IN THE HIGH COURT OF JAMMU AND KASHMIR
AT SRINAGAR

Reserved on: 13.09.2024
Pronounced on: 14 .10.2024

HCP No.46/2024

SAYAR AHMAD SHAH ALIAS SAYAR ...Petitioner(s)

Through: -Mr. M. Ayoub Bhat, Advocate.

Vs.

UT OF J&K AND ORS. ...Respondent(s)

Through: -Mr. Hakim Aman Ali, Dy. AG.

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

JUDGEMENT

1) Impugned in this petition is order of detention bearing No.12/DMP/PSA/24 dated 01.02.2024 issued by District Magistrate, Pulwama, whereby Sayar Ahmad Shah @ Sayar (the detenue) has been placed under preventive detention with a view to prevent him from acting, in any manner, prejudicial to the security of the State.

2) The petitioner has challenged the impugned order of detention on the grounds that the same is violative of constitutional guarantees; that the material forming basis of the grounds of detention has not been supplied to the detenue thereby curtailing his right to make an effective representation against impugned order of detention; that the petitioner has not been

informed about his right of making a meaningful and effective representation to the detaining authority as well as to the government; that the allegations leveled in the grounds of detention are vague and that representation of the detenue against the order of detention has not been considered by the respondents.

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 detenue and that 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 detenue 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) The learned counsel for the detenu has laid much emphasis on the following grounds:

(I) That whole of the material that has been relied upon by the detaining authority while framing the grounds of detention has not been supplied to the petitioner;

(II) That the petitioner was already booked in substantive offences, as such, there were no compelling reasons for the detaining authority to take resort to preventive detention;

(III) That the representation of the petitioner against the impugned order of detention has not been considered;

(IV) That the grounds of detention are vague on the basis of which the petitioner could not have made an effective representation against the impugned order of detention.

6) So far as the first ground is concerned, if we have a look at the detention record, the petitioner has been provided 25 leaves, which include detention order (01 leaf), notice of detention (01 leaf), grounds of detention (02 leaves), dossier of detention (04 leaves) and copies of FIR, statements of witnesses and other related documents (17 leaves). In the execution report and the receipt of grounds of detention that bears signature of the petitioner, it is further recorded that the petitioner has been explained the contents of aforesaid documents in Urdu and

Kashmiri languages. The affidavit of the executing official in support of the aforesaid assertion is also available in the detention record. Thus, the contention of the petitioner that he has not been furnished whole of the material forming basis of the grounds of detention and that he has not been provided translated version thereof is without any merit.

7) It has been next contended by learned counsel for the petitioner that there were no compelling reasons for the detaining authority to pass the impugned order of detention once the petitioner had been booked for substantive offences. In this regard, it has to be noted that the petitioner was booked in FIR No.46/2020 for offences under Section 18, 39 ULA(P) Act registered with P/S Tral. The incident which is subject matter of this FIR is dated 22.05.2020. Thereafter certain preventive measures were taken against the petitioner on 18.10.2021, 21.12.2021, 20.07.2023 and 09.11.2023 in terms of Section 107 and 151 of Cr. P. C with the intention to prevent him from indulging in anti-national activities, meaning thereby that the petitioner despite having been booked for substantive offences and in spite of taking preventive measures as aforesaid, the detemi did not resist himself did not deter him from indulging in similar activities. In these circumstances, action of the respondents in passing the impugned order of detention appears to be justified as the normal criminal law was not sufficient to deter the petitioner from indulging in similar activities.

8) The petitioner is stated to have made a representation to the detaining authority through his father. A copy of representation dated 10.02.2024 has been placed on record. A perusal of the detention record reveals that the said representation has been considered by the District Magistrate, Pulwama, on 13.02.2024, whereafter the same has been rejected. The information relating to rejection of representation of the petitioner has been conveyed to him in terms of communication No.DCP/PA/24/3130-34 dated 13.02.2024. Thus, the ground urged by the petitioner is without any substance.

9) Lastly, it has been contended that the allegations made in the grounds of detention against the petitioner are vague and lacking in material particulars, on the basis of which it was not possible for him to make an effective representation against the impugned order of detention. In this regard, a perusal of the grounds of detention reveals that it has been clearly mentioned that the petitioner was in touch with his terrorist brother, namely, Imtiyaz Shah of banned terrorist organization AGUH, to whom he had been providing every kind of logistic support. It is also indicated in the grounds of detention that the petitioner was continuously extending support to the terrorists of banned terrorist organization Jash-e-Mohammad and in this regard, the name of the active terrorist of the said organization Asif Sheikh is also mentioned in the grounds of detention. Thus, there are specific allegations and assertions made in the grounds of

detention. Therefore, it cannot be stated that the allegations made in the grounds of detention are vague or lacking in material particulars. The fact that the petitioner made a representation, which seems to be an effective representation against the impugned order of detention, clearly shows that he has not been hampered from making a representation on account of alleged lack of specific particulars in the grounds of detention. The contention of learned counsel for the petitioner in this regard is, therefore, without any merit.

10) For the foregoing reasons, I do not find any merit in this petition. The same is, accordingly, dismissed.

(Sanjay Dhar)
Judge

Jammu
14.10.2024
"Sanjeev"

Whether the order is speaking: Yes/No
Whether the order is reportable: Yes/No