

HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT SRINAGAR

WP(Crl) No. 706/2022

Reserved on: **17.04.2023**

Pronounced on: **27.04.2023**

Molvi Mohammad Amin Pala

...Petitioner(s)

Through: Mr. I.A. Parray, Advocate.

Vs.

Union Territory of J&K & Ors.

...Respondent(s)

Through: Mr. Faheem Nisar Shah, GA.

CORAM:HON'BLE MR. JUSTICE M. A.CHOWDHARY, JUDGE

JUDGMENT

- 1.** District Magistrate, Anantnag -Respondent No.2 (hereinafter for short 'detaining authority') in exercise of powers conferred on him under **Section 8 of the J&K Public Safety Act, 1978**, has passed the detention order No. **66/DMA/PSA/DET/2022 dated 13.09.2022** (for short 'impugned order'), in terms whereof the petitioner Molvi Mohammad Amin Pala (hereinafter called 'the detenué') has been detained. The said detention order having been challenged through the medium of instant petition, allegedly being in breach of the provisions of **Article 22(5)** of the Constitution of India.
- 2.** It is being pleaded in the petition that the detenué was arrested in the month of October, 2021 by the police after he was summoned to Police Station Tral, without any justification and was placed in illegal confinement. It is being contended that the allegations/grounds of detention are vague and mere assertions of the

detaining authority and no prudent man can make an effective representation against these allegations. Furthermore, it is stated that the allegations whose mention is made in the grounds of detention have no nexus with the detenu and have been fabricated by the police in order to justify its illegal action of detaining the detenu. In addition, it is stated that the detaining authority has not prepared the grounds of detention by itself, whileas, same is replica of the police dossier. Also it is being pleaded that the detaining authority has not furnished the material and other connected documents, relied upon, to the detenu to enable him to make an effective representation. Detenu has also not been informed that within what time-frame he can make representation against his detention, which clearly shows violation of the right of the detenu guaranteed in terms of the Article 22(5) of the Constitution of India.

- 3.** Respondents in their counter affidavit/reply have stated that the grounds of detention are precise, proximate, pertinent and relevant. There is no vagueness or staleness in the grounds coupled with definite indications as to the impact thereof, which has been precisely stated in the grounds of detention. Further it is contended that the grounds of detention give complete account of the activities of the detenu, which on the face of them are highly prejudicial for maintenance of security of the State, as such, there was no option left but to order detention of the detenu under Public Safety Act.
- 4.** The main plea of learned counsel for the detenu is that the allegations made in the grounds of detention are vague, non-existent and no prudent man can make a representation against such allegations and passing of detention on such grounds is unjustified

and unreasonable. The detaining authority has not mentioned any FIR in the grounds of detention if the detenu was involved in any unlawful activity why criminal law has not been set in motion and why they have chosen to preventive detention directly. All the allegations levelled against the detenu are far from reality and that the detenu is not involved in any unlawful activity.

5. In rebuttal, learned GA submits that the record reveals that there is no vagueness in the grounds of detention. The procedural safeguards prescribed under the provisions of Public Safety Act and the rights guaranteed to the detenu under the Constitution have strictly been followed in the instant case. The detenu has been furnished all the material, as was required, and was also made aware of his right to make representation to the detaining authority against his detention.

6. Heard and considered.

7. Perusal of the record reveals that the detenu having been furnished twelve leaves of the documents pursuant to the order impugned in terms of which he was taken into custody. He has not been provided copy of the communication of the sponsoring agency referred to in the impugned order which is stated to have been received from the said agency, on which the detaining authority has stemmed its subjective satisfaction. In case the detaining authority intends to rely on the stand, as is reflected in the records, that the copies of the documents were furnished to the detenu through ASI Mushtaq Ahmad, then it was mandatory upon the said authority to place on record the affidavit of the said person. In this regard it may be apt to quote the relevant observation made in the case “*State Legal Aid*

Committee, J&K Vs. State of J&K & others (AIR 2005 SC 1270)”:-

"Though several questions have been raised in this petition, it is not necessary to deal with them in detail as we find that there is no definite material to show that the requirements of Section 13 of the Jammu & Kashmir Public Safety Act, 1978, (in short the Act), requiring the grounds of order of detention to be disclosed/communicated to the person affected by the order has been complied with. Though in the affidavit filed by the State, it has been stated that the contents of the warrants and grounds of detention were served, read over and explained to the detainee and he was informed about his right to make a representation against the detention, if he so desired, there is no material placed on record to substantiate this stand. It is stated in the affidavit that the detenue refused to receive copy of the detention order and also refused to put his signatures on the documents. The least the State could have done is to file an affidavit of the person who wanted to serve the relevant documents and an endorsement to the effect that there was refusal. Even the name of the official has not been indicated in the affidavit. That would have been sufficient to comply with the requirements of Section 13 of the Act."

8. Hon’ble Apex Court in a case ‘**Dr. Rahamtullah Vs. State of Bihar & Anr., 1981 SCC(4) 559**’, while discussing to provide opportunity to file representation to a detenue, made following pertinent observations in the said judgment:-

“...The normal rule of law is that when a person commits an offence or a number of offences, he should be prosecuted and punished in accordance with the normal appropriate criminal law; but if he is sought to be detained under any of the preventive detention laws as may often be necessary to prevent further commission of such offences, then the provisions of Article 22(5) must be complied with. This sub article provides that the detaining authority shall as soon as may communicate the grounds of detention and

shall afford him the earliest opportunity of making a representation against the order. The opportunity of making a representation is not for nothing. The representation, if any, submitted by the detenu is meant for consideration by the Appropriate Authority without any unreasonable delay as it involves the liberty of a citizen guaranteed by Article 19 of the Constitution.”

- 9.** The Hon’ble Apex Court in the judgment rendered in the case ‘*Sophia Gulam Mohd. Bham V. State of Maharashtra & Ors. (AIR 1999 SC 3051)*’, again held as under:-

“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 to 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.”

- 10.** It needs no emphasis that the detenu cannot be expected to make a meaningful exercise of his constitutional and statutory rights guaranteed under **Article 22(5) of the Constitution of India** unless and until the material on which the detention is based, is supplied to the detenu. If the detenu is not supplied the material on which detention order is based, the detenu cannot be in a position to make an effective and meaningful representation against his detention.

- 11.** It is also a fact that time frame within which representation was required to be filed has not been conveyed to the detenu. This too has to be treated a breach of right of the detenu under **Section 13 of Public Safety Act** and **Article 22 of the Constitution of India**. Allahabad High Court has rendered the judgment in the case

‘Jitendra Vs. District Magistrate (2004 CriLJ 2967) in this regard

and has observed that:

*“...There is another reason as to why in our judgment the impugned detention order would be vitiated. Since the detenu’s right to make a representation to the detaining authority was only available to him till the approval of the detention order by the Government, it follows as logical imperative that the detaining authority should have communicated to the detenu **in the grounds of detention the time limit, in which, he could make a representation to him** i.e. till the approval of the detention order by the State Government.”*

12. On the touchstone of the law laid down above and the rival submissions, the order of detention, impugned in the instant petition, does not sustain on the aforesaid grounds.

13. Perusal of the grounds of detention reveals that the detenu as Imam, delivers Friday sermons and speeches in Jamia Masjid Hanfia Pethbugh Dialgam Anantnag to mobilize common masses against sovereignty and integrity of UT of J&K, having potential of disturbing law and order in the District, which necessitates his isolation, being threat to the maintenance of public order. No specific instance has been cited to justify as to what the detenu had said on what occasion, so as to order his preventive detention. The afore-stated grounds of detention, as such, are general allegations against the detenu, with no specific instances/incidents. The detention order based on such vague and stale grounds is not sustainable, for the reason that the detaining authority before passing the order has not applied its mind to draw subjective satisfaction to order detention of the detenu by curtailing his liberty which is a valuable and cherishable right guaranteed under Article 21 of the

Constitution of India. In this regard reliance can be placed on the judgments of Supreme Court in the cases (i) *Jahangirkhan Fazal Khan Pathan Vs. Police Commissioner Ahmadabad (1989) 3 SCC 590* and, (ii) *Abdul Razak Nanekhan Pathan Vs. Police Commissioner Ahmadabad AIR 1989 SC 2265*.

14. In the afore-stated backdrop, this petition is allowed. Order of detention No. **66/DMA/PSA/DET/2022** dated **13.09.2022** passed by District Magistrate Anantnag, is, as such, quashed. The detenu namely Molvi Mohammad Amin Pala S/O Gh. Rasool Pala R/O Meshipora Qaimoh Kulgam, is ordered to be released from the preventive custody forthwith provided he is not required in connection with any other case(s).

15. Detention record, as produced, be returned to learned GA.

(M. A. CHOWDHARY)
JUDGE

Srinagar
27.04.2023
Muzammil. Q

Whether the order is reportable: Yes / No