HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT JAMMU

HCP No. 19/2024
CM No. 681/2024

Surjeet Singh Alias Sonu   ….Appellant/Petitioner(s)
S/O S. Harmohinder Singh
R/O Village Sehora, Tehsil Bishnah,
District Jammu.
Through wife Smt. Pusvinder Kour
W/O S. Surjeet Singh.

Through :- Mr. Satinder Gupta, Advocate.

V/s

1. Union Territory of Jammu &   ….Respondent(s)
Kashmir, Through Commissioner/
Secretary Home Department
Civil Secretariat, Jammu

2. District Magistrate, Jammu.

3. Senior Superintendent of Police,
Jammu.

4. Station House Officer, P/S Gangyal,
Jammu.

Through :- Mr. Rajesh Thapa, AAG.

Coram: HON'BLE MR. JUSTICE ATUL SREEDHARAN, JUDGE

ORDER (ORAL)
09.07.2024

01. The present petition has been filed by the petitioner, who is aggrieved by the impugned order No. PSA 02 of 2024 dated 30.01.2024, passed by the District Magistrate, Jammu, whereby the petitioner has been taken into preventive detention. The grounds of detention disclose four cases against the petitioner.

02. The first case is FIR No. 13/2012 of Police Station Gangyal for offences under Section 447/147/427/379 RPC which offences are triable by the Court of

Magistrate. *Ex facie*, the case is stale which has been considered 12 years after its registration for passing an order in the year 2024.

03.   The second case is FIR No. 42/2019 again of Police Station Gangyal for offences under Section 420/467/468/471 RPC. Though the offences are triable by the Court of Sessions, The principal offence is Section 420 RPC. The offences for forgery reflected in Section 467, 468 and 471RPC is a method by which the offence under Section 420 RPC was committed. The same is also a stale case and also an interpersonal case not affecting the society of the State at large.

04.   The third case is FIR No. 04/2021 of Police Station Bagh-E- Bahu for offences under Sections 307/147/148 IPC, 3/25 of the Arms Act. Though these offences are also interpersonal in nature however, the interest of the society is involved on account of Section 307 IPC. Learned counsel for the petitioner submits that the charge sheet in this particular case has been filed after the passing of order of detention against the petitioner.

05.   The last FIR which is the *causa causans* or the immediate cause for taking the petitioner into the detention is FIR No. 114/2023 of Police Station Gangyal for offences under Sections 420/467/468/471 IPC. At first blush, all the cases with the exception of FIR No. 4/2021 are interpersonal in nature which does not even by a wrong shot involves the security of the State or public order. In paragraph 3 of the grounds of detention, the District Magistrate, Jammu holds *"It is pertinent to mention here that the crime committed by the subject are grave threat to the security of the State"* as to how the District Magistrate comes to this fanciful and puerile finding is a mystery. No justification for holding so has been given. Further, the twisted and the contorted reasoning of

the District Magistrate, Jammu continues in paragraph 7 which deserves to be reproduced in its entirety.

> "whereas, it is necessary to note that the "maintenance of the public order" always occurs in juxtapose with public safety. Repeated offences committed by the subject who inflict major harm and injury on public is not only prejudicial to the public safety and public order but also has potential to sky ball und impact overall security of the state. Since there is a reasonable probability of likelihood of the subject acting in a manner similar to his past conduct, it would be dangerous for the people at large, to wait and watch as by the time ordinary law is set into motion, the person having dangerous designs, would execute his plans, exposing general public to risk and causing colossal damage to life and property. Further, *In Haradhan Saha V/S State of West Bengal* it was said that the purpose of preventive detention is to prevent the greater evil of elements imperiling the security and safety of a state and welfare of the nation"

06. Paragraph 7 quoted hereinabove, reflects that twisted reasoning and thought process of the District Magistrate and deserves to be deprecated strongly. It is vague and the language used is intended to confuse rather than convince and it reflects an anxiety on the part of the District Magistrate, Jammu to justify the unjustifiable.

07. Learned counsel for the Union Territory on the other hand has argued that the petitioner is a recidivist and has been involved in a life of crime for a long time. However, when asked by this Court to demonstrate from the grounds of detention that the detaining authority had applied its mind and arrived at a conclusion that the freedom of the petitioner would imperiled the State on account of precise and verifiable reasons coupled with the fact that he has been already enlarged on bail or that the probability of him being recipient of bail being very high, his preventive detention was necessary, learned counsel for the

Union Territory has not been able to demonstrate from the grounds of detention that such a finding of probable bail or bail already having been granted was a factor that bears in the minds of the detaining authority.

08.   Under the circumstances, petition is allowed. The petitioner shall be set forth at liberty. A cost of ₹10,000/- is imposed on the District Magistrate, Jammu personally which shall be paid to the petitioner within two weeks from the date of passing of this order, failing which, the petitioner shall be at liberty to file a petition of contempt against the District Magistrate, Jammu. This Court felts the imposition of cost essential in view of the observation in paragraph No.7 of the grounds of detention.

Petition stands disposed of.

Copy of this order be given under seal and signature of Bench Secretary of this Court to the learned counsel for the Union Territory to be transmitted it to the District Magistrate, Jammu for compliance of that part of the order which imposed cost.

(Atul Sreedharan)
Judge

Jammu:
09.07.2024
Renu

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