

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

WP(Cr1) No. 222/2021

**Pronounced on: 12.08.2022**

Faheem Sultan Gojree ..... Petitioner(s)

Through:- Mr. Wajid Haseeb, Advocate,

V/s

UT of J&K and another .....Respondent(s)

Through:- Mr. Sajad Ashraf, GA

**CORAM :HON'BLE MRS. JUSTICE SINDHU SHARMA, JUDGE**

**JUDGMENT**

**01.** The present petition has been preferred seeking quashing of detention order bearing No. DMS/PSA/63/2021 dated 20.10.2021 passed by the District Magistrate, Srinagar, pursuant to which, the District Magistrate, had ordered the detention of detenu namely Faheem Sultan Gojree S/o Sh. Mohammad Sultan Gojree R/o Jahangir Mohalla Cement Kadal, Srinagar under Section 8 of the Jammu and Kashmir Public Safety Act, 1978, with a view to prevent him from acting in any manner prejudicial to the maintenance of security of the State. The detenu has assailed this order of detention through his bother namely Shaizan Sultan Gojree.

**02.** The Detaining Authority by virtue of the impugned order of detention in exercise of powers conferred under Section 8 of the J&K Public Safety Act, has taken the detenu in preventive custody to prevent him in acting in any manner prejudicial to the security of the State. The impugned detention order has been issued on the basis of material supplied by the

Senior Superintendent of Police, Srinagar vide his communication dated 19.10.2021. The grounds of detention reveal that the detenu has been reported to have developed contacts with various terrorist/secessionist organizations to carry out the activities of secessionism and has associated with terrorist organization TRF (the Resistance Force). The detenu was providing all logistic support including transportation of arms from one place to another. The targets include street vendors, labourers from outside the State working at orchards, small shops commercial establishment so that cycle of terror is to create lawlessness and in order to stop the detenu from indulging in the above activities and to take immediate preventive measures to protect the society from violence and social indiscipline and threat to the safety of the public.

**03.** The impugned order of detention has been assailed by the detenu inter alia on the grounds that; (i) the allegations mentioned in the grounds of detention have no nexus with the detenu; (ii) the allegations made in the grounds of detention are vague, non-existent against which no representation can be made; (iii) the Detaining Authority has not prepared the grounds of detention itself, therefore, there is total non-application of mind while passing the order of the detention; (iv) the respondent No. 2 has not furnished the relevant material relied upon by the Detaining Authority enabling him to make an effective representation; (v) the detenu was not informed of his right to make a representation to the Detaining Authority or to the Government; (vi) the detention order has not been read and explained to him in the language, he understand.

**04.** Mr. Sajad Ashraf, learned Government Advocate has filed the reply affidavit and also produced the detention record. It is submitted by him that the detenu was detained vide order dated 20.10.2021 by the District Magistrate Srinagar in accordance with the provisions of Public Safety Act. The order of detention was passed by the Detaining Authority after deriving its subjective satisfaction and after considering all the relevant material. The grounds of detention, order of detention and also all the material relied upon by the Detaining Authority was furnished to the detenu. The Detaining Authority had complied with all the statutory requirement and constitutional guarantees as provided under the said Act.

**05.** Heard learned counsel for the parties and perused the record also.

**06.** The detenu was detained vide order dated 20.10.2021 passed by the District Magistrate, Srinagar keeping in view his activities, as he had having developed contacts with various secessionist organization to carry out its terror activity of targeting to create a cycle of terror and atmosphere of fear and intimidation by targeting small shops, orchards, commercial establishment and policemen. The Detaining Authority, after considering the dossier submitted by the Senior Superintendent of Police and also considering the fact that the activities of the detenu are highly prejudicial to the security of the State, issued the order of detention. The detention was approved by the Government within time. The detenu has been informed of his right to make a representation before the Government as well as Detaining Authority.

**07.** Personal liberty is one of the most precious rights guaranteed under the Constitution and a person cannot be deprived of his personal

liberty except by procedure established by law. Article 22(5) of the Constitution provides for detention of person without formal charge, trial or sentence from a competent Court under the enactment of preventive detention law. The object of the same is to protect the society from activities which would deprive a large number of people from their life and personal liberty.

**08.** It is well settled that the purpose of the preventive detention is detaining of a person and not to punish him for something he has done but to prevent him from doing a particular act which is prejudicial either to the security of the State or to the maintenance of the public order. In **Haradhan Saha V. State of West Bengal, (1975) 3 SCC 198**, Hon'ble the Supreme Court has held that there is no parallel between prosecution in a Court of law and a detention order under the Public Safety Act. One is a punitive action and the other is a preventive act. In one, case a person is punished to prove his guilt and the standard is proof beyond reasonable doubt whereas in preventive detention a man is prevented from doing something which it is necessary for reasons mentioned in the Act. The relevant part of the judgment is reproduced as under:-

“The essential concept of preventive detention is that the detention of a person is not to punish him for something he has done but to prevent him from doing it. The, basis of detention is the satisfaction of the executive of a reasonable probability of the likelihood of the detenu acting in a manner similar to his past acts and preventing him by detention from doing the same. A criminal conviction on the other hand is for an act already done which can only be possible by a trial and legal evidence. There is no parallel

between prosecution in a Court of law and a detention order under the Act. One is a punitive action and the other is a preventive act. In one, case a person is punished to prove his guilt and the standard is proof beyond reasonable doubt whereas in preventive detention a man is prevented from doing something which it is necessary for reasons mentioned in section 3 of the Act to prevent.”

**09.** In **Khudiram Das V. State of West Bengal and others, (1975) 2 SCR 832**, It was held that:-

“.....The power of detention is clearly a preventive measure. It does not partake in any manner of the nature of punishment. It is taken by way of precaution to prevent mischief to the community. Since every preventive measure is based on the principle that a person should be prevented from doing something which, if left free and unfettered, it is reasonably probable he would do, it must necessarily proceed in all cases, to some extent, on suspicion or anticipation as distinct from proof.....”

**10.** Similarly, in **Secretary to Government, Public (Law and order) and another vs. Nabila and another, (2015) 12 SCC 127**, it has been held that one act may not be sufficient to form the requisite satisfaction for detaining him. Relevant portion of the judgment is as under:

“Indisputably, the object of law of preventive detention is not punitive, but only preventive. In case of preventive detention no offence is to be proved nor is any charge formulated. The justification of such detention is suspicion and reasonability and there is no criminal conviction which can only be warranted by legal evidence...”

**11.** Perusal of the record reveals that the detenu, at the time of detention as well as at the time of execution of the detention was provided all the material relied upon by the Detaining Authority i.e., the detention order, copy of ground of detention, dossier and other material, he has acknowledged the same by signing the receipt. S. I. Siraj-ud-Din of Police Station Safakadal has read over the detention warrant, grounds of detention and explained the same to him in Urdu and Kashmiri language. He also informed the detenu that he can make a representation against his order of detention.

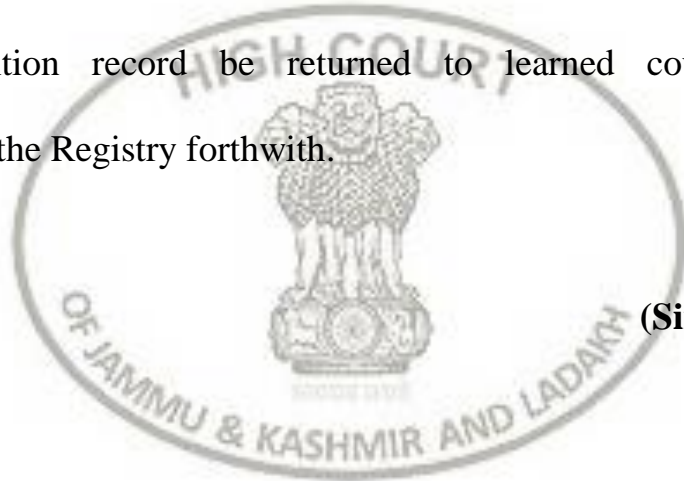
**12.** It is submitted that the detenu has filed a representation before the District Magistrate but a copy of the same, that is placed on record, does not reflect that it was served upon the District Magistrate to support the claim. The same is also not on record, therefore, this submission cannot be accepted.

**13.** The detention order does not suffer from any legal infirmity and grounds of detention are definite, proximate and free from any ambiguity and the detenu was duly informed of what weighed with the detaining authority while passing the order of detention. The Detaining Authority after considering the material placed before it had arrived at the requisite satisfaction that the detenu was required to be placed under preventive detention in order to prevent him from acting in any manner prejudicial to the security of the State, therefore, there is no infraction of constitutional and statutory rights of the detenu. The Detaining Authority has arrived at its subjective satisfaction after considering all the material.

**14.** The decision of the Detaining Authority cannot be substituted by the Court while scrutinizing the detention order. Since preventive detention is a precautionary measure to protect the society from activities which may cause harm to their life and liberty. Preventive detention is a precautionary measure to protect the society from the activities that are likely to deprive a large number of people of their rights and protect them from damaging to their life and property.

**15.** In view of the aforesaid, none of the constitutional or statutory provisions available to the detenu have been violated, thus, there is no merit in this petition and the same is, accordingly, **dismissed**.

**16.** Detention record be returned to learned counsel for the respondents by the Registry forthwith.



**(Sindhu Sharma)**  
**Judge**

**SRINAGAR**

12.08.2022

*Ram Murti*

Whether the judgment is speaking : Yes  
Whether the judgment is reportable : Yes