

HIGH COURT OF JAMMU AND KASHMIR
AT JAMMU
(Through Virtual Mode)

Pronounced on : 11.08.2020

WP (Crl) No. 16/2020
Crl M No. 440/2020

Surinder Singh

...Petitioner(s)..

Through :- Mr. Ankur Sharma, Advocate

v/s

Union Territory of Jammu and Kashmir
and others

...Respondent(s)..

Through :- Mr. Aseem Sawhney, AAG.

Coram: HON'BLE MR. JUSTICE PUNEET GUPTA, JUDGE

JUDGMENT

1. The petitioner has challenged Order No. 02/DMU/JC/PSA-2019 dated 06.09.2019, passed by the respondent No.2, whereby the petitioner has been detained under Section 8 of the J&K Public Safety Act, 1978 (hereinafter called the Act), on the ground that the petitioner has not been explained the grounds of detention while passing the order thereby he was not in a position to make proper representation to the Government; that the petitioner has been implicated falsely in FIRs in order to harass him; that the petitioner has been either acquitted or is on bail in the FIRs of which the mentioned is made in the detention order; that the respondent No.2 has not applied mind properly as the police dossier has been reproduced only while passing the impugned order and that the order impugned has been passed on non-existent

- grounds and upon ulterior motives. The notice was issued to the respondents. The counter affidavit has been filed on behalf of the respondent No.3, therefore, the petitioner is disposed of while admitting the same.
2. In the counter affidavit filed it is submitted that the order impugned is valid in law. The petitioner is a history-sheeter and has become threat to the maintenance of public order which prompted the respondent to pass the order of detention against the petitioner. The provisions of the Act have been followed in the present case. The petitioner was informed of his valuable right to make representation against the detention order. The prayer is for dismissal of the petition.
 3. Heard learned counsel for the parties and perused the record. The learned Additional Advocate General has also furnished the relevant record of the case.
 4. The order impugned is purportedly followed by its execution on 09.09.2019 at Central Jail, Kot Bhalwal, Jammu, with handing over of the grounds of detention, notice of detention and the other related documents. The receipt purportedly issued by the petitioner in this regard is also on the file. The order of detention dated 06.09.2019 has been confirmed initially by the respondent No.1 vide Order No. HOME/PB-V/1762 of 2019 dated 13.09.2019 and thereafter extended from time to time by the respondent No.1. It is also apparent from the record that the Advisory Board constituted under the Act also approved the detention order passed against the petitioner vide dated 24.09.2019. It is mentioned in the order that no representation seems to have been made by the detenu and therefore no representation is before the Board.

5. The argument raised on behalf of the learned counsel for the petitioner is that the order of detention is in fact copy of the dossier sent by Superintendent of Police, Udhampur to the District Magistrate. The non-application of mind is writ large from the order which is impugned in the present petition.
6. Learned AAG appearing on behalf of the respondents has submitted that the order of detention is passed by the respondent No.2 after applying mind and recording subjective satisfaction in the matter.
7. The order of detention is accompanied by the grounds of detention separately as Annexure-A to the order. The dossier sent by Senior Superintendent of Police, Udhampur which mainly refers to the cases registered against the petitioner at different point of time and concluding therein that the acts of the petitioner are prejudicial to the maintenance of peace and public order in the area and criminal activities are adversely affecting the local police in maintaining peace and public order. The order of detention when read with the annexure containing grounds of detention makes out that the order of detention is more or less copy-paste of the dossier sent by the respondent No.3 to the respondent No.2. It is just that the contents of the dossier find the place in the order of detention and its annexure either at the beginning or at the concluding paras of the same. No specific wording is required to be maintained while passing the order of detention while assessing the case in subjective manner but the order has to reflect that proper application of mind has been applied keeping in view all the facts and circumstances of the case. Mere reproduction of the dossier in the detention order cannot justify the detention order in such circumstances.

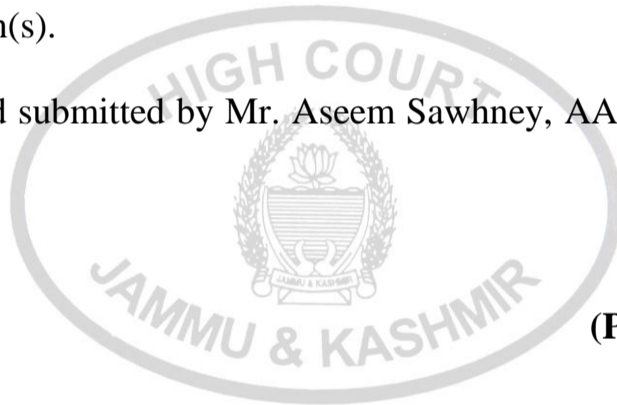
8. In *Rajesh Vashdev Advani v. St of Maharashtra* (2005) 8 SCC 4388 390 the Hon'ble Apex Court noted the non-application of mind on the part of the District Magistrate as the wording in the dossier was almost replicated in the detention order. The detention was quashed in that case.
9. In *Jai Singh v. State of J&K* (1985) 1 SCC 561 the detention order was quashed on the grounds that the wording in the dossier and the detention order were similar.
10. In *Union Of India v. Dimple Happy Dhakad*(Appeal no. 1064/2019 decided on 18.7.2019) the Hon'ble Supreme Court has held that the subjective satisfaction of the detaining authority is not immune from judicial reviewability.
11. The purpose of the preventive detention is to prevent the person from committing the acts prejudicial to the maintenance of public order. The confidence of the society is sought to be secured through preventive detention. The detention order cannot be passed in a casual manner by the concerned authority thereby depriving the person of his liberty.
12. The Court is of the view that the detention order does not stand the test of law in the light of what has been discussed above and is liable to be quashed on that score.
13. The counsel for the petitioner has vehemently argued that the grounds of detention which are part and parcel of the detention order reflect number of FIRs which stand registered against the petitioner but the same do not indicate the outcome/progress of those FIRs. It speaks of the half hearted approach of the detaining authority in the present case. The learned counsel for the respondents, on the other hand, has argued that the fact that the mention of FIRs in the detention order/ dossier

detail out the facts of the case and the details of the FIRs, the detention order cannot be said to be deficient on the ground as argued on behalf of the petitioner.

14. The mere perusal of the detention order and the grounds of detention reveal that the details of the FIRs registered against the petitioner right from the year 1990 till detention order came to be passed have been mentioned therein. The offences in which the FIRs have been registered against the petitioner also find mention therein. No doubt the copies of FIRs and the challan also appear to have been supplied to the petitioner but the matter does not seem to rest here. It is pertinent to mention herein that the petitioner in his pleadings has specifically mentioned about the outcome of the challans which were filed in pursuance to the lodging of FIRs. The petitioner has mentioned that he has been acquitted in most of the FIRs or bailed out. This fact is not controverted / disputed by the other side. Surprisingly, the dossier does not mention the factum of disposal of most of the criminal cases which were lodged against the petitioner and that the petitioner stands acquitted in those cases. Either the respondents were not fully aware of the outcome of those criminal cases which were lodged against the petitioner or they did not intend to disclose the same with a view to strengthen its case against the petitioner for detention on the ground of disruption of public order. The detention order not only misses out on the above vital aspect of the case but also again shows the non-application of mind on the part of the respondents.
15. In (2011) 5 SCC 244 the Apex Court quashed the detention order solely on the ground that the detention order failed to say of the details

of the similar cases as mentioned in the detention order. This authority applies on all fours in the case in hand.

16. The Court has no hesitation in holding that the detention order is liable to be quashed on the above mentioned grounds.
17. In view of the above discussion which encompasses the vital aspects of the case and holding that dent is caused in the detention order passed by the respondent no. 2, the court need not go into other aspects of the case that are pleaded by the petitioner.
18. The order of detention is quashed. The petitioner if not presently required in any other case be released forthwith.
19. The petition is, accordingly, disposed of along with connected application(s).
20. The record submitted by Mr. Aseem Sawhney, AAG shall be returned to him.



**(PUNEET GUPTA)
JUDGE**

Jammu
11.08.2020
Pawan Chopra

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