3 – District Magistrate, Poonch came to apprise Financial Commissioner (Additional Chief Secretary), Home Department, Govt. of UT of Jammu & Kashmir about the passing of the detention order against the petitioner.

14. The Detention Order No. 02/DMP/PSA of 2024 dated 09.03.2024 came to be executed on 10.03.2024 by none else than the SHO Police Station Gursai – Inspector Ashaq Hussain, PID No. EXJ-109381 himself when the petitioner came to be arrested, delivered with 62 leaves of compilation and handed over to the Superintendent District Jail, Poonch.

15. Preventive Detention Order No. 02/DMP/PSA of 2024 dated 09.03.2024 came to be approved by the Govt. of UT of Jammu & Kashmir by virtue of Govt. Order No. Home/PB-V/502 of 2024 dated 15.03.2024 while forwarding the case for the opinion of the Advisory Board acting under the Jammu & Kashmir Public Safety Act, 1978.

16. The petitioner, at his end, came to submit a written representation dated 20.03.2024 to the Home Department, Govt. of UT of Jammu & Kashmir against receipt C.R.U. No. 4086765 Home Department dated 20.03.2024.

17. Pursuant to the Advisory Board's opinion dated 02.04.2024 justifying the preventive detention order against the petitioner while considering the representation so submitted by the petitioner, the Govt. of UT of Jammu & Kashmir came forward with Govt. Order



No. Home/PB-V/704 of 2024 dated 08.04.2024 confirming the preventive detention of the petitioner and ordering his detention for a period of three months at the first instance in the District Jail Poonch.

18. During the pendency of the writ petition, the period of detention, in terms of first installment of three months, came to expire as a result whereof the Govt. of UT of Jammu & Kashmir, vide Govt. Order No. Home/PB-V/1220 of 2024 dated 05.06.2024, came to order next extension of period of detention of the petitioner for a duration of three months till 09.09.2024.

19. The respondents came forward with filing of counter affidavit on 15.07.2024 to the writ petition. The counter affidavit came to file by the respondent No. 3 – District Magistrate, Poonch.

20. It is in the aforesaid backdrop that the petitioner has thrown challenge to his preventive detention alleging it to be violative of articles 21 & 22 of the Constitution of India and alleging that his detention is an act of *mala fide* at the end of the local police to settle their personal score with the petitioner.

21. In this regard, the petitioner refers to the fact that the respondent No. 4 – Sr. Superintendent of Police (SSP), Poonch deliberately withheld the fact about the final status of police reports relatable to FIR No. 28/2001, FIR No. 111/2003, FIR No. 04/2006, FIR No. 31/2006, FIR No. 35/2010, FIR No. 67/2013 & FIR No. 15/2023. In this regard, the petitioner has pleaded that only in the last two FIRs i.e. FIR No. 67/2013 & FIR No. 15/2023 the criminal



trial is going on before the competent court of criminal jurisdiction, whereas in the rest of the five FIRs the petitioner stood acquitted and this fact was all along known and is supposed to be known to the respondent No. 4 – Sr. Superintendent of Police (SSP), Poonch and despite that the truth was screened so as to portray the petitioner as a bad person by reference to the series of five FIRs so as to link it with the last two FIRs to project that the petitioner was a criminal in terms of his disposition.

22. When this Court examines this aspect in terms of the claim of the petitioner that he has been acquitted of criminal cases relatable to said five FIRs to which the respondent No. 3 – District Magistrate, Poonch has come up with no denial or dispute, this Court finds that in his dossier, the respondent No. 4 – Sr. Superintendent of Police (SSP), Poonch who cannot be heard to claim a novice in the office that he was not aware of the final outcome of the criminal cases relatable to said FIRs which came to be highlighted by him in his dossier to portray the petitioner bad in every sense of import and meaning. This, therefore, surely exposes the *mala fide* on the part of the respondent No. 4 – Sr. Superintendent of Police (SSP), Poonch in coming up with an adulterated facts against the petitioner with a mindset to somehow get the petitioner behind bars and to suffer loss of his personal liberty at the cost of violation of his fundamental right to life and personal liberty in terms of article 21 of the Constitution of India.

23. At the same level at which the respondent No. 4 – Sr. Superintendent of Police (SSP), Poonch had come forward with the



dossier against the petitioner, the respondent No. 3 – District Magistrate, Poonch also acted as if a novice in the office in the matter of exercise of preventive detention jurisdiction under the Jammu & Kashmir Public Safety Act, 1978 readily believing the version as given by the respondent No. 4 – Sr. Superintendent of Police (SSP), Poonch least taxing his mind to cross-check and verify the fact feed from the respondent No. 4 – Sr. Superintendent of Police (SSP), Poonch as to the outcome of the FIRs so referred in the dossier about which reference relates back to 2001, 2003, 2006, 2010 and also 2013.

24. The manner in which the respondent No. 3 – District Magistrate, Poonch responded to the dossier of the respondent No. 4- Sr. Superintendent of Police (SSP), Poonch against the petitioner is as if the respondent No. 3 – District Magistrate, Poonch was made to act blind folded in signing the detention order of the petitioner without his own application of mind at work.

25. Even otherwise, FIRs reckoning from 2001 to 2013, with or without any acquittal in favour of the petitioner are, so distant in point of time of reference that a preventive detention order against the petitioner on the reference of the said FIRs could not have been conceived at the very first instance lest that of granting it.

26. Thus, taking out six FIRs of seven referred FIRs, the only FIR left in reckoning is FIR No. 15/2023 for alleged commission of offences under section 354/452/504/506 of Indian Penal Code which by no stretch of reasoning and reference can be said to be reflective of activities of the petitioner to be prejudicial to the public



order, as has been observed by the respondent No. 3- District Magistrate, Poonch in his impugned detention order leaving out word “maintenance of public order” thereby pointing out the fact that the respondent No. 3 – District Magistrate, Poonch was well aware of the fact that maintenance of public order was nowhere related to the alleged activities of the petitioner in the context of FIR No. 15/2023 which at the best is a case of law and order problem for which an ordinary procedure of law governing the rule of law in the country is good enough to take care of the petitioner’s guilt if at all he is found to be guilty liable to conviction.

27. This Court would like to refresh the mindset of the sponsoring as well as detention order making authority acting in exercise of preventive detention jurisdiction who have the tendency to fall in misconception of their authority and office in subjecting a person/citizen to the preventive detention custody on a pretext which do not fall within the scope of preventive detention jurisdiction but still lead themselves by habit of their casualness and callousness without bearing and exhibiting any sense of constitutionality in seeking and granting preventive detention order/s against person/s at the cost of mocking the Constitution of India which in its Part-III guarantees fundamental right to life and personal liberty in terms of its articles 21 & 22. In this regard, the judgment of the Hon’ble Supreme Court of Indian in the case of **“Mallada K. Sri Ram Vs State of Telangana and others” 2022(3) JKJ 33**, is a food for thought and in para 15 has held as under:-

“15. A mere apprehension of a breach of law and order is not sufficient to meet the standard of adversely



affecting the “maintenance of public order”. In this case, the apprehension of a disturbance to public order owing to a crime that was reported over seven months prior to the detention order has no basis in fact. The apprehension of an adverse impact to public order is a mere surmise of the detaining authority, especially when there have been no reports of unrest since the detenu was released on bail on 8 January 2021 and detained with effect from 26 June 2021. The nature of the allegations against the detenu are grave. However, the personal liberty of an accused cannot be sacrificed on the altar of preventive detention merely because a person is implicated in a criminal proceeding. The powers of preventive detention are exceptional and even draconian. Tracing their origin to the colonial era, they have been continued with strict constitutional safeguards against abuse. Article 22 of the Constitution was specifically inserted and extensively debated in the Constituent Assembly to ensure that the exceptional powers of preventive detention do not devolve into a draconian and arbitrary exercise of state authority. The case at hand is a clear example of non-application of mind to material circumstances having a bearing on the subjective satisfaction of the detaining authority. The two FIRs which were registered against the detenu are capable of being dealt by the ordinary course of criminal law.

28. Thus, in view of the aforesaid facts and circumstances of the case, there is no iota of doubt that the preventive detention of the petitioner is a sheer abuse of jurisdiction of preventive detention under the Jammu & Kashmir Public Safety Act, 1978 resorted to by the District Police represented by the respondent No. 4 – Sr. Superintendent of Police (SSP), Poonch compounded by the respondent No. 3 – District Magistrate, Poonch in coming forward with doling out preventive detention order against the petitioner just at the asking of the District Police, Poonch unmindful of the fact that the jurisdiction reserved in favour of a District Magistrate under the Jammu & Kashmir Public Safety Act, 1978 is based upon an independent application of mind on the part of a District



Magistrate and not by going subservient to the call and command of the Police seeking preventive detention of a citizen.

29. Therefore, this Court, without losing any further second in the matter hastens to quash the preventive detention Order No. 02/DMP/PSA of 2024 dated 09.03.2024 read with approval/confirmation order/s passed by the Govt. of UT of Jammu & Kashmir with respect to preventive detention of the petitioner and holds the preventive detention of the petitioner illegal and, therefore, directs his immediate release from illegal custody.

30. Accordingly, the Superintendent District Jail, Poonch is directed to set free person of the petitioner to his personal liberty from the custody of District Jail, Poonch. The respondent No. 3 – District Magistrate, Poonch to ensure immediate release of the petitioner with due safety and security of his person.

31. Record file submitted by Mr. Pawan Dev Singh, learned Dy. AG upon being scanned to be returned to him by the Registry of this Court.

32. ***Disposed of.***

(RAHUL BHARTI)
JUDGE

JAMMU
17.09.2024
Muneesh

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