

HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT JAMMU

HCP No. 28/2024

Pronounced on: 16.10.2024

Syed Shabir Ahmed Shah

.... Petitioner/Appellant(s)

Through:- Mr. R.K.S. Thakur, Advocate.

V/s

UT of J&K and others

.....Respondent(s)

Through:- Mr. Rajesh Thapa, AAG.

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

JUDGMENT

01. The petitioner has challenged the detention order No. PSA 28 of 2023 dated 15.11.2023, issued by the District Magistrate, Jammu, placing him under detention with a view to prevent him from acting in any manner prejudicial to the maintenance of public order. The order of detention has been challenged by the petitioner through his wife-Mst. Nazneena Akhtar.

02. The contention of the petitioner is that the impugned order of detention has been passed without any application of mind, as the allegations made in the grounds of detention have no nexus with the petitioner, as the same have been made in order to justify the illegal detention of the petitioner. The petitioner was earlier detained in pursuance of detention order No. 7/PSA of 2016, dated 24.05.2016 based on a dossier submitted by respondent No. 3. All five complaints mentioned in the detention order dated 15.11.2023 were also part of the earlier detention order, however, the respondents relied on the same complaints while issuing the impugned detention order dated 15.11.2023.

The grounds of detention are verbatim of the dossier submitted by SSP, Jammu, and the detention order has been passed without any subjective satisfaction of the Detaining Authority. The Detaining Authority has also not considered the fact that the detention is on the basis of FIRs relied upon by them in which charge-sheet has been presented and the petitioner has been granted bail. This fact has neither been noticed nor any compelling reasons were recorded while passing the order of detention. All the material relied upon by the Detaining Authority has not been supplied to the petitioner, infringing upon his right to make a representation. The petitioner was not informed about his right to make a representation either to the Detaining Authority or the Government, which has resulted in infraction of his valuable rights. There is no live and proximate link between the alleged prejudicial activities and the detention order, therefore, the detention is unsustainable.

03. The respondents have contested the petition by filing counter affidavit and record has also been produced by them.

04. The respondents submit that there are four FIRs registered against the petitioner, i.e., (i) FIR No. 88/2015 u/s 447-A/336 registered at Police Station, Bagh-e-Bahu, Jammu; (ii) FIR No. 103/2015 u/s 447-A, registered at Police Station, Bagh-e-Bahu, Jammu; (iii) FIR No. 63/2019 u/s 451/323/506/34 RPC, registered at Police Station, Peermitha, Jammu and; (iv) FIR No. 62/2023 u/s 452/506 IPC, registered at Police Station, Peermitha, Jammu. This apart, five complaints have also been registered against the petitioner, i.e., (i) Complaint u/s 107/151 CrPC at Police Station, Kulgam; (ii) Complaint u/s 186 RPC at Police Station, Peermitha;

(iii) Complaint u/s 107/117(3) CrPC at Police Station, Peermitha; (iv) Complaint u/s 107/117(3) CrPC at Police Station, Peermitha and; (v) DDR No. 25 dated 17.11.2011 at Police Station, Peermitha. It is submitted that these FIRs and complaints registered against the petitioner were stated in the dossier submitted by the Sr. Superintendent of Police, Jammu and after considering all the material on record, the Detaining Authority arrived at a subjective satisfaction and passed the order of detention.

05. It is further submitted by the respondents that the petitioner poses a threat to public order, peace, and stability due to his involvement in numerous criminal activities. It was improbable that he will refrain from such activities, which adversely affect the maintenance of public order, therefore, his detention was deemed necessary under the provisions of J&K Public Safety Act. All the statutory requirements and constitutional guarantees have been fulfilled and complied with by the Detaining Authority. The impugned order issued is legal and valid and that the grounds urged by the petitioner in this petition are misconceived and untenable being without any merit.

06. Heard learned counsel for the parties and perused the record.

07. Petitioner was detained in terms of detention order No. PSA 28 of 2023, dated 15.11.2023. As per the grounds of detention, the petitioner has been considered to be involved in four FIRs, i.e., (i) FIR No. 88/2015 u/s 447-A/336 registered at Police Station, Bagh-e-Bahu, Jammu; (ii) FIR No. 103/2015 u/s 447-A, registered at Police Station, Bagh-e-Bahu, Jammu; (iii) FIR No. 63/2019 u/s 451/323/506/34 RPC, registered at Police Station, Peermitha, Jammu and; (iv) FIR No. 62/2023 u/s 452/506 IPC, registered at

Police Station, Peermitha, Jammu. This apart, five complaints have also been registered against the petitioner, i.e., (i) Complaint u/s 107/151 CrPC at Police Station, Kulgam; (ii) Complaint u/s 186 RPC at Police Station, Peermitha; (iii) Complaint u/s 107/117(3) CrPC at Police Station, Peermitha; (iv) Complaint u/s 107/117(3) CrPC at Police Station, Peermitha and; (v) DDR No. 25 dated 17.11.2011 at Police Station, Peermitha.

08. The detention of the petitioner was ordered on the basis of these FIRs and complaints which were registered against him from the year 2011 to 2023. FIR Nos. 88 and 103 have been registered in the year 2015, FIR No. 63 in the year 2019 and FIR No. 62 in the year 2023. In FIR No. 88/2015, Ajay Singh reported that the petitioner trespassed on government land, dumped construction materials, and threatened locals who objected. In FIR No. 103/2015 Inspector Khilafwarzi Zone B, JDA, reported of an illegal trespassing and damage to government property by the petitioner. In FIR No. 63/2019, Smt. Rukshana Anis stated she was threatened and assaulted by petitioner and others when they chased her and entered her home. Lastly, FIR No. 62/2023 was filed by Roof Ahmed, who accused petitioner of illegally entering his hotel, attempting to snatch his phone, and issuing threats.

09. The detention of the petitioner was based on four FIRs, three complaints, and one DDR. There is a total non-application of mind by the Detaining Authority, as it has not shown any awareness to the fact that in the complaint under Section 186 RPC registered at Police Station Kulgam, the petitioner was acquitted and the other two complaints, under Sections 107/117(3) CrPC, registered at Police Station Peermitha, were consigned to the records on

28.05.2012 and 13.10.2010, respectively. This apart, the petitioner was granted bail in all the aforementioned FIRs, yet the Detaining Authority has not shown any awareness of this fact or whether charges have been framed. This shows total non-application of mind by the Detaining Authority while passing the order of detention.

10. The Hon'ble Apex Court in '**Rishikesh Tanaji Bhoite vs. State of Maharashtra and others**', (2012) 2 SCC 72, observed as under:

"9. In a case where detenu is released on bail and is enjoying his freedom under the order of the court at the time of passing the order of detention, then such order of bail, in our opinion, must be placed before the detaining authority to enable him to reach at the proper satisfaction.

10. In the present case, since the order of bail dated August 15, 2010 was neither placed before the detaining authority at the time of passing the order of detention nor the detaining authority was aware of the order of bail, in our view, the detention order is rendered invalid. We cannot attempt to assess in what manner and to what extent consideration of the order granting bail to the detenu would have effected the satisfaction of the detaining authority but suffice it to say that non-placing and non-consideration of the material as vital as the bail order has vitiated the subjective decision of the detaining authority."

11. The Detaining Authority without showing any awareness to the fact of grant of bail as well as acquittal order has passed the order of detention, which has vitiated the order of detention passed by the Detaining Authority and has rendered the detention unsustainable.

12. In view of the aforementioned facts and circumstances, the detention of the petitioner is unsustainable, therefore, without adverting to the other grounds raised in this petition, this petition is disposed of and the impugned detention Order No. PSA 28 of 2023 dated 15.11.2023, passed by the District Magistrate, Jammu, detaining the petitioner-Syed

Shabir Ahmed Shah alias Shabir Billu, S/o Late Syed Mohd. Abdullah Shah, R/o House No. 256, Mohalla Dalpathian, Jammu, is quashed. The respondents are directed to release the petitioner from the custody forthwith, provided he is not required in any other case.

13. Detention record be handed over to learned counsel for the respondents by the Registry forthwith.

(Sindhu Sharma)
Judge

Srinagar:
16.10.2024
Michal Sharma/PS



: Yes