

**IN THE HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT SRINAGAR**

Reserved on: 18.04.2022

Pronounced on: 28.04.2024

WP(Crl.) No.132/2021

MOHAMMAD HANIEF BHAT **...PETITIONER(S)**

Through: - Mr. Wajid Haseeb, Advocate.

Vs.

UT OF J&K & ANR **...RESPONDENT(S)**

Through: - Mr. Sajjad Ashraf, GA.

CORAM: HON'BLE MR. JUSTICE SANJAY DHAR, JUDGE

JUDGMENT

1) By the medium of this petition, veracity and validity of the order of detention bearing No.DMS/PSA/45/2021 dated 09.09.2021, issued by District Magistrate, Srinagar (“the *Detaining Authority*”), has been assailed. In terms of the impugned order, *Shri Mohammad Hanief Bhat @ Haneef Peer son of Mohammad Sidiq Bhat resident of Gurpora Khushki Rainawari, Srinagar*, has been placed under preventive detention and lodged in District Jail, Kupwara.

2) The petitioner has contended that the Detaining Authority has passed the impugned detention order mechanically without application of mind. It has been further contended that the Constitutional and Statutory procedural safeguards have not been complied with in the instant case. It has also been urged that the allegations made against the

detenue in the grounds of detention are vague. The petitioner has gone on to contend that whole of material forming the basis of the detention order has not been provided to him thereby violating his right guaranteed under the Constitution.

3) The writ petition is opposed by the respondents who have filed reply affidavit on behalf of the detaining authority. The factual submissions made by the petitioner have not been refuted in the reply affidavit filed by the respondents, who have contended that the detention order is based on the subjective satisfaction of the detaining authority and that the same cannot be gone into by this Court in exercise of its extraordinary writ jurisdiction. It is contended that the detenue has been detained only after following the due procedure; that there has been proper application of mind on the part of the Detaining Authority while passing the impugned order and that the detenue has been provided all the material. The learned counsel for the respondents also produced the detention records to lend support to the stand taken in the counter affidavit.

4) I have heard learned counsel for parties and I have also gone through detention record.

5) The petitioner has urged a number of grounds to challenge the impugned order. However, during the course of arguments, he has laid emphasis on the following grounds:

- (I) That there has been delay in passing of the detention order, inasmuch as the police had forwarded the dossier

to the District Magistrate on 10th March, 2021 but the impugned order of detention has been passed only on 09.09.2021. There has been no explanation for the delay that has occasioned in passing of the impugned detention order;

(II) That whole of the material which formed the basis of the grounds of detention has not been furnished to the detenu;

6) It has been contended by learned counsel for the petitioner that resort to preventive detention has to be taken only in cases where there is an urgent need to detain a person so as to prevent him from indulging in activities which are prejudicial to the maintenance of public order or security of the State. It is contended that in the instant case, the Senior Superintendent of Police, Srinagar, had forwarded the dossier to the District Magistrate on 10.03.2021 but the District Magistrate passed the impugned order of detention about six months thereafter, which clearly shows that there was no requirement for immediate detention of the petitioner under preventive detention laws and that there was sufficient time with the respondents to take resort to normal criminal laws if at all they wanted to proceed against the petitioner. In this regard, learned counsel for the petitioner has relied upon the judgment of the Supreme Court in the case of **Adishwar Jain vs. Union of India and another**, (2006) 11 SCC 339.

7) A perusal of the record of detention reveals that on 10.03.2021, Senior Superintendent of Police, Srinagar, had forwarded a dossier to the

District Magistrate concerned but on 24.04.2021, District Magistrate, Srinagar, responded to the dossier of SSP, Srinagar, and conveyed to him that detention of the detenu has been sought in respect of a case relating back to the year 2015 and, as such, certain further information is needed for enabling the said authority to proceed further in the matter. It appears that in response to the said letter of the District Magistrate, further material was placed before the District Magistrate which included FIR No.11/2021 for offences under Section 147, 149, 427, 307 of IPC relating to an incident that took place on 28.03.2021 when a musical party was attacked at Badamwari, Srinagar, in a programme organized by J&K Tourism. The fact that the detaining authority refused to act on the dossier submitted by SSP, Srinagar, on 10.03.2021 and asked for further information clearly shows that the detaining authority has applied its mind before passing the impugned order of detention and it is only after further material was provided to it that the said authority passed the said order. So, the delay in passing the impugned order of detention is clearly explained from the material which is available in the detention record. The contention of the learned counsel for the petitioner, therefore, is not sustainable.

8) The second ground urged by the learned counsel for the petitioner is that the constitutional and statutory procedural safeguards have not been complied with in the case of the petitioner, inasmuch as whole of the material forming basis of the grounds of detention has not been furnished to him.

9) A perusal of the detention record produced by learned counsel for the respondents reveals that the material is stated to have been received by the petitioner on 16.09;2021. Report of the Executing Officer in this regard forms part of the detention record, a perusal whereof reveals that it bears the signature of petitioner and according to it, the contents of the detention warrant and the grounds of detention/FIR have been read over to the detenu in Kashmiri language which he understood fully and in lieu whereof, his signature/thumb impression has been obtained but nothing has been brought on record as whether or not the copies of this material have been supplied to the detenu. The grounds of detention bears reference to FIR No.11/2021. But there is no material on record to show as to whether or not copies of statements of witnesses recorded under Section 161/164 of Cr. P.C recorded during investigation of the said FIR have been furnished to the detenu.

10) Besides this, it is clear from the execution report, which forms part of the detention record, that copy of the dossier has also not been supplied to the detenu. It was incumbent upon respondents to supply all the material which formed basis of the detention of the petitioner. Thus, contention of the petitioner that whole of the material relied upon by the detaining authority, while framing the grounds of detention, has not been supplied to him, appears to be well-founded. Obviously, the petitioner has been hampered by non-supply of these vital documents in making a representation before the Advisory Board, as a result whereof his case has been considered by the Advisory Board in the absence of his representation, as is clear from the detention record. Thus, vital

safeguards against arbitrary use of law of preventive detention have been observed in breach by the respondents in this case rendering the impugned order of detention unsustainable in law.

11) For the afore-stated reasons, the petition is allowed and the impugned detention order is quashed. The detinue is directed to be released from the preventive custody forthwith, unless, of course he is not required in connection with any other case.

12) The detention record be returned to the learned counsel for the respondents.

Srinagar
28.04.2022
"Bhat Altaf, PS"

(Sanjay Dhar)
Judge

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

