

**HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT JAMMU**

**WP (Crl) No. 74/2021
CrlM No. 138/2022
CM No. 9497/2021**

**Reserved on: 28.03.2022
Pronounced on: 01.04.2022**

Rajesh Dogra @ Mohan Cheer

.....Petitioner(s)

Through :- Mr. Aseem Sawhney, Advocate

v/s

UT of J & K & Ors.

.....Respondent(s)

Through :- Mr. Amit Gupta, AAG

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

**JUDGMENT
01.04.2022**

1. District Magistrate, Jammu (hereinafter called 'Detaining Authority') in exercise of powers under Section 8 (1)(a) of the Jammu & Kashmir Public Safety Act, 1978, passed the detention Order No. 15 PSA of 2021 dated 29.11.2021 (for short 'impugned order'), in terms whereof the detenu namely **Rajesh Dogra @ Mohan Cheer S/O Ved Parkash, R/O Reasi, A/P House No. 797, Tali Morh, New Plot, Jammu** (for short 'detenu') has been detained.
2. The impugned detention order has been challenged through the medium of the instant petition, being in breach of the provisions of Article 22(5) of the Constitution of India read with Section 13 of the J&K Public Safety Act, 1978.
3. It is being pleaded in the petition that the detaining authority-respondent No.2 has not attributed any specific allegation against the detenu. Furthermore, it is stated that the detenu has been incapacitated in filing a

representation as the grounds of detention are not in a language which could be understood by the detenu. It is also being stated that the neither the petitioner is threat to the public order nor he has committed any such crime which has disturbed the society at large and moreso, the petitioner is the hapless victim of circumstances and is already facing litigation and was convicted by the learned Trial Court and after being in jail for 11/12 years was bailed out by the Division Bench of this Court where eventually the said bail order was challenged before Hon'ble the Supreme Court, which was upheld. It is also being stated that without there being any fresh material on record, the respondents have booked the petitioner under PSA. It is also being stated that detenu is not an English literate person and understands only Urdu/Hindi language but the order of detention is in English and it is not possible for him to understand such a hyper technical language. It is also the submission of learned counsel for the detenu that the order of detention and the connected documents annexed with the petition clearly show violation of right of the detenu guaranteed in terms of the Article 22(5) of the Constitution of India.

4. Respondents in their counter affidavits have stated that the detenu was ordered to be detained for maintenance of 'public order' and had he been let free there would have been every likelihood of his re-indulging in criminal activities. It is being stated that the power of preventive detention is different from punishment; preventive detention aimed at stopping the illegal activities of an individual which otherwise under common both criminal/civil cannot be stopped and the said individual creates a havoc in the society which leads to public disorder, peace, stability and in certain cases also raises alarm bells regarding the National Unity and Integrity; that the petitioner falls under the category of Section 8 of the Public Safety Act,

being a threat to the public order, peace and stability in the society. It is also being stated that the petitioner is involved in numerous criminal activities of serious and heinous in nature over a period of time, history sheet of Police Station, Bakshi Nagar and has spread a reign of terror among the peace-loving people of the area and his anti-social activities are pre-judicial to the maintenance of public order.

5. Heard learned counsel for both the sides at length and considered the record.
6. Learned counsel for the detenu while being heard makes reference to the grounds of the detention and states that on a cursory look on the same it is manifest that same are vague. It is also submitted that the Detaining Authority on the basis of dossier submitted by Senior Superintendent of Police, Jammu, without application of mind and without evaluating the allegations alleged against the detenu in the said dossier, copy of which was not even provided to the detenu, proceeded to pass impugned detention order whereby the detenu has been detained and directed to be lodged at Central Jail Jammu. In addition, learned counsel submitted that the allegations levelled against the detenu are totally vague as nothing specific has been stated in the grounds of detention. It has also been urged that the petitioner has been shifted to Jhajjar Jail in Haryana and that petitioner has been suffering of renal problems and in view of his health, detention of petitioner be quashed.
7. Learned AAG, ex adverso, 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 as well as government, against his detention.

8. Personal liberty is one of the most cherished freedoms, perhaps more important than the other freedoms guaranteed under the Constitution. It was for this reason that the Founding Fathers enacted the safeguards in Article 22 in the Constitution so as to limit the power of the State to detain a person without trial, which may otherwise pass the test of Article 21, by humanising the harsh authority over individual liberty. In a democracy governed by the rule of law, the drastic power to detain a person without trial for security of the State and/or maintenance of public order, must be strictly construed. However, where individual liberty comes into conflict with an interest of the security of the State or public order, then the liberty of the individual must give way to the larger interest of the nation.
9. Before appreciating the rival contentions of the parties, it would be appropriate to note that the procedural requirements are the only safeguards available to the detainee since the Court cannot go behind the subjective satisfaction of the detaining authority as has been laid down by Hon'ble Apex Court in a case titled **Abdul Latif Abdul Wahab Sheikh Vs B.K. Jha & Anr.**, reported as **(1987) 2 SCC 22**. The procedural requirements are, therefore, to be strictly complied with, if any value is to be attached to the liberty of the subject and the constitutional rights guaranteed to him in that regard.
10. The detention record, as produced, reveals that the detainee was involved in following cases registered at different Police Stations of Jammu and Udhampur vide:-

- (i) FIR No. 77/1993 U/Ss 307, 302, 34 RPC and 3/25 Arms Act

- P/S Pacca Danga;
- (ii) FIR No. 201/1996 U/Ss 307, 302, 147, 148, 34 RPC and 4/25 Arms Act P/S Pacca Danga;
 - (iii) FIR No. 56/1998 U/Ss 307, 148, 149 RPC and 3/25 Arms Act P/S City, Jammu;
 - (iv) FIR No. 147/1998 U/Ss 302, 34 RPC and 3/25 Arms Act of P/S Udampur;
 - (v) FIR No. 89/2006 U/S 3/25 Arms Act P/S Gangyal;
 - (vi) FIR No. 140/2006 U/S 302 RPC and 3/25 Arms Act P/S Bahu Fort, Jammu; and
 - (vii) FIR No. 79/2020 U/S 4/25 Arms Act P/S Gharota.

Involvement of the detenu in the aforementioned cases appears to have heavily weighed with the detaining authority while passing detention order.

11. The detention of the detenu has been ordered on the basis of seven FIRs, out of which, six had been lodged upto the year 2006 only and just one FIR No. 79/2020 for the commission of offences punishable U/S 4/25 Arms Act had been registered in the year 2020, therefore, almost all the cases except one had no proximity of time with the detention order and the latest FIR also does not disclose any heinous offence. Live and proximate link between the past conduct of the detenu and the imperative need to detain have to be harmonised to rely upon the alleged illegal activities of the detenu. Old and stale incidents shall be of no use as has been held in **“Sama Aruna Vs State of Telangana & Anr.”** reported as **(2018) 12 SCC 150**. Relevant paragraph No.16 is extracted as under:

““16. Obviously, therefore, the power to detain, under the Act of 1986 can be exercised only for preventing a person from engaging in or pursuing or taking some action which adversely affects or is likely to affect adversely the maintenance of public order; or for preventing him from making preparations for engaging in such activities. There is little doubt that the conduct or activities of the detenu in the past must be taken into account for coming to the conclusion that he is going to engage in or make preparations for engaging in such activities, for many such persons follow a pattern of criminal activities. But the question is how far back? There is no doubt that only activities so far back can be considered as furnish a cause for preventive detention in the present. That is, only those activities so far back in the past which lead to the conclusion that he is likely to

engage in or prepare to engage in such activities in the immediate future can be taken into account. In Golam Hussain vs State of W.B, this Court observed as follows:(SCC p.535 para 5)

“No authority, acting rationally, can be satisfied, subjectively or otherwise, of future mischief merely because long ago the detenu had done something evil. To rule otherwise is to sanction a simulacrum of a statutory requirement. But no mechanical test by counting the months of the interval is sound. It all depends on the nature of the acts relied on, grave and determined or less serious and corrigible, on the length of the gap, short or long, on the reason for the delay in taking preventive action, like information of participation being available only in the course of an investigation. We have to investigate whether the causal connection has been broken in the circumstances of each case”.

Suffice it to say that in any case, incidents which are said to have taken place nine to fourteen years earlier, cannot form the basis for being satisfied in the present that the detenu is going to engage in, or make preparation for engaging in such activities”.

Therefore, in the considered opinion of this Court, the detention order, other than not following the constitutional safeguards also suffers on merit as well, as the sole case cannot be made basis to invoke the preventive detention.

12. The requirement of law is that whole of the record, on which the detention order is based, has to be made available to the detenu in the language that he understands. As per the execution report, he has been furnished copies of detention order (01) leaf, notice of detention (01), grounds of detention (04) leaves, dossier of detention (10) leaves and copies of FIR, Statements of witnesses and other related documents (108) leaves total eight leaves. However, he has not been provided with copies of charge-sheets as well as the material relied upon by the detaining authority under which the petitioner has been detained. The detenu, thus cannot be said to be provided with whole of the record which based his detention, so as to make

an effective representation. The failure on the part of the detaining authority to supply material renders detention illegal and unsustainable.

13. Hon'ble the Supreme Court in a case titled **Chaju Ram Vs The State of Jammu & Kashmir**, reported as **AIR 1971 SC 263**, held in Para-9 of the judgment as under:-

“.....The detenu is an illiterate person and it is absolutely necessary that when we are dealing with a detenu who cannot read or understand English language or any language at all that the grounds of detention should be explained to him as early as possible in the language he understands so that he can avail himself of the statutory right of making a representation. To hand over to him the document written in English and to obtain his thumb impression on it in token of his having received the same does not comply with the requirements of the law which gives a very valuable-right to the detenu to make a representation which right is frustrated by handing over to him the grounds of detention in an alien language. We are therefore compelled to hold in this case that the requirement of explaining the grounds to the-detenu in his own language was not complied with.”

14. It shall also be quite apposite to reproduce the following portions from **Paras 3 and 5** of the judgment rendered by Hon'ble the Supreme Court in the case titled **“Raziya Umar Bakshi Vs Union of India & Ors.” (AIR 1980 SC 1751)**:

“3.....The service of the ground of detention on the detenu is a very precious constitutional right and where the grounds are couched in a language which is not known to the detenu, unless the contents of the grounds are fully explained and translated to the detenu, it will tantamount to not serving the grounds of detention to the detenu and would thus vitiate the detention ex-facie.

5.....in cases where the detaining authority is satisfied that the grounds are couched in a language which is not known to the detenu, it must see to it that the grounds are explained to the detenu, a translated script is given to him and the grounds bear some sort of a certificate to show that the grounds have been explained to the detenu in the language which he understands.”

15. The Hon'ble Apex Court in the judgment rendered in the case of "**Sophia Gulam Mohd. Bham V. State of Maharashtra & Ors. (AIR 1999 SC 3051)**", has also 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."

16. Vide impugned order, the Detaining Authority has though communicated to the detenu his right to represent against the order to him and the government in Urdu/Kashmiri which he does not understand being Dogra, but no time limit was communicated, in which, he could make a representation to him, till approval of the detention order by the Government. In a case of National Security Act, titled "**Jitendra Vs. Dist. Magistrate, Barabanki & Ors.**", reported as **2004 Cri.L.J 2967**, the Division Bench of Hon'ble Allahabad High Court, has held:-

"10. We make no bones in observing that a partial communication of a right (in the grounds of detention) of the type in the instant case, wherein the time limit for making a representation is of essence and is not communicated in the grounds of detention, would vitiate the right fundamental right guaranteed to the detenu under Article 22(5) of the Constitution of India, namely, of being communicated, as soon as may be the grounds of detention."

17. This is another reason, as to why the impugned order would be vitiated since the detenu's right to make a representation to the detaining authority was only available to him till approval of detention order by the Government, it follows as a 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 it i.e., till the approval of the detention order by the State Government.

18. Reproducing the dossier prepared by the Senior Superintendent of Police, Jammu in the order of detention, almost word by word; non furnishing of the whole of the record on which detention order was based; furnishing the material in English and not the language of the detenu; and not informing detenu of his right to make representation before the Detaining Authority within the statutory period, all reflect that the Detaining Authority has not applied its mind to draw the subjective satisfaction to detain the petitioner and detenu has also been deprived of his fundamental right to make effective and meaningful representation against the detention order to the Detaining Authority and the government.
19. For the foregoing reasons and the law laid down as above, this petition is allowed. Impugned order of detention No. 15 PSA of 2021 dated 29.11.2021 passed by the District Magistrate, Jammu, is, as such, quashed. The detenu namely **Rajesh Dogra @ Mohan Cheer S/O Ved Parkash, R/O Reasi, A/P House No. 797, Tali Morh, New Plot, Jammu**, is ordered to be released from the preventive custody forthwith provided he is not required in connection with any other case(s).
20. Detention record, as produced, be returned to the learned GA.
21. Writ petition is **disposed of**, accordingly along with pending application(s), if any.

(M.A.Chowdhary)
Judge

JAMMU
01.04.2022
Vijay

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