

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

Reserved on : 12.05.2023

Pronounced on : 14.06.2023

WP(Crl) No. 466/2022

Manzoor Ahmad Lone alias MunaaAppellant(s)/Petitioner(s)

Through: Mr. G. A. Lone, Advocate

Vs

Union Territory of JK and othersRespondent(s)

Through:

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

JUDGEMENT

सत्यमेव जयते

01. Nothing can be more pricking to the sensitivity and spirit of the fundamental right to life and personal liberty coded in Article 21 of the Constitution of India than the mechanical mindset exhibited in the present case on the part of the District Police Baramulla, the District Magistrate Baramulla and last on the part of the Govt. of UT of J&K in using the public detention jurisdiction more on a pleasure mode than on the principle mode. An unwarranted and misconceived preventive detention order issued by the Govt., or its authorized officials leave the person (detenue) and the populace at same page going by the words of **Martin Luther King** ***“Injustice anywhere is a threat to justice everywhere.”***

02. This is a writ petition for seeking quashment of preventive detention order which has resulted in subjecting the petitioner to suffer second time in succession loss of his personal liberty as a citizen of India to whom otherwise the right to life and personal liberty is guaranteed as a fundamental right under article 21 of the Constitution of India. Only to lose its exercise and enjoyment in accordance with the procedure established by law.

03. For the purpose of securing his lost fundamental right, the petitioner, acting through his father, has made this writ petition a bearer of his SOS call to restore his snatched personal liberty by invoking habeas corpus writ jurisdiction of this Court. The constitutional onus, now, lies upon this Court to examine the legality and validity of the act and action on the part of the respondents which so enabled and led them to reckon the petitioner's personal liberty having trespassed into the arena of legal sanctions prescribed by the J&K Public Safety Act, 1978.

04. The petitioner is a young man of 43 years of age having aged parents, wife and six daughters all of whom being in their age of minority. The petitioner came to be implicated in FIR no. 51/2020 registered with the Police Station Kralpora for alleged commission of offences under sections 8/21 of the Narcotic Drugs & Psychotropic Substances(NDPS) Act, 1985 and section 13, 19 and 39 of the Unlawful Activities (Prevention) Act, 1967. In this

FIR, the petitioner came to suffer arrest on 26.06.2020 at Dragmulla, Kupwara.

05. By virtue of preventive detention order no. 14-DMK/PSA of 2020 dated 30.12.2020, the petitioner had come to be subjected to preventive detention. This detention was challenged by the petitioner in a writ petition WP(Crl) no. 08/2021 before this Court which came to be quashed by a judgement dated 16.11.2021, thereby restoring the personal liberty of the petitioner after suffering almost a one year of deprivation.

06. The petitioner came to be subjected to proceedings under section 107/151 Cr.P.C. by the Police Station Bijhama on 11.06.2022. The Superintendent of Police, Baramulla by virtue of a dossier no. CS/PSA/2022/5496-99 dated 24.06.2022 came to approach the District Magistrate, Baramulla with a case for seeking prevention detention of the petitioner.

07. Acting upon the basis of this dossier, the District Magistrate, Baramulla by virtue of an order no. 52/DMB/PSA/2022 dated 25.06.2022 came to register his purported satisfaction that the petitioner deserves to be booked for preventive detention under section 8 of the J&K Public Safety Act, 1978 as his activities were found to be prejudicial to the so-called Security of the State. By virtue of this preventive detention order, the petitioner came to be lodged in Central Jail, Kote Bhalwal, Jammu. The petitioner came to be taken in detention custody by

execution of detention warrant upon him on 27.06.2022 and ever since then the petitioner is now almost completing one year of this second time detention. The petitioner through this petition challenges his detention by terming its basis as vague, uncertain and manufactured.

08. In its reply affidavit to the writ petition, the District Magistrate Baramulla has defended his action taken under the mandate of the Jammu & Kashmir Public Safety Act, 1978 by drawing support from the fact that even the Advisory Board has approved the detention order of the petitioner so passed by the District Magistrate, Baramulla and consequently the Govt. Order no. Home/PB-V/1819 of 2022 dated 08.08.2022 confirming the detention order passed by the District Magistrate, Baramulla. Thus, by reference to the fact that all statutory/ constitutional provisions and formalities were followed without any breach, therefore, the detention order passed by the District Magistrate, Baramulla is claimed to be legal, warranting no interference.

09. A perusal of the impugned detention order shows that only by a reference to stray proceedings under section 107/151 Cr.P.C. on 11.06.2022 by the Police Station Bijhama set against the petitioner, the District Police Baramulla and the District Magistrate Baramulla found themselves on same page by a judgement that the petitioner's personal liberty warrants deprivation under the Public Safety Act, 1978. How such an incident of booking of the petitioner

under section 107/151 Cr.P.C. could count to be such an aggravating factor that without even getting the petitioner to suffer a condition of bond with surety for keeping the peace, the District Magistrate Baramulla found it a fit case to resort to the extreme step of unleashing the preventive detention unto the petitioner, is itself an exhibit of flirtatious tendency to trample fundamental right to life and personal liberty by reference to any sham incident.

10. This Court, when examines the grounds of detention read with the detention order, is led to wonder as to whether the District Magistrate, Baramulla was approached by the Superintendent of Police, Baramulla with full disclosure of facts concerning the petitioner or with an edited version of facts.

11. Before proceeding further, this Court would like to set in a perspective that a State acts through its Government and the Government acts and conducts itself as an entity through its law and enforcement agencies for the purpose of ensuring law and order. A State and its Govt., do not and are not meant to act in a split personality mode through its province-wise or district-wise administrative and law enforcement authorities, and, as such, it cannot afford itself to be seen in a situation where its right hand does not know what left hand is doing.

12. Bearing this jurisprudential mandate in mind, this Court finds that in the second detention order and in the first detention order there is a common factor which is FIR no. 51/2020 but to the

utter amazement of the Court, the District Police Baramulla acted as if unaware, deliberately or incidentally, about the fact that with similar FIR reference the previous detention order no.14-DMK/PSA of 2020 dated 30.12.2020, which had made the petitioner to suffer loss of personal liberty for an almost one year, had come to be quashed by this High Court in its judgement dated 16.11.2021.

13. Since the District Police Baramulla was relishingly ignorant of said previous detention order and its consequent quashment with respect to the petitioner, so remained the case with the District Magistrate Baramulla who, in his grounds of detention, is also found at loss to have even a whisper of information about the previous detention of the petitioner and its consequent quashment. Just by a borrowed reference of FIR no. 51/2020 of the Police Station Kralpora, the District Magistrate Baramulla came to draw so called subjective satisfaction about the prospect of the petitioner's personal liberty being found in conflict with so called Security of State so as to warrant petitioner's personal liberty deserving custodial curtailment.

14. This Court is at loss to figure out how even the Govt. afforded itself to act as a rubber stamp to lend approval vide its Order no. Home/PB-V/1819 of 2022 dated 08.08.2022 to the action on the part of the District Police Baramulla and the decision on the part of the District Magistrate Baramulla in dishing out a detention order in a manner so casual that even a routine issuance

of a summon by a judicial authority asking a person to appear before it is issued with a more informed application of mind.

15. When this Court examines its judgement dated 16.11.2021, vide which the previous detention of the petitioner came to be quashed, in juxtaposition to the impugned detention order passed by the District Magistrate Baramulla by keeping in mind the factual context, this Court comes to an irresistible impression that the Govt. acting through the District Magistrate Baramulla by subjecting the petitioner to second time preventive detention acted with a mindset to rewrite same text, which this High Court had erased out by its judgement, as if to exhibit that it is the writ of the Govt. which is mightier than the writ of the Court.

16. Thus this Court holds the preventive detention of the petitioner illegal and unwarranted. The impugned order of detention no. 52/DMB/PSA/2022 dated 25.06.2022 read with Govt. Order no. Home/PB-V/1819 of 2022 dated 08.08.2022 are hereby quashed. The petitioner is directed to be released by the concerned Incharge of the Jail in which the petitioner is lodged.

17. ***Disposed of*** accordingly.

(Rahul Bharti)
Judge

Jammu
14.06.2023
Muneesh

Whether the order is speaking : **Yes**
Whether the order is reportable : **Yes**