Sr. No. 02

HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT SRINAGAR
(THROUGH VIRTUAL MODE)

CJ Court

Case: LPA No. 277/2022 in
[WP (Crl) No. 247/2022]

Reserved on: 01.02.2024
Pronounced on:02.03.2024

Aquib Ahmad Regoo .....Appellant/Petitioner(s)

Through :- Mr. M. Ashraf Wani, Advocate.

v/s

U.T of J &K and another .....Respondent(s)

Through :- Mr. Mubeen Wani, Dy. AG.

CORAM:
HON'BLE THE CHIEF JUSTICE
HON'BLEMR. JUSTICE M A CHOWDHARY, JUDGE

JUDGMENT

N. Kotiswar Singh- CJ.

1. The present Letters Patent Appeal has been preferred against the judgment and order dated 19.12.2022 passed by the learned Single Judge in writ petition bearing WP (Crl) No. 247/2022, by which the challenge made to the detention order No. 22/DMP/PSA/2022 dated 08.04.2022, by Aquib Ahmad Regoo, resident of Khrew, District Pulwama under Section 8 of the J&K Public Safety Act 1978 issued by District Magistrate Pulwama, was rejected.

2. The brief facts of the case giving rise to the passing of the detention order and filing of this appeal are stated as follows.

3. According to the appellant detenue, he is a driver by profession and not involved in any activity prejudicial to the security of state and public order. He, however was called by Police Station at Khrew and then taken into custody and falsely implicated in FIR No. 65/2021 u/s 13 ULAP Act. He was bailed out by the Court of competent jurisdiction by granting default bail on 17.12.2021.However, he was not released from the custody

and was detained in another FIR bearing No. 44/2021 at Police Station Pampore. While he was in detention under the aforesaid FIR, he was booked under the Public Safety Act as mentioned above.

4. Being aggrieved by the aforesaid detention order, the appellant detenue filed the aforesaid writ petition bearing WP (Crl) No.247/2022 before the Writ Court and the following grounds were taken to challenge the detention order.

(i) Firstly, that the petitioner/detenue was not furnished the grounds of detention and other relevant documents on the basis of which detention order was passed which prevented him from making effective representation against the detention order as provided under Article 22(5) of the Constitution of India read with Section 13 of Public Safety Act.

(ii) Secondly, it has been stated that there was non-application of mind by the detaining authority inasmuch as the ground of detention is the ditto reproduction of the dossier prepared by the Police.

(iii) Thirdly, it has been submitted that though the detenue was already under custody at the time of passing of detention order, this aspect has not been reflected in the detention order and, there was no mention that there was likelihood of the detenue being released on bail which would necessitate passing of the detention order. Thus, the detention order suffers from non-application of mind on the part of the detaining authority.

(iv) Fourthly, it has been contended that the grounds of detention does not disclose any imminent threat to the security of state or public order which would be the basis for passing of the detention order under Section 8 of Public Safety Act.

(v) Though a representation was made against the detention order and submitted to the District Magistrate on 26.04.2022 and also to the Government, the same had not been considered by the Government which has rendered his continued detention illegal.

5. The petition was contested by the respondents by filing objections to the same, wherein it was averred by the respondents that the detenue was duly informed about his right to submit a representation against his detention and the brother of the detenue had filed a representation which was duly considered and rejected on 14.05.2022. It has also been submitted that relevant documents were furnished to the detenue in the jail and these were explained in the language understood by him. It was also submitted that grounds of detention were precise, proximate, pertinent and relevant and there was no vagueness and staleness in the grounds of detention and the incidents clearly substantiate the subjective satisfaction arrived at by the detaining authority.

6. It has also been contended that the activities of the detenue were highly prejudicial to security of state and as such, it was necessary to prevent him from acting in such activities requiring preventive detention. The learned Single Judge considered all these aspects and after consideration of the same, rejected the writ petition.

7. Before us, the learned counsel appearing for the writ petitioner/appellant Mr. M. Ashraf Wani has more or less reiterated the grounds urged before the learned Single Judge.

8. Learned counsel for the appellant has strenuously argued before us that all the relevant documents and materials on the basis of which the detention order was passed were not furnished to the detenue viz. copies of FIRs, statements of witnesses recorded u/s 161 Cr. P.C, seizure memo etc., relating to the FIR No.65/2021 registered under Section 13 of the Unlawful Activities (Prevention) Act and also subsequent FIR i.e., FIR No. 44/2021 registered u/s 18/20/23/38 & 39 ULAP Act registered at Police Station Pampore. Thus, in the absence of the aforesaid documents/materials, the detenue has been prevented from making effective representation which has vitiated the continued detention of the detenue.

9. Learned counsel for the appellant petitioner also submits that the fact remains that even if the petitioner was released on bail in connection with

the earlier FIR No. 65/2021, in the subsequent FIR, the detenue had not applied for bail and even otherwise also there was no likelihood for grant of bail in the subsequent case by the concerned court in view of the stringent provisions of Section 43-D of UAP Act and it cannot be said that there was any cogent material before the detaining authority to arrive at the subjective satisfaction that the detenue was likely to be released on bail which would necessitate passing the preventive detention order.

10. Learned counsel for the appellant petitioner also submits that though the representation filed by the brother of the detenue to the District Magistrate was rejected by the District Magistrate, the representation which was submitted to the Government through the Financial Commissioner was also required to be considered and disposed of, which was not done, which amounts to infraction of Article 22(5) of the Constitution of India read with Section 13 of the Public Safety Act.

11. Learned counsel for the appellant petitioner in support of his submissions, relied upon the following decisions: -

a. ***Hadibandhu Das versus District Magistrate Cuttack, AIR 1969 SC 43,*** *in which it was held that documents were required to be furnished to detenue in the language understood by the detenue.*
b. ***Raziya Umar Bakshi Versus Union of India, AIR 1980 SC 1751,*** *in which it was held that the service of the grounds of detention is a very precious constitutional right.*
c. ***Sophia Ghulam Mohd Bham Versus State of Maharashtra and others, AIR 1999 SC p 3051,*** *which dealt with the obligation on the part of the authorities to consider the representation.*
d. ***Union of India versus Ranu Bhandari, Cri.L.J. 2008 p 4567.***
e. ***Kaliah Prasad versus State of U.P, SLJ 2004 (2) 547, 1983 Cr L J 630 SC,*** *in which it was held that if the grounds of detention were based on confessional statement, and if the same was not furnished, the detention order would be rendered bad.*
f. ***Dhnanajay Das Versus District Magistrate, AIR 1982 SC 1315.***

g. ***Mehraj-ud-din Rather versus State and others, SLJ 2007 (1) 136.***

h. ***Farooq Ahmad Shaikh Versus State and others, 2017 (II) SLJ 681 (HC).***

i. ***Mohammad Rafiq Najar Versus Union Territory and another,*** *passed in LPA No. 53/2022, decided on 17.10.2023.*

j. ***Non consideration of representation would vitiate the detention.***

(i) ***Ratilal Prithviraj Bafna and others versus Purshottam Krishnaji Kane and others, 1979 (4) SCC 559.***

(ii) ***Sarabjeet Singh Mokha Vs. The District Magistrate Jabalpur Criminal Appeal No. 1301 of 2021,*** *reported by Live Law.*

(iii) ***Mohammad Younis Vs. U.T. of J and K another, WP (Crl) 193/2020.***

12. The learned counsel for the respondents Mr. Mubeen Wani, learned Dy. AG on the other hand has resisted this appeal on the similar grounds taken before the Writ Court by contending that all the documents/materials on the basis of which detention order was passed, were supplied to the detenue and it has been clearly mentioned in the detention order that the detenue was already in detention and as such, the detaining authority was already aware of the detention of the detenue and since he was released on bail in the earlier case, there was every likelihood of him having released on bail in the subsequent case also. Thus, in view of the possibility of detenue being enlarged on bail, the preventive detention order came to be passed. It was also submitted that there were sufficient materials on the basis of which the detaining authority arrived at the subjective satisfaction which could not be lightly interfered by this Court in exercise of the jurisdiction under Article 226 of Constitution of India.

13. In support of his submissions advanced, Ld. State Counsel has relied upon following decisions:-

(a) Muntazir Ahmad Bhat Vs. Union of Territory of J&K, LPA No. 164/2021.

(b) State of Bombay Vs. Atma Ram Shridhar Vaidya, AIR 1951 SC 157.

(c) Abdul Sattar Ibrahim Vs. Union of India, AIR 1991 SC 2261.

(d) Senthamilseti Vs. State of Tamil Nadu, 2006 Vol 5 SCC 676.

(e) Aamir Shafi Bhat Vs. State, HCP No. 120/2019

(f) Haradhan Shah Vs. State of West Bengal, 1475 3 SCC 198.

14. Heard learned counsel for the parties and perused the materials on record.

15. From a perusal of the record submitted by the respondents, it appears that copies of FIRs, statements of witness and other material were not handed over to the petitioner. However, this Court also noticed that the specific allegation against the detenue is that he is a hardcore Over Ground Worker (OGW) of the banned terrorist organization of Lashker-e-Toiba (LeT) whose aim and objective is to secede the UT of Jammu and Kashmir from Union of India and to annex it with Pakistan.

16. It has been also mentioned in the grounds of detention that the said banned organization (LeT) has virtually engaged a war against the UT of J&K and Government of India established by the law and in the terror strikes which have been carried out by the terrorists of the said terrorist outfit till date, hundreds of innocent subjects of the soil have lost their precious lives. It has been further mentioned in the grounds of detention that he was found to be involved in FIR No. 65/2021 registered u/s 13 ULAP Act of P/S Khrew in which some posters of the banned terrorist organization (LeT) outfit were recovered from his possession and was arrested in connection with the said case on 08.09.2021, in which case he was bailed out on 17.12.2021.

17. Perusal of the grounds of detention indicates that he was associated with Lashker-e-Toiba (LeT), inasmuch as, from his possession certain posters of Lashker-e-Toiba (LeT) were recovered. The question which arises for consideration before us is whether non-furnishing of the copies of FIRs and the materials relating to the outlawed organization, Lashker-e-Toiba (LeT) or the statements recorded of the witnesses under Section 161 Cr. P.C relating aforesaid FIR cases would prevent the petitioner from making an effective representation so as to infringe his right conferred under Article 22 (5) of the Constitution of India.

18. In our opinion, mere non-furnishing of those materials may not lead to the inexorable inference that the detenue has been denied the opportunity to file an effective representation. It has been categorically mentioned in the grounds of detention that some posters of the banned terrorist organization, Lashker-e-Toiba (LeT) were recovered from his possession and accordingly, he was arrested in connection with the said case on 08.09.2021.

19. There is a specific allegation against the appellant detenue of having found to be in possession of posters belonging to a banned terrorist organization, Lashker-e-Toiba. In our opinion this allegation is specific, not vague, and is clear. It has to be noticed that Lashker-e-Toiba (LeT) is a proscribed organization listed at Serial No. 5 of the First Schedule of the Unlawful Activities (Prevention) Act 1967. The said Schedule contains the list of banned terrorist organizations which includes Lashker-e-Toiba (LeT). Such being the undisputable position as regards the status of the Lashker-e-Toiba (LeT) as a banned terrorist organization, nothing much is required to be provided to the detenue concerning the activities of the aforesaid proscribed organization.

20. Thus, as regards the allegation that the detenue is associated with the aforesaid organization, in view of the specific allegation that he was found to be in possession of posters of the aforesaid Lashker-e-Toiba (LeT) and the allegation that he was arrested in connection of the aforesaid case in connection with which, a police case was registered, being FIR No. 65/2021 under Section 13 of the UAP Act in the Khrew Police Station, and since all these allegations are already known to the detenue and these are not new allegations made against him which would require any supporting documents to connect with him, we are of the view that non-furnishing of copies of the FIRs or the documents relating to the case does not amount to denial of relevant materials. The fact that he has not denied being arrested in the aforesaid case and later bailed out does indicate that he was already aware of the allegations against him in connection with the aforesaid FIR case. Further, in the representation submitted by the detenue, apart from making the statements that he was falsely booked in FIR No. 65/2021 of

P/S Khrew, he has not made any specific plea that no such posters of LeT were recovered from him. If posters of Lashker-e-Toiba (LeT) were indeed recovered from the detenue as alleged, the detaining authority can legitimately draw the conclusion that he was associated with the Lashker-e-Toiba (LeT). Hence, as far as this ground for detention is concerned, we are of the view that it does not suffer from any vagueness.

21. We would have taken the view that lack of furnishing of documents may prevent the detenue from making effective representation if the allegations were made for the first time on the basis of which the detenue was detained under the law of preventive detention. However, this is not the case herein.

22. As discussed above, one of the grounds for his detention is his involvement in FIR No. 65/2021 on the allegation that he was found to be in possession of posters of Lashker-e-Toiba (LeT)on the basis of which the authorities come to the conclusion that he was involved in acts prejudicial to the security of the Nation. It has been also mentioned that the Lashker-e-Toiba (LeT) by engaging in various terrorist activities has created a terror ecosystem in the UT of J&K. As regards this aspect, in our view, nothing much more is required to be furnished to the detenue, inasmuch, this is a well-known fact, because of which the Lashker-e-Toiba (LeT) has been declared a proscribed terrorist organization finding a place in list of terrorist organizations under the First Schedule under UAP Act as mentioned above. On this ground alone, the detention order of the appellant cannot certainly be sustained.

23. In this regard, one may refer to the decision in **"State of Bombay v. Atma Ram Shridhar Vaidya",** reported in **1951 AIR SC 157** wherein it was held as follows:

> "**14**. The contention that the grounds are vague requires some clarification. What is meant by vague? Vague can be considered as the antonym of 'definite.' If the ground which is supplied is incapable of being understood or defined with sufficient certainty it can be called vague. It is not possible to state affirmatively more on the question of what is vague. It must vary according to the

> circumstances of each case. It is, however, improper to contend that a ground is necessarily vague if the only answer of the detained person can be to deny it. That is a matter of detail which has to be examined in the light of the circumstances of each case. If, on reading the ground furnished it is capable of being intelligently understood and is sufficiently definite to furnish materials to enable the detained person to make a representation against the order of detention it cannot be called vague. The only argument which could be urged is that the language used in specifying the ground is so general that it does not permit the detained person to legitimately meet the charge against him because the only answer which he can make is to say that he did not act, as generally suggested. In certain cases that argument may support the contention that having regard to the general language used in the ground he has not been given the earliest opportunity to make a representation against the order of detention. It cannot be disputed that the representation mentioned in the second part of Art. 22(5) must be one which on being considered may give relief to the detained person.

24. Therefore, the submissions advanced by learned counsel for the appellant detenue that the grounds of detention and materials provided are devoid of detailed particulars do not appear to be well founded.

25. The law is also well settled that in the matter of preventive detention the subjective satisfaction need not necessarily be based on the established charges but may be based on apprehensions based on some materials which are yet to be proved, so long as these are not irrelevant, and the sufficiency of the materials on which the subjective satisfaction of the detaining authority is based, is beyond judicial review. If the detaining authority found that detenue had been accused of being found to be in possession of posters of a proscribed organization, the subjective satisfaction arrived at the detaining authority that the detenue is involved in the act prejudicial to the security of the Nation cannot be said to be without any basis nor can it be judicially scrutinized by way of judicial review.

26. Coming to the other ground that the representation of the petitioner was not considered by the State Authority which has vitiated the continued

detention of the detenue, we have examined the record. The learned Single Judge has made a finding that the District Magistrate, Pulwama vide his order DCP/PA/22/784-88, dated 14.05.2022 had rejected the representation and also noted that the Advisory Board had made a finding to the effect that they had accorded consideration to the representation made on behalf of the detenue and given him personal hearing through video conferencing, but the Board did not find any substance in the representation or the submission made by him and accordingly, rejected the said contention.

27. Thus, the finding of the learned Single Judge is that representation filed by the petitioner was rejected by the District Magistrate, Pulwama on 14.05.2022 and by the Advisory Board on 20.05.2022, and hence rejected the plea taken by the appellant.

28. In this regard, we have perused the records produced before us which shows that the representation made on behalf of the detenue on 25.04.2022 before the Financial Commissioner (Additional Chief Secretary), Home Department, J&K, Civil Secretariat, was received on 28.04.2022. However, it appears that the same was not considered, as indicated by a noting in the file stating that the representation should be made by the detenue and not on his behalf by anyone else. Consequently, it was not treated as a valid representation.

29. From the above, it appears that the detenue submitted two representations. The first one was to the District Magistrate, which was rejected on 14.05.2022. Additionally, a representation was submitted to the Government through the Financial Commissioner (Additional Chief Secretary), Home Department on 25.04.2022. However, it appears that this representation was not considered on the ground that the said representation was not submitted by the detenue himself by holding that any representation not submitted by the detenue himself but by someone else cannot be considered to be a valid representation.

30. It thus appears that the said representation submitted to the Government through the Financial Commissioner (Additional Chief Secretary), Home Department, J&K, Civil Secretariat was not considered by the Government/Appropriate Authority. Non-consideration of

representation solely on the ground that the same was not submitted by the detenue himself does not appear to be sound in law.

31. The observation by the Ld. Single Judge that the District Magistrate as well as the Advisory Board had considered the representation will not relieve the Government of its constitutional obligation to consider the representation submitted to it. These are separate and independent exercises to be undertaken by these authorities as is evident from the decision of the Apex Court in **Ankit Ashok Jalan v. Union of India and others,** (**2020) 16 SCC 127,** wherein it was held as follows:

> "**16**. These decisions clearly laid down that the consideration of representations by the appropriate Government and by the Board would always be qualitatively different and the power of consideration by the appropriate government must be completely independent of any action by the Advisory Board. In para 12 of the decision in Pankaj Kumar Chakravarty19 it was stated that the obligation on the part of the Government to consider representation would be irrespective of whether the representation was made before or after the case was referred to the Advisory Board. As stated in para 18, this was stated so, as any delay in consideration of the representation would not only be an irresponsible act on the part of the appropriate authority but also unconstitutional. The contingency whether the representations were received before or after was again considered in para 29 of the decision in Haradhan Saha."
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> 19: (1969) 3 SCC 400
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> 17: (1975) 3 SCC 198
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> **17**. In terms of these principles, the matter of consideration of representation in the context of reference to the Advisory Board, can be put in the following four categories:
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> **17.1**. If the representation is received well before the reference is made to the Advisory Board and can be considered by the appropriate government, the representation must be considered

with expedition. Thereafter, the representation along with the decision taken on the representation shall be forwarded to and must form part of the documents to be placed before the Advisory Board.

17.2. If the representation is received just before the reference is made to the Advisory Board and there is not sufficient time to decide the representation, in terms of law laid down in Jayanarayan Sukul16 and Haradhan Saha17, the representation must be decided first and thereafter the representation and the decision must be sent to the Advisory Board. This is premised on the principle that the consideration by the appropriate Government is completely independent and also that there ought not to be any delay in consideration of the representation.

16: (1970) 1 SCC 219

17.3. If the representation is received after the reference is made but before the matter is decided by the Advisory Board, according to the principles laid down in Haradhan Saha17, the representation must be decided. The decision as well as the representation must thereafter be immediately sent to the Advisory Board.

17.4. If the representation is received after the decision of the Advisory Board, the decisions are clear that in such cases there is no requirement to send the representation to the Advisory Board. The representation in such cases must be considered with expedition."

32. It may be noted that neither the statute nor the Constitution specifically provides that the representation must be personally made by the detenue. The same can be done by anyone who is competent or otherwise authorized. The purpose for submitting the representation, as guaranteed under Article 22(5) of the Constitution is to bring to the notice of the concerned/appropriate authority of the grounds for considering setting aside or revocation of the detention order. It is not necessary that the representation must be done by the detenue himself.

33. In this regard one may refer to the decision of the Hon'ble Supreme Court rendered in **Piara Singh Vs. State of Punjab, (1987) 4 SC 550**. In the said case, the representation of the detenue was submitted by his advocate and the objection was raised by the authorities that the representation made by the detenue through his advocate is invalid, as the advocate who submitted the representation has no authority to make the representation.

34. The said objection was rejected by the Hon'ble Supreme Court on the ground that there is nothing in law which prevents the representation being made on behalf of the detenue and if there was any difficulty on that ground, an enquiry should have been made with the advocate as to what was his authority to represent the detenue and no such enquiry was made as held by the Apex Court in the aforesaid case as below:

> "**8**. It was contended by the learned counsel for the respondent that the representation made by the detenu to the Special Secretary, Government of Punjab was invalid as the advocate who sent the representation had not authority to make that representation. It was submitted by him in the alternative that the delay in dealing with the representation was on account of the fact that it was made by a person who claimed to be the advocate of the petitioner but whose authority was not checked. In our view neither of these contentions can be upheld. These contentions have not been taken up in the counter affidavit and cannot be urged merely at the hearing of the petitioner. There is nothing in law which prevents a representation being made by an advocate on behalf of the detenu. If there was any difficulty on that ground, enquires should have been made with the advocate as to what was his authority to represent the detenu, and no such enquiry has been made in the present case. Thus, in the present case, the fact that the representation was made by the advocate does not explain the delay in dealing with that representation and cannot constitute any explanation for the delay in dealing with it."

35. In the present case, the representation was not made by any advocate but by his own brother, one Mohammad Ashraf Regoo. If the respondents

were doubtful of him, they could have sought clarification from him whether he is his brother and was authorized to submit the representation, which was not done in the present case and the representation was not considered at all as can be seen from the original record produced before us on the ground that the representation was not submitted by the detenue himself.

36. Under the circumstances, we are of the opinion that non-consideration of the representation submitted to the Government through the Finance Commissioner on the ground that it was not submitted by the detenue himself, amounts to violation of the right of a detenue, a right guaranteed under Article 22(5) of the Constitution of India. Accordingly, this Court would hold that since the representation was not considered, it would vitiate the continued detention of the detenue.

37. In view of the above conclusion arrived, it may not be necessary to delve into the other grounds raised. This is because the detention order, having breached the fundamental right guaranteed under Article 22(5) of the Constitution, cannot be upheld any longer.

38. The appeal is, accordingly, allowed and the impugned judgment dated 19.12.2022 is set aside. Consequently, the detention order No. 22/DMP/PSA/22 dated 08.04.2022 issued by the District Magistrate, Pulwama, is also quashed. The detenue shall be released forthwith from custody if not required in any other case.

39. With the above observations and direction, the present appeal is allowed.

(M A CHOWDHARY)
JUDGE

(N. KOTISWAR SINGH)
CHIEF JUSTICE

SRINAGAR
02.03.2024
Renu/
Junaid

Whether the order is reportable *Yes*