

**IN THE HIGH COURT OF JAMMU & KASHMIR AND
LADAKHAT SRINAGAR**

Reserved on: 14.07.2022
Pronounced on: 04.08.2022

WP(Crl) No.100/2021

SAKIB AHMAD SHEROO

...PETITIONER(S)

Through: - Mr. Asif Ahmad, Advocate.

Vs.

UT OF J&K & ANOTHER

...RESPONDENT(S)

Through: - Mr. M. A. Chashoo, AAG

CORAM: HON'BLE MR. JUSTICE SANJAY DHAR, JUDGE

JUDGMENT

1) Impugned in this petition is the detention order bearing No.26/DMA/PSA/DET/2021 dated 30.06.2021, passed by District Magistrate, Anantnag (respondent No.2) whereby the petitioner has been taken into preventive custody with a view to prevent him from acting in any manner prejudicial to the security of the State. The said order has been passed by respondent No.2 in exercise of his powers under Section 8 of the Jammu & Kashmir Public Safety Act, 1978.

2) The petitioner has challenged the impugned order of detention on the grounds that at the time when the impugned order of detention was passed, he was already in custody in connection with FIR No.98/2020 for offences under Section 18, 20 and 38 of ULA(P) Act

of Police Station, Dooru, and, as such, there were no compelling reasons for the detaining authority to pass the detention order. It is further contended that the material forming basis of the grounds of detention in the form of copy of FIR, copy of dossier, copies of statements of witnesses recorded under Section 161 Cr. P. C have not been supplied to the detenu thereby curtailing his right to make an effective representation against impugned order of detention.

3) The petition has been resisted by the respondents by filing a counter affidavit thereto. In their counter affidavit, the respondents have submitted that all the safeguards have been adhered to and complied with by the detaining authority and that the order has been issued validly and legally. It is pleaded that the detention order and grounds of detention along with the material relied upon by the detaining authority were handed over to the detenu and the same were read over and explained to him. It is contended that the grounds urged by the petitioner are legally misconceived, factually untenable and without any merit. That the detenu was informed that he can make a representation to the government as well as to the detaining authority against his detention. That the grounds urged by the petitioner are legally misconceived, factually untenable and without any merit. It is further averred that the impugned detention order has been passed after following the due procedure of law. In order to buttress the contentions raised in the counter affidavit, learned counsel for the respondents has also produced the detention record.

4) I have heard learned counsel for the parties and perused the record.

5) Although a number of grounds have been urged by the petitioner in his petition, yet during the course of arguments the ground which prevailed is that there were no compelling circumstances for the detaining authority to pass the impugned order of detention when the detenu was already in custody in connection with case FIR No.98/2020.

6) It is trite that the preventive detention orders can be passed even when a person is in police custody or involved in a criminal case but for doing so, compelling reasons are to be recorded. The Detaining Authority is bound to record the compelling reasons as to why the detenu could not be deterred from indulging in subversive activities by resorting to normal law and in the absence of these reasons, the order of detention becomes unsustainable in law. I am supported in my aforesaid view by the judgments of the Supreme Court in the cases of **Surya Prakash Sharma v. State of U. P. and others, 1994 SCC (Cri) 1691** and **T. P. Moideen Koya vs. Government of Kerala and ors. 2004 (8) SCC 106.**

7) Adverting to the facts of the instant case, as per the detention record, No.98/2020 for offences under Section 18, 20 and 38 of ULA(P) Act was registered against the detenu in Police Station, Dooru Station, and he was taken into custody in connection with investigation of the said case on 23.02.2021. Excepting the aforesaid FIR, there is no material on record to even remotely show that it was absolutely

necessary for the Detaining Authority to detain the petitioner under the provisions of the Jammu and Kashmir Public Safety Act.

8) In the grounds of detention, after referring to the contents of the aforesaid FIR, it has been mentioned that these activities of the detenu are prejudicial to the security of the State and being highly motivated to carry on the illegal designs he is not likely to desist from indulging in antinational and anti-social activities. However, the Detaining Authority has not brought on record any other cogent material or furnished any other cogent ground to show that the detenu is not likely to desist from the aforesaid activities. It appears that the satisfaction of the Detention is solely based on the allegations made in the aforesaid FIR and no other material.

9) As already noted, the Supreme Court in a catena of judgments has clearly held that unless there are compelling circumstances and cogent material before the Detaining Authority for passing a detention order against a person who is already in custody or is facing criminal prosecution in a substantive offence, the Detaining Authority cannot pass an order of detention against such a person.

10) From the perusal of material/record before me, it is clear that the detenu has been shown involved in a substantive offence and it is not the case of the respondents that there was any apprehension of the petitioner getting released on bail in the said offence. It is pertinent to mention here that the petitioner has been booked in an offence falling under Chapter IV of the ULAP Act and in view

of the provisions of Section 43-D of the said Act, the chances of the petitioner getting bail were very remote. Thus, there were no compelling circumstances for the detaining authority to pass the impugned order of detention. The Detaining Authority was bound to record the compelling reasons as to why the detenu could not be deterred from indulging in subversive activities by resorting to normal law and, as already discussed, there is no such material on record. The impugned order of detention, therefore, cannot be sustained.

11) Viewed thus, the petition is allowed and the impugned detention order is quashed. The respondents are directed to release the detenu from the preventive detention forthwith, provided he is not required in connection with any other case.

12) The detention record be returned back to the learned counsel for the respondents.

(Sanjay Dhar)
Judge

SRINAGAR
04.08.2022
"Bhat Altaf, PS"

<i>Whether the order is speaking:</i>	<i>Yes/No</i>
<i>Whether the order is reportable:</i>	<i>Yes/No</i>