Sr. No. 146

HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT JAMMU

Reserved on:- 03.09.2024
Pronounced on:- 20.09.2024

Case No. HCP No. 68/2024

Anjum Khan Aged 25 years …. Petitioner(s)
Son of Mr. Azmat Hussain,
R/o Village Mahra Tehsil Surankote
District Poonch
Through Father
Azmat Hussain, Aged 52 years
Son of Gohar Ali,
R/o Village Mahra Tehsil Surankote
District Poonch

Through: - Mr. Sunil Sethi, Sr. Advocate with
Mr. Tejashwar S. Chib, Advocate.

V/s

1. Union Territory of Jammu & Kashmir
Through Financial Commissioner,
Home Department,
Civil Secretariat, Jammu/Srinagar.
2. District Magistrate,
Poonch.
3. Superintendent,
District Jail, Poonch. ....Respondent(s)

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

Coram: HON'BLE MR. JUSTICE WASIM SADIQ NARGAL, JUDGE

JUDGMENT

PRAYER

1. The instant petition has been preferred by the detenue through his father Mr. Azmat Hussain under Article 226 of the Constitution of India, wherein following reliefs have been sought:-

a) An appropriate writ, order or direction in the nature of Habeas Corpus, quashing detention order No. 06/DMP/PSA of 2024 dated 08.04.2024 passed by respondent No. 2 under Section 8(1)(a) of the J&K Public Safety Act, 1978, whereunder the petitioner has been detained and lodged in District Jail, Poonch and for directing the respondents to immediately and forthwith set the petitioner at liberty.

b) Any other relief, which this Court, in the facts and circumstances of the case deems fit and proper may also be passed in favour of the petitioner."

2. Before proceeding further in the matter and to clinch the controversy in question, it is apposite to give brief resume of the facts, which, in nutshell, are summarized as under:-

FACTUAL MATRIX OF THE CASE

3. The case of the petitioner/detenue is that vide order. 06/DMP/PSA of 2024 dated 08.04.2024 *(hereinafter referred as the "**impugned order**")* issued by District Magistrate, Poonch (*hereafter referred to as the*, "***Detaining Authority***") in exercise of powers under Section 8 of the J&K Public Safety Act, 1978 (*hereinafter referred to as the, "**Act**"*)**,** he was placed under preventive detention and lodged in District Jail, Poonch with a view to prevent him from indulging in the activities, which are prejudicial to the maintenance of public order.

4. The fact of the matter is that petitioner is a young married man of 25 years and was serving as Security Guard in EKTA security services, whose family has enmity and animosity with one-Mohd. Rayaz @ Rayaz Hussain and

his family. On 11.05.2023, the family members of Mohd. Rayaz carried out criminal assault upon real sister-in-law of the petitioner, namely, Rubia Kouser, who suffered grievous injuries including fracture of her one tooth. Subsequent thereto, she filed a complaint before the Police Station, Surankote, whereby an FIR being FIR No. 123 of 2023 dated 01.06.2023 was registered against Mohd. Rayaz and three other persons for the commission of offences punishable under Sections 323, 325 of IPC. As a counterblast to the aforesaid FIR, the wife of Mohd. Rayaz, namely, Safaza Begum registered a false and motivated FIR being FIR No. 107/2023 dated 20.05.2023 against the petitioner and his family members with the same Police Station for the commission of offences punishable under Sections 341/323/147 IPC, which is now made basis for issuing the impugned order.

5. The further fact of the matter is that petitioner, who was serving as security guard in EKTA Security services, Uttar Pradesh came to his home town at Surankote in the second week of March 2024 and during his stay, again a fight took place between the petitioner, his brother-Asif Mughal and two assailants, namely, Faizan Ahmed and Mohd Anas on 22.03.2024. Subsequently, Police Station, Surankote taking cognizance of the incident, registered the FIR No. 0041/2024 dated 22.03.2024 against the petitioner and other co-accused for the commission of offence punishable under Sections 307/160/323 IPC and 7/25 of the Arms Act. However, in the said FIR, the petitioner alongwith other co-accused were admitted to interim bail by the court of learned Sub-Judge, JMIC, Surankote vide order dated 02.04.2024, which was later on made absolute vide order dated 08.04.2024.

6. It is also averred in the petition that the Senior Superintendent of Police, Poonch merely on the basis of registration of aforesaid two FIRs against the petitioner and under the influence and pressure exerted by the family of Mohd. Rayaz, submitted a dossier to detaining authority against the petitioner vide his Communication No. CS/PSA/2024/1784 dated 02.04.2024 under the provisions of the Act. The detaining authority on the basis of the dossier and documents sent by SSP, Poonch, passed the impugned detention order whereby the petitioner has been detained in District Jail, Poonch under the Act.

7. Feeling aggrieved of the impugned order, the petitioner has approached this Court by way of instant habeas corpus petition.

SUBMISSION ON BEHALF OF THE PETITIONER/DETENUE

8. Mr. Sunil Sethi, learned Senior counsel appearing on behalf of the petitioner submits that the order of detention is illegal, arbitrary and contrary to the provisions of the Act and is liable to be quashed and the said order is based upon two false and fabricated FIRs i.e. FIR No. 107 of 2023 dated 20.05.2023 registered under Sections 341, 323 and 147 IPC and FIR No. 31 of 2024 dated 22.03.2024, registered under Sections 307, 160, 324 IPC, details of which have been reflected in the grounds of detention. However, it has not been indicated in the grounds that the petitioner has already been admitted to bail in both the FIRs.

9. It is the specific case of the petitioner that the Detaining Authority while passing the order of detention was not alive to the fact that the petitioner has already been admitted to bail in both the FIRs and this aspect of the matter was deliberately concealed and suppressed by SSP Poonch in his communication

dated 02.04.2024 as well as in the dossier sent to respondent no. 2. The detaining authority was not aware about the petitioner having been admitted to bail in both FIR's. This goes to the root of the case to establish that the Detaining Authority has passed the order of detention without being aware of the fact that the petitioner has already been admitted to bail by the Competent Court of law. Further, it is a specific case of the petitioner that with a view to frustrate the order passed by the Competent Court of law in the bail application, which was later on made absolute vide order dated 08.04.2024, the impugned order of detention has been passed.

10. Mr. Sethi with a view to fortify his claim, has drawn the attention of this Court to the grounds of detention with respect to FIR No. 107/2023, in which reference has been made to the incident of 18.09.2012, when the petitioner was merely 13 years of age. Thus, the very reference of the incident pertaining to the year 2012 and the registration of the FIR No. 107/2023, prove beyond any reasonable shadow of doubt that the detaining authority while passing the impugned order, has not evaluated the facts of the case properly and instead, passed the order of detention in hush-hush manner and without proper application of mind. Another illegality has been committed by the Detaining Authority while passing the impugned order, which can be gauged from the fact that the incident had shown to be occurred in the year 2012, whereas the FIR has been registered on 20.05.2023, which is the basis for passing of the order of detention.

11. It has also been argued by learned Senior counsel for the petitioner that no dossier has been supplied by the detaining authority before passing the

impugned order, and, thus, on this count alone, the order impugned cannot sustain the test of law, as the non-supply of the dossier can't be condoned in the instant case, as he has been denied of making effective representation, which is violative of his Constitutional right. The filing of two FIRs against the petitioner cannot be an indicative of the fact that he is a threat to public order, which could be a basis for passing the order of detention.

12. The learned counsel further submits that the order of detention and the order of absolute bail was passed on the same day i.e. on 08.04.2024. The very passing of the detention order by the detaining authority, is with a view to frustrate the order passed by the Competent Court, in which the said bail was opposed by the prosecution in tooth and nail and after hearing both the rival counsels, the order was made absolute. The respondents were alive to the passing of the bail order dated 02.04.2024, as the concerned Additional Public Prosecutor (APP) was appearing and opposing the said bail, which, however, was subsequently made absolute on 08.04.2024 i.e., on the date when the impugned detention order was passed and there is no whisper about the said bail order in the grounds of detention. Thus, the action of respondents smacks foul play and *malafide* on their part in passing the order of detention, which has been issued with the sole object to frustrate the order passed by the competent Court to keep the petitioner behind the bars for one reason or the other.

13. Another point, which has been raised by Mr. Sethi is that the Detaining Authority has formulated the opinion to detain the petitioner on the basis of highly motivated and baseless FIRs and, as such, the detention of the

petitioner is not legally permissible, as the incident of FIRs does not fall within the realm of public order.

14. He has drawn the attention of this Court to the grounds of detention issued by the detaining authority, a perusal whereof, reveals that there is apprehension that petitioner may again indulge in subversive activities that can be threat to public order and with a view to prevent the detenue to involve other youth/his family members in criminal activities and to prevent him from acting in any manner prejudicial to the public order, the impugned detaining order was passed by the Detaining Authority. However, what subversive activities the petitioner was indulging in the past, which could be a threat to the public order, have not been reflected in the grounds of detention or in the impugned order and, on the other hand, a mere reference that the petitioner will indulge in subversive activities, which are threat to public order, cannot be a basis for detaining the petitioner.

15. Mr. Sethi has made an endeavour to draw distinction between the offences which constitutes ***'law and order'*** and ***'public order'***. He has also drawn the attention of this Court with respect to the grounds of detention, a perusal whereof, reveals that the Detaining Authority in the grounds of detention, has referred to the past acts of the petitioner that he was indulging in frequent, consistent and relentless engagement in criminal activities, which pose threat to public order without giving reference to any such incident or giving details of the said incident, which could be a basis of passing the said impugned order.

16. The Detaining Authority has also referred that the petitioner was indulging persistently in criminal activities, which is posing a grave danger to the public order and have made him a dedicated troublemaker and a threat to the people in the area. However, these baseless allegation are made in the grounds of detention, without referring to any such incident or giving details of such incident, which could have been the basis for the Detaining Authority to arrive at a subjective satisfaction for passing of the said order. The grounds did not disclose, which activities of the petitioner were detrimental to public safety, which was instilling fear among the general public and was a grave concern.

17. Another argument advanced by Mr. Sethi is that the Detaining Authority has made the upcoming General Elections as the basis to detain the petitioner. However, holding of elections, could not be a basis to curtail the liberty of someone or to detain a person, that too, without assigning proper reason or referring to any such specific incident.

18. With a view to buttress his claim, Mr. Sethi has also drawn the attention of this Court, whereby a reference has been made in the grounds of detention by the Detaining Authority that detenue was indulging in so called subversive activities from more than a decade, which has branded the petitioner as a hardcore criminal, engaging in actions such as harassing innocent individuals, pressuring traders, shopkeepers and venders for concessions through intimidation and the exertion of physical force. It is not apparent from record that how the petitioner has been branded as a hardcore criminal nor any such incident in the past has been referred, which could be the basis for passing the said order of detention.

19. He further argues that the order of detention is a figment of imagination of Detaining Authority, who has passed the detention order without any basis or any reference to any such incident in the past. According to the learned counsel, no such specific incident has been referred in the grounds of detention and instead, it has been reflected that the detenue was indulging in criminal activities for more than a decade and on the other hand, only two FIRs, which have been registered in the year 2023 and 2024 has been referred and merely leveling bald allegations against the petitioner without specifying any details cannot justify the detention of the petitioner.

20. He has further argued in vehemence that in the counter affidavit, respondents have taken a specific stand that the petitioner being hardcore and a desperate/notorious character, who indulges in activities endangering the breach of peace and tranquility, which poses great threat to safety/security of the District and that the petitioner is habitual in criminal activities and active in anti-national activities, which pose threat to the ***security of the Nation***. However, the aforesaid stand taken by the respondents is contrary to what has been pleaded in the grounds of detention or in the order of detention and a new ground of detention has been carved out while filing the counter affidavit. In counter affidavit filed by the respondents, they have used all the adjectives, which is contrary to the grounds of detention.

21. Lastly, in reply to the aforesaid stand taken by the respondents, Mr. Sethi has argued that the activities, which pose threat to security of the Nation, does not fall within the realm of the Public Safety Act. As such, the impugned order of detention cannot sustain the test of law and deserves to be quashed.

SUBMISSION ON BEHALF OF THE RESPONDENTS

22. ***Per contra***, Mr. Pawan Dev Singh, learned Dy. AG, appearing on behalf of respondents submits that that the Detaining Authority has drawn subjective satisfaction before detaining the petitioner and there is sufficient incriminating material against the petitioner, and, accordingly, the order impugned does not suffer from any illegality. He further submits that the instant petition is liable to be dismissed, as despite being communicated of his right, the petitioner has not availed alternative remedy by filing representation before the competent authority-*advisory board*.

23. Learned counsel for the respondents further submits that the grounds of detention are based on material record and a perusal of original record shows that the petitioner is a habitual offender and has no tendency to mend.

24. He has further argued that there are distinct and independent grounds for detention of petitioner and even if, one ground is not made out, the same does not render the entire order of detention as invalid. According to him, the petitioner has not approached this Court with clean hands and instead has tried to mislead this Court by sheer misrepresentation of facts.

25. Lastly, he has argued that the liberty of the detenue is subservient to the welfare, safety and interest of the society at large and the detaining authority has exercised its powers within the ambit of law of the land by observing all the safeguards, as such, the instant petition is required to be dismissed.

LEGAL ANALYSIS

26. Heard learned counsel for both the parties at length and perused the detention record, which has been supplied to this Court by the learned Dy.AG appearing on behalf of respondents.

27. Firstly, a bare perusal of the execution report reveals that the petitioner was provided with total of (24) leaves, which consisted copy of the detention warrant (1) leaf, ground of detention (2) leaf, notice of detention (1) leaf and other relevant record (20) leaf. However, in the aforesaid report, there is no mention of receipt of dossier to the petitioner, which makes it evident that the dossier was not supplied and the non-supply of the dossier cannot be condoned. Thus, it can safely be concluded that all the material on which the respondents have placed reliance while passing the impugned order has not been supplied to the petitioner. Thus, the petitioner has been denied of his right of making effective representation for non-supply of dossier, which infringes his constitutional right enshrined under Article 22(5) of the Constitution of India. In this context, reliance has been placed on the judgment rendered by this Court in WP(Crl) No.139/2021 titled ***"Gulzar Ahmad Sheikh Vs. Union Territory of J&K",*** decided on 21.05.2022, wherein following has been held:-

> ***"Respondents have, therefore, failed to supply the dossier, FIR and other record of the case, based whereupon the order of detention had been passed to detain the detenue. The detenue has thus, been prevented from making an effective and meaningful representation in accordance with law and his rights under Article 22 of the Constitution of India, again lending substance to the challenge to the detention order.***
>
> ***"So far as the contours of this requirement and sufficient compliance thereof is concerned, reliance can be placed on the judgment of the Supreme Court reported as AIR 1999 SC 3051 Sophia Gulam Mohd.***

Bham, vs. State of Maharashtra'. Paras 12, 13 and 14 of the same read as under:-

> ***"The detenu was thus informed that he has a right not only to make a representation to the Detaining Authority against the order of detention but also to the State Government and the Central Government.***
> ***Now, an effective representation can be made against the order of detention only when copies of the material documents which were considered and relied upon by the Detaining Authority in forming his opinion that the detention of Bham Faisal Gulam Mohammed was necessary, were supplied to him. It is only when he has looked into those documents, read and understood their contents that it can be said that the detenue can make an effective representation to the Detaining Authority, State or Central Government, as laid down in Article 22 (5) of the Constitution which provides as under:***
> ***"When any person is detained in pursuance of an order made under any law providing for preventive detention, the authority making the order shall, as soon as may be, communicate to such person the grounds on which the order has been made and shall afford him the earliest opportunity of making a representation against the order."***
> ***The above will show that when a person is detained in pursuance of an order made for preventive detention, he has to be provided the grounds on which the order was made. He has also to be afforded the earliest opportunity of making a representation against that order. Both the requirements have to be complied with by the authorities making the order of detention. These are the rights guaranteed to the person detained by this clause of Article 22 and if any of the rights is violated, in the sense that either the grounds are not communicated or opportunity of making a representation is not afforded at the earliest, the detention order would become bad. The use of the words "as soon as may be" indicate a positive action on the part of the Detaining Authority in supplying the grounds of detention. There should not be any delay in supplying the grounds on which the order of detention was based to the detenu. The use of the words "earliest opportunity" also carries the same philosophy that there should not be any delay in affording an adequate opportunity to the detenu of making a representation against the order of detention. The right to be communicated the grounds of detention flows from Article 22(5) while the right to be supplied all the material on which the grounds are based flows from the right given to the detenu to make a representation against the order of detention. A representation can be made and the order of detention can be assailed only when all the grounds on which the order is based are communicated the detenu and the material on which those grounds are based are also disclosed and copies thereof are supplied to the person detained, in his own language."***

> ***In view of the above legal position, as stated above and in particular having regard to the fact that an order of preventive detention against a person passed at a time when that person is already in the custody of the Authorities for commission of an act under substantive law, is illegal unless there is possibility of immediate release of the person from custody in the substantive offence and there are compelling reasons for passing of the order of preventive detention. Such a situation is required to be reflected in the order of detention or the grounds of detention formulated by the detaining authority. Non-furnishing of the whole material, on which the detention order has been based, to the detenue has also made him disabled to make an effective and meaningful representation against the detention order, vitiates the same which is not sustainable. The impugned order is, therefore, liable to be quashed on these counts alone."***

28. Law is well settled that right to be communicated the grounds of detention flows from Article 22(5) while the right to be supplied all the material on which the grounds are based, flows from the right given to the detenue to make a representation against the order of detention. The Hon'ble Apex Court in the case of ***"Sophia Gulam Mohd. Bham v. State of Maharashtra &Ors."*** reported in ***(AIR 1999 SC 3051)***, has held as under: -

> ***"…12…..the right to be communicated the grounds of detention flows from Article 22 (5) while the right to be supplied all the material on which the grounds are based flows from the right given to the detenue to make a representation against the order of detention. A representation can be made and the order of detention can be assailed only when all the ground on which the order is based are communicated to the detenue and the material on which those grounds are based are also disclosed and copies thereof are supplied to the person detained, in his own language."***
>
> ***"13.The words "grounds" used in clause (5) of Article 22 means not only the narration or conclusions of facts, but also all materials on which those facts or conclusions which constitute "grounds" are based."***

29. Recently, the Hon'ble Apex Court in ***Jaseela Shaji vs The Union of India and Ors*** reported in ***2024 Online SC 2496*** has dealt with this legal aspect that

not every document to which passing reference has been made is to be furnished, however, such documents which are relied upon while arriving at its subjective satisfaction are compulsorily required to be supplied. The relevant paras of the aforesaid judgment is reproduced as follows:

> ***40…..If the detention order is passed on one ground taking into consideration factual aspects, the question would be as to whether non-supply of the material containing the factual aspects relied on by the Detaining Authority would vitiate the detention order or not. The question, therefore, for our consideration is as to whether though the grounds of detention could be severed, whether the materials which have been relied on by the Detaining Authority for arriving at its subjective satisfaction could also be severed.***
>
> ***41. "No doubt, as has been reiterated time and again by this Court, it may not be necessary to supply each and every document to which a passing or casual reference is made. However, all such material which has been relied on by the Detaining Authority while arriving at its subjective satisfaction will imperatively have to be supplied to the detenu."***

30. The Division bench of this Court in "***Aqib Ahmad Renzu vs Union Territory of J&K and ors"*** reported in ***2024 SCC OnLine J&K 461*** has held that all the documents referred in the grounds of detention and all the material which the Detaining Authority has considered while framing its subjective satisfaction are to be furnished. The relevant para of aforesaid judgment is reproduced as follows:

> ***13. Thus, the Detaining Authority is required to furnish to the detenue the grounds of detention, all the documents referred in the grounds of detention and all the material which the Detaining Authority has considered while framing its subjective satisfaction. Police report of the dossier is also to be provided. Record reveals that all the material has not been***

> ***provided to the appellant-detenue. Thus, it is also clear from the material available on file that all the documents have not been provided to the appellant-detenue in order to enable him to make an effective representation to the Government or Detaining Authority, as such, non-supply of material violates the rights of the appellant-detenue under Article 22(5) of the Constitution of India and would make the order unsustainable in the eyes of law***

31. Further from the perusal of record, it is clear that the basis for passing the impugned detention order is the two FIRs which are lodged against the petitioner. However, the record reveals that in both the FIRs, the petitioner has been enlarged on bail. Despite the fact that the aforesaid bail order passed by the competent Court was in the knowledge of the respondents, yet neither any reference has been made in the grounds of detention by the detaining authority nor the copies of the bail order were supplied to the petitioner. This aspect of the matter becomes further evident from the fact that on 02.04.2024, the petitioner was enlarged on bail by the Court of learned Sub Judge JMIC, Surankote, where the concerned Additional Public Prosecutor (APP) was appearing and opposing the said bail.

32. Pertinently, the respondents ought to have approached the trial court for cancellation of the bail, in case, he was allegedly indulging in nefarious activities or violating bail conditions. However, they have proceeded to pass an order of detention. Thus, it appears that instead of approaching the competent Court for cancellation of bail order, the respondents have issued the order of detention, as a matter of afterthought with a view to defeat the bail order passed by the competent Court.

33. In the instant case, it appears that the impugned detention order is issued by the respondents on the same date when the bail was made absolute by the competent Court and after having failed before the competent Court, the impugned order of detention was passed to keep him inside the jail. Therefore, the respondents are adopting this nefarious method of detaining the petitioner by issuing the order impugned, which too is without application of mind.

34. Once it was in knowledge of the respondents that petitioner has been granted bail by the competent court, then the remedy available for the respondents is either seeking cancellation of bail or to file an appeal to Higher Court, as the nature of crime as alleged against the petitioner can at best be said to be a *"law and order"* situation and not the *"public order"* situation which would have justified invoking the powers under the preventive detention law.

35. In the aforesaid context, this Court draws reliance on the decision of Hon'ble Apex Court in the case of ***Shaik Nazeen v. State of Telangana and Others*** reported in (***2023) 9 SCC 633***, wherein following has been held:

> ***"11. The detention order was challenged by the wife of the detenu in a habeas corpus petition before the Division Bench of the Telangana High Court. The ground taken by the petitioner before the High Court was that reliance has been taken by the Authority of four cases of chain snatching, as already mentioned above. The admitted position is that in all these four cases the detenue has been released on bail by the Magistrate. Moreover, in any case, the nature of crime as alleged against the petitioner can at best be said to be a law and order situation and not the public order situation, which would have justified invoking the powers under the preventive detention law. This, however did not find favour with the Division Bench of the High Court, which dismissed the petition, upholding the validity of the detention order.***
>
> ***19. In any case, the State is not without a remedy, as in case the detenue is much a menace to the society as is being alleged, then the prosecution should seek for the cancellation of his bail***

> ***and/or move an appeal to the Higher Court. But definitely seeking shelter under the preventive detention law is not the proper remedy under the facts and circumstances of the case.***

36. It is also well settled that the ground on which the detenue has been granted bail, forms an important part of the material and the same is required to be provided to the detenue and the Detention Authority should be aware of the said development. However, it is an admitted case that the entire record i.e. dossier and the copies of the bail order were not provided to the petitioner. In aforesaid context, the Bombay High Court in "***Alakshit S vs. State of Maharashtra &Anr***. reported as ***2022 SCC Online Bom 7439",*** held as under: -

> ***"13.....The grounds of bail may not perhaps help the proposed detenu and the Authority may possibly find them to be all the more reason for ordering preventive detention of such a person, provided the other criteria is fulfilled. Such is the importance of the grounds of bail and therefore, they are required to be considered by the Detaining Authority while passing the order of detention. This is the law laid down by the Apex Court in the case of Abdul Sathar Ibrahim Manik Vs. Union Of India [1991 AIR 2261], which has been followed by this Court in several of its judgments including the judgment delivered in the case of Ratnamala Mukund Balkhande Vs. State of Maharashtra [2022 All M.R. (Cri) 3106]."***

37. Once bail order is passed by a competent court, then the recourse available with the authorities is only ordinary law of the land and not preventive detention. This proposition of law is settled by the judgment of this Court passed by Srinagar Bench of this Court in "***Shabir Ahmad Mir vs State of J&K and Anr.,*** reported in ***(2019) SCC Online J&K 882)*** and the operative part is reproduced as under:-

> ***"Testing the instant case on the touchstone of the law laid down above, the detenu could not have been detained after taking recourse to the provisions of "The Act of 1974", when***

> ***he was already on bail in the cases, the details whereof have been given hereinbefore. The State could have exercised its right to knock at the doors of a higher forum and seek the reversal of the orders of bail so granted by the competent Court(s). This single infraction knocks the bottom out of the contention raised by the State that the detenu can be detained preventatively when he was released on bail. It cuts at the very root of the State action. The State ought to have taken recourse to the ordinary law of the land"***

38. Pertinently, Preventive detention cannot be made alternative/substitute for ordinary law and absolve investigating authorities of their normal functions. This proposition of law is also settled by the Hon'ble Supreme Court in case titled, "***V. Shantha v. State of Telangana &Ors.*** reported in ***AIR 2017 SC 2625"***, the relevant part of the judgment is reproduced as under:-

> ***"That preventive detention of a person by a State after branding him a 'goonda' merely because the normal legal process is in effective and time consuming in "curbing the evil he spreads", is illegal and that the detention of a person is a serious matter affecting the liberty of the citizen. Preventive detention cannot be resorted to when sufficient remedies are available under general laws of the land for any omission or commission under such laws. Recourse to normal legal procedure would be time consuming and would not be an effective deterrent to prevent the detenu from indulging in further prejudicial activities, affecting security of the State, and that there was no other option except invoking the provisions of preventive detention Act as an extreme measure to insulate. No doubt the offences alleged to have been committed by detenu are such as would attract punishment under the prevailing laws but that has to be done under the said prevalent laws and taking recourse to preventive detention laws would not be warranted. Preventive detention involves detaining of a person without trial in order to prevent him from committing certain types of offences. But such detention cannot be made a substitute for ordinary law and absolve investigating authorities of their normal functions of investigating the crimes which the detenu may have committed. After all, preventive detention cannot be used as an instrument to keep a person in perpetual custody without trial."***

39. This Court finds another discrepancy while perusing the response filed by the respondents in the counter affidavit, where the respondents have used adjectives, which run contrary to the grounds of detention. The relevant portion of the aforesaid para is reproduced as under:-

> ***"It is pertinent to mention that the petitioner is a hardcore, and a desperate/notorious character, who indulges in activities endangering the breach of peace and tranquility. The activities of the subject pose great threat to safety/security of the District. The petitioner is habitual in criminal activities and active in anti-national activities which support threat to the security of the Nation."***

40. From perusal of aforesaid para, it transpires that there are allegations of petitioner being active in anti-national activities, which poses threat to the ***Security of the Nation.*** However, this allegation of the detenue endangering the security of Nation runs contrary to what has been alleged in the grounds of detention. The Public Safety Act, 1978 has been enacted by the State Legislature keeping in view the interest of the security of the State and the maintenance of public order.

41. From perusal of the record, it has also come to fore that the allegations, which have been leveled in the grounds of detention are pertaining to disputes between the private parties, who are in rivalry to each other. Thus, the allegation and contents of the FIRs cannot be made the foundation for passing an order by invoking powers under the Act. The detaining authority has not recorded any subjective satisfaction and has issued the order impugned without application of mind, which is not sustainable in the eyes of law.

42. Perusal of the ground of detention also reflects that the detenue is a hard-core criminal, engaging in action and harassing innocent individuals as well

as pressurizing traders, shopkeepers' vendors for concession through intimidation and extortion. However, in support of such allegations, no supporting material has been produced before this Court, which could justify such vague allegations. Even, no specific incident has been referred in the order of detention, which characterizes the petitioner as a hard-core criminal, who according to the respondents is allegedly harassing, innocent and individuals or pressurizing traders, shopkeepers, and vendors etc. Merely leveling bald allegation without any supporting material or specific incident will not be a justifiable ground to detain somebody and curtail the personal liberty of a person. On this ground alone, the order impugned cannot sustain the test of law.

43. Merely alleging vague grounds or allegations are no grounds at all. In the aforesaid context, this Court is in agreement with the view taken in judgment rendered by the High Court of Gujarat in the case titled *"**FatmabaiAbdulkadar Vs Shyamlal Ghosh"*** reported in ***(1975) 16 GLR 846***, the relevant extract is reproduced as under :-

> ***"It cannot be gain-said that the grounds which is vague is no ground at all. If the detenue has a right to make an effective representation against his detention it is difficult to conceive how he can make any representation at all unless the grounds give him a clear as to the charges which he is called upon to meet with. Under the circumstances, one thing which is clear is that a vague ground is no ground and whenever a vague ground is given for the detention of a particular person, he is robbed of his important right of making representation against the order of his detention."***

44. The record further transpires that the detaining authority was not aware that the petitioner has been enlarged on bail in both FIRs, which goes to

the root of the matter and establishes beyond any reasonable doubt that the detaining authority has passed the order of detention without being aware about the fact that the petitioner has already been enlarged to bail by the competent Court of law.

45. Also, in the ground of detention with respect to FIR No.107/2023, the incident of 18.09.2012 have been mentioned, when the petitioner was merely 13 years of age, which shows that the detaining authority while passing the order of detention has not properly evaluated the facts of the case and passed the order of detention in a haste manner and without application of mind. Thus, the impugned order which is the replica of what has been reflected in the dossier, (which though has not been supplied to the petitioner), cannot sustain the test of law.

46. In the context of non-application of mind by the detaining authorities while passing the order of detention, this Court draws its reliance on a judgment of this court in the case of ***Khalid Nazir Wagay vs. Union territory of J&K &Ors*** decided on 09.02.2023, wherein following has been held:-

> "***12. A perusal of the grounds of detention reveals that the incidents referred therein pertain to the year 2016, 2017 and 2018, that is more than six years, five years and four years respectively prior to the passing of impugned order of detention. There is no reference to any recent incident involving the petitioner in the grounds of detention. Thus, it is clear that the order of detention has been based on past and stale incidents. In fact, the incidents and FIRs which formed basis of the grounds of detention have been the basis of earlier detention of petitioner which was made in terms of order No.19/DMK/PSA/2018 dated 04.10.218, which has been quashed by this Court while disposing of HCP No. 363/2018. Thus, using the same grounds and material for passing subsequent detention order without actually mentioning that the petitioner had been previously***

> ***detained on the basis of this very material not only amounts to an illegality but also shows lack of application of mind on the part of the detaining authority".***

47. Bare perusal of the record further reveals that the allegations leveled in the grounds of detention have no live approximate link with the allegations leveled in the FIRs and there is no supporting material to substantiate the allegations so leveled in the grounds of detention which form the basis for issuing the impugned detaining order.

48. It is to be noted that live and proximate link between the past conduct of the detenue and the imperative need to detain have to be harmonized, in order to rely upon the alleged illegal activities of the detenue. A preventive detention order which is passed without examining a live and proximate link between the event, amounts to punishment without trial as has been held by Apex Court in ***"Sama Aruna vs State of Telengana and Anr"*** reported in ***(2018) 12 SCC 150***, the relevant extract of the judgment is reproduced as under:

> ***"We are, therefore, satisfied that the aforesaid detention order was passed on grounds which are stale and which could not have been considered as relevant for arriving at the subjective satisfaction that the detenu must be detained. The detention order must be based on a reasonable prognosis of the future behavior of a person based on his past conduct in light of the surrounding circumstances. The live and proximate link that must exist between the past conduct of a person and the imperative need to detain him must be taken to have been snapped in this case. 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."***

49. It is to be noted that live and proximate link between the past conduct of the detenue and the imperative need to detain have to be harmonized to rely upon the alleged illegal activities of the detenue. A preventive detention order that is passed without examining a live and proximate link between the event and the detention tantamount to punishment without trial.

50. Further, reliance in this regard is placed on the judgment of Hon'ble Apex Court in ***Vijay Narain Singh vs. State of Bihar &Ors*** reported as (***1984) 3 SCC 14***, wherein it has been held as under: -

> ***"32 ..... It is well settled that the law of preventive detention is a hard law and therefore it should be strictly construed. Care should be taken that the liberty of a person is not jeopardised unless his case falls squarely within the four corners of the relevant law. The law of preventive detention should not be used merely to clip the wings of an accused who is involved in a criminal prosecution. It is not intended for the purpose of keeping a man under detention when under ordinary criminal law it may not be possible to resist the issue of orders of bail, unless the material available is such as would satisfy the requirements of the legal provisions authorizing such detention. When a person is enlarged on bail by a competent criminal court, great caution should be exercised in scrutinizing the validity of an order of preventive detention which is based on the very same charge which is to be tried by the criminal court."***

51. Applying the aforesaid law laid down by the Apex Court and also by this Court in catena of judgments, this Court is of the considered view that there is

no live link with the allegations leveled in the grounds of detention and the allegations in the FIRs *supra* or the alleged incident which pertains to the year 2012. Thus, there is no proximity or any live link with the alleged incidents which were reflected in the grounds of detention which could justify the passing of the order of detention against the detenue in 2024. Thus, the detaining authority without application of mind has referred "security of the State/Nation", the detenue indulging in subversive activities, public order as the basis of impugned detention order without knowing its implication/applicability or exact meaning.

52. In the instant case, the alleged incidents have been referred without mentioning any details or for that matter supported with any material to substantiate those allegations. Merely leveling bald allegations cannot justify the detention of the detenue and by doing so, the fundamental rights of a person are being infringed and violated. The detaining authority has neither applied its mind nor arrived at any subjective satisfaction before passing the order of detention. Even the date of incidents mentioned in both the FIRs was not known to the detaining authority which shows that the detention authority has passed the order without application of mind. Be that as it may, the allegations leveled in the FIRs are not an indicator that the petitioner is a threat to public order.

53. Further, perusal of record reveals that in grounds of detention it has been reflected that there is apprehension that petitioner may again indulge in subversive activities that can be threat to public order and with a view to prevent the detenue to involve other youth/his family members in criminal

activities and to prevent him from acting in any manner prejudicial to the public order, the order of detention has been issued. This Court has no hesitation in observing that the detaining authority has not correctly understood the meaning of subversive activities***, which means actions that are intended to overthrow Government or social order by using illegal or violent means.***

54. However, the perusal of grounds of detention shows that the details of these alleged subversive activities have not been reflected by the respondents. Thus, a mere reference or vague allegation that the petitioner will indulge in subversive activities which are threat to public order, cannot be made basis for issuance of the impugned detention order.

55. Before parting, this Court will be failing in its duty, in case, if the Court does not discuss the conduct of the detaining authority (concerned Deputy Commissioner, Poonch) and the SSP concerned in the instant case. This Court, after perusing the record has come to the conclusion that the impugned detention order smacks of foul play and *malafide* on part of the detaining authority which has issued detention order with a view to frustrate the bail order issued by the competent authority. Once, the respondents failed before the competent Court dealing with the bail application of the detenue, then it is not open to the respondents to pass the order of detention with the sole object to keep him inside the jail by relying upon imaginary grounds which as a matter of fact have no nexus with the allegations leveled against the petitioner in the grounds of detention. Once recourse to ordinarily criminal law is available, then preventive detention could not be resorted to.

56. The personal liberty of an individual is reckoned to be the greatest of human freedoms which is paramount and deeply imbedded in values of the Constitution. Despite putting all the emphasis on this precious and prized right, we often encounter the curtailment of personal liberty in most casual manner by the authorities entrusted with upholding democratic faith. The authorities have to strike a balance between individual liberty and maintenance of public order. Before curtailing the liberty of an individual, it is to excogitate that every single day of a human life is crucial, as such, the authorities before detaining anyone must be in a position to justify each and every day the person is being detained. In the instant case, the detaining authority acted rather in a casual manner while issuing the order of detention and curtailed detenue's right to liberty as contained in Article 21 of the Constitution and Article 22(2). The State has been granted the power to curb such rights under criminal laws as also under the laws of preventive detention, which, therefore, are required to be exercised with due caution as well as upon a proper appreciation of the facts.

57. The Jammu and Kashmir Public Safety Act, 1978, enables the Union Territory of J&K to make an order directing a person to be detained with a view to prevent him from acting in any manner prejudicial to the security of the state, or for maintenance of public order. However, the grounds of detention and the record produced by the respondents do not justify such detention to curtail the personal liberty of the detenue which is paramount.

58. This Court takes a serious note of the casual approach of the detaining authority in issuing the detention order in the instant case without supplying the dossier to the detenue and arriving at a subjective satisfaction in absence of any cogent reasons or material and merely by placing reliance on two FIR's which have no nexus with the security of the State or public order or any proximity/ live link with the allegation leveled in grounds of detention. The inability on part of the State's police machinery to take recourse to ordinary criminal law should not be an excuse to invoke the jurisdiction of preventive detention. In the instant case, the relevant provisions in the Indian Penal Code were clearly sufficient to deal with the situation, however the respondents have invoked provisions of the Public Safety Act to indirectly achieve something which could not be achieved directly by them. i.e., the detention of the petitioner.

59. From the above analysis and the law laid down by Hon'ble Supreme Court, this Court is of the view that the cases of preventive detention must be authorized by the due process of law.

60. Since the detenue was denied of his right of making effective representation as the dossier was not given to the detenue, which is the basic right enshrined under the Constitution, such a violation of fundamental rights amounts to gross violation of personal liberty and right to life. Thus, the order impugned which is violative of basic fundamental rights cannot sustain the test of law and is liable to be set aside. Moreover, no compelling reason have been recorded by the detaining authority which could be the basis of

detaining the detenue and on this ground also, the impugned order cannot sustain in the eyes of law.

CONCLUSION

61. In light of what has been discussed hereinabove coupled with the enunciations of law, this instant petition is ***allowed***, and the Order No. 06/DMP/PSA of 2024 dated 08.04.2024 passed by District Magistrate, Poonch is hereby ***quashed.*** Accordingly, the detenue, namely, **Anjum Khan S/o Azmat Hussain R/o Mahra, Tehsil Surankote, District Poonch** is ordered to be set at liberty forthwith, if not required in any other case(s).

62. Accordingly, the present petition is ***disposed of*** alongwith all connected applications, if any.

63. Registry is directed to handover the record of the case to Mr. P D Singh, learned Dy.AG against proper receipts.

(Wasim Sadiq Nargal)
Judge

Jammu:
20.09.2024
Manan

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