

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

**Reserved on: 28.02.2024
Pronounced on: 22.03.2024**

WP (CrI) No. 209/2023

Jaffar Ahmad Parray

... Petitioner/Appellant(s)

Through: Mr. Jahangir Ahmad Wani, Advocate

V/s

UT of J&K and another

... Respondent(s)

Through: Ms. Rekha Wangnoo, GA

CORAM: HON'BLE MR. JUSTICE RAHUL BHARTI, JUDGE

JUDGMENT

22-03-2024

1. Heard the learned counsel from both sides. Perused the writ pleadings and the documents therewith. The detention record produced from the respondents' end also scanned thoroughly.
2. The petitioner, acting through his brother, has filed this writ petition instituted on 05/06/2023 seeking thereby a writ of habeas corpus under article 226 of the Constitution of India for quashment of his preventive detention and consequent restoration of his personal liberty.
3. The petitioner is 26 years of age and at the prime of his youth came to be reckoned by the Senior Superintendent of Police (SSP), Shopian, Kashmir by reference to his alleged acts and conduct documented in a dossier No. CS/D-1/2023/4072 dated 09/05/2023 a case to be recommended for preventive detention under the J&K

- Public Safety Act, 1978 as the petitioner's alleged acts and conduct were held to be prejudicial to the security of UT/Country.
4. Led by the dossier so presented, the respondent No. 2 - District Magistrate, Shopian came to formulate the grounds of detention on the basis of which subjective satisfaction came to be formulated by the respondent No.2- District Magistrate, Shopian that the petitioner's personal liberty was prejudicial to the security of UT of J&K/Country warranting the curtailment of the petitioner's personal liberty, the free enjoyment of which was otherwise guaranteed to him by the Constitution of India.
 5. In the grounds of detention, the respondent No. 2-District Magistrate, Shopian by referring to and reiterating the feedback of the SSP Shopian, as documented in the dossier, came to hold that it was evident to him i.e. the District Magistrate Shopian that the petitioner is a hardcore OGW of LeT/HM terrorist outfits, deeply involved in anti-national and antisocial activities and also being a highly motivated OGW continuously indulging in anti-national and antisocial acts prejudicial to the security of UT of J&K/Country .
 6. In the entire grounds of detention, which is dominated by the verbatim reproduction of the dossier contents, there is not even a single line reference about the petitioner being involved in a case registered under some FIR with any Police Station and that means there was no antecedent culpability attached to the acts and conduct on the part of the petitioner.

7. Now, in absence of any criminal case registered and undergoing against the petitioner, the grounds of detention framed as it is are purely drawn from the release of opinion and inferences because the grounds of detention do not spell out any factual contents drawn from the dossier. The entire dossier has been recited in the grounds of detention by the respondent No. 2-District Magistrate, Shopian and if there would have been any factual contents in the dossier then the same would not have missed mention in the grounds of detention.
8. The petitioner came to be ordered to be detained under preventive detention by the respondent No. 2 - District Magistrate, Shopian vide an order No. 165/DMS/PSA/2023 dated 10/05/2023 so as to prevent him from acting in a manner prejudicial to the security of the UT/Country under section 8(a) of the J&K Public Safety Act, 1978 and upon the petitioner's arrest to be lodged in the District Jail Baramulla.
9. The respondent No. 2-District Magistrate, Shopian came to address a communication No. DMS/PSA/2023/90-92 dated 10/05/2023 to the petitioner for informing him about passing of detention order against him and about his right to make a representation against the detention to the Govt. and also to the District Magistrate, Shopian.
10. Upon getting detained vide said order of detention of the respondent No. 2-District Magistrate, Shopian, the petitioner, acting through his brother Bilal Ahmad Parray, came to address a representation to the respondent No. 2 - District Magistrate,

Shopian received in the office against written receipt dated 03/06/2023 and a representation to the Home Department, Govt. of UT of J&K received against receipt No. 2434557 dated 05/06/2023.

11. It against this backdrop that the petitioner came forward to challenge his detention terming it to be illegal in all respects.
12. To the writ petition, the respondents have submitted their counter affidavit dated 09/10/2023 submitted by the respondent No. 2 - District Magistrate, Shopian on 10/10/2023.
13. In the counter affidavit, it has been stated that the petitioner's preventive detention came to be approved by a Govt. Order No. Home/PB-V/1099/2023 dated 18/05/2023 and later as it came to be confirmed by the Advisory Board whereupon the Govt. of UT of J&K vide Govt. Order No. Home/PB-V/1423 dated 21/06/2023 confirmed the petitioner's detention meant to last for two years in the District Jail Baramulla.
14. It is in the light of the aforesaid facts and circumstances of the case that this court is to adjudge the legality/validity of the petitioner's preventive detention.
15. Going by the face impression of the case, it seems that the respondent No. 2 - District Magistrate, Shopian dealt with the case on sound footing and that the slapping of the preventive detention upon the petitioner was deserving going by the tone and tenor of the purported grounds of detention.

16. However, there is a vitiating fact in the very grounds of detention which is worth serious notice and that is the petitioner is admittedly not mentioned to be involved in a registered criminal acts of omission or commission as otherwise there would have been a mention of said fact in the dossier of the SSP Shopian and in the grounds of detention in support of the order of detention passed by the respondent No. 2 - District Magistrate Shopian, but still it is expressly mentioned in the grounds of detention by the respondent No. 2-District Magistrate, Shopian that by the interrogation of the petitioner it stood revealed that the petitioner was a hardcore OWG of active terrorists of LeT/HM outfits operating in district Shopian and further revealing that the petitioner was in contact with the active militants of district Shopian.
17. Now, if the petitioner came out allegedly divulging all the adverse facts against his own self during interrogation, then the dossier by the SSP Shopian and the grounds of detention framed by the respondent No. 2 - District Magistrate, Shopian ought to have put it on record as under which authority of law the petitioner came to be first picked up, by whom and then by whom subjected to so called interrogation so as to make alleged revelations as cited in the grounds of detention by the respondent No. 2 - District Magistrate, Shopian.
18. In India, which is a democratic country governed by rule of law, it cannot be heard to be said by the police and the district magistracy that a citizen was picked up to be interrogated without any

registration of a criminal case against him and from that purported interrogation a case for preventive detention was found to be made out against the petitioner. To believe this version of the respondent No. 2 - District Magistrate, Shopian as cited and highlighted in the grounds of detention in support of the detention order would be to concede to scenario that India is a police state which otherwise it is not by any stretch of imagination or claim.

19. A district magistrate acting under the regime of J&K Public Safety Act, 1978, or for that matter even the Govt. of UT of J&K, is not supposed to parrot the police dictated version in the dossier and serve a detention order on a platter. As the jurisdiction is preventive and not punitive, so the legislature has thoughtfully not granted or vested the jurisdiction and authority to propose and pass a preventive detention order against a citizen in the hands of the Police and its officials howsoever high the official may be. Neutrality of mindset has been insured by reposing the legislative trust in the executive magistracy under the J&K Public Safety Act, 1978 as is the case of framework of the separation of power and jurisdiction between the police and the magistracy under the Code of Criminal Procedure, 1973 and the Police Rules. Police is not let to and is not at its liberty and lathi to use/usurp State power/force in its physical manifestation against the citizenry of India as that can only be done through the agency of magistracy intervening with its independent application of mind.

20. So in the context of present case, if this court were to legitimize the preventive detention of the petitioner then that would be by first legalizing the so called interrogation of the petitioner without ever knowing from the end of the respondent No. 2 - District Magistrate, Shopian as to how the said interrogation of the petitioner took place.
21. The petitioner who is the loser of his personal liberty by the detention order of the respondent No. 2 -District Magistrate, Shopian would always remain at a loss and clueless, as even this court is, to understand and figure out from the grounds of detention so read to him as to under which authority of law he was so subjected to interrogation as cited in the grounds of detention without any whisper of mention under which enabling authority of law the petitioner's interrogation came to take place.
22. Thus, the very root of the petitioner's preventive detention is illegal and coercive as that is the reason that in its counter affidavit the respondents have chosen to keep silent in their response as to what was the fate of the written representation submitted both to the respondent No. 2 - District Magistrate, Shopian and even to the Home Department. There is no denial to the fact that the petitioner's representation stood duly received by the respondent No. 2 - District Magistrate, Shopian and the Home Department of the Govt. of UT of J&K on 3rd June and 5th June 2023 but in its counter affidavit filed on 10/10/2023 the respondents are found

- tight lipped about the fate of said representation of the petitioners at first instance and said fate being made known to the petitioner.
23. Representation against a preventive detention once submitted by a detenu is not meant to be a routine piece of paper at the office table of the PA of the District Magistrate or for that matter of the Secretary Home Department representing the Govt. of UT of J&K. A representation is a very live document bearing the cry and concern of a detenu against his preventive detention meant for application of mind on the part of the District Magistrate concerned and of the Govt. to be read and responded in letter and spirit. In the present case, the petitioner did not get the solace of fact that his representation was even read lest considered by the concerned authority.
24. Thus, the cumulative effect of all the aforesaid is that the petitioner's preventive detention is held to be illegal and is accordingly quashed by setting aside the detention order No. 1645/DMS/PSA/2023 dated 10/05/2023 of the respondent No. 2 - District Magistrate, Shopian along with consequent Govt. Orders approving and confirming the detention of the petitioner.
25. The respondent No. 2 - District Magistrate, Shopian and the District Superintendent District Jail Baramulla are directed to set free the petitioner forthwith without any unwarranted delay.

(RAHUL BHARTI)
JUDGE

Whether the order is reportable: Yes

Whether the order is speaking: Yes

