

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

Reserved on: 06.09.2023

Pronounced on: 08.09.2023

WP(Crl) No. 673/2022

Mushtaq Ahmad Bhat @ Veeri

.....Petitioner(s)

Through: Mr. Shafaqat Nazir, Adv.

V/s

Union Territory of J&K & Ors.

..... Respondent(s)

Through: Mr. Alaudin Ganai, AAG
with Ms. Shaila Shameem, Adv.

CORAM:

Hon'ble Mr. Justice Rajnesh Oswal, Judge.

JUDGMENT

1. The petitioner through his father has impugned the order of detention bearing No. 64/DMA/PSSA/DET/2022 dated 13.09.2022 passed by District Magistrate, Anantnag, by virtue of which the petitioner has been detained under Section 8 of the Public Safety Act (hereinafter referred as 'the Act').
2. It is stated that the petitioner was earlier detained vide order No. 81/DMA/PSA/DET/2018 dated 12.03.2019 under the Act and the order of detention was quashed by this Court vide order dated 03.06.2019. The petitioner has impugned the order of detention

on the ground that the grounds of detention are identical to the grounds of detention on the basis of which petitioner was earlier detained by the respondents. It is also stated that the order of detention is vague, bereft of specific details, as such no prudent and reasonable man can make effective and purposeful representation to the Government. It is further averred that the representation filed by the petitioner through his father has not been considered by the respondents more particularly the respondent No. 2.

3. The reply stands filed by the respondents wherein it has been stated that the petitioner is delivering Friday sermons in Jamia Ahil Hadees Sherbagh, Anantnag and is presently serving as Vice President of Jamiat Ahli Hadees. In the year 2016, he played a key role in instigating and provoking the youth resulting in the registration of FIR bearing No. 17/2016, FIR No. 168/2018 and FIR No. 228/2017. It is further stated that the petitioner is continuously delivering anti- national speeches and taking into consideration his activities being prejudicial to the maintenance of public order, order of detention was issued. The warrant issued pursuant to order of detention was executed through PSI Rouf Ahmad of Police Station, Anantnag on 16.09.2022. The contents of warrant were read over and explained to the detune in his

language which he understands fully. It is further averred that the petitioner was informed that he has a right to make representation to the detaining authority i.e, District Magistrate, Anantnag and to the Government against the detention order as well, if he so desired. Further it is stated that the Government has approved the order of detention vide order dated 16.09.2022 and vide order dated 03.10.2022, the Government has confirmed the aforesaid detention order. It is also pleaded that the Advisory Board too has opined in favour of detention the petitioner.

4. Mr. Shafaqat Nazir, Advocate appearing on behalf of the petitioner has vehemently argued that the petitioner has been detained on vague grounds and also the sponsoring agency did not bring to the notice of the detaining authority i.e, respondent No. 2 in respect of the earlier detention order which was quashed by this Court. He further submits that the petitioner has never delivered and will never deliver any anti- national speeches. He further submitted that in the representation submitted by the petitioner through his father it has been mentioned that the petitioner is a peaceful citizen of India and has never indulged in any anti-national activity. He also submitted that he is under instructions from the petitioner that the petitioner is ready to furnish an undertaking that he would never make any hate or

- anti-national speech anywhere in the country, in any manner and mode.
5. Mr. Alaudin Ganai, learned AAG vehemently argued that all the constitutional and procedural safeguards have been complied with by the respondents at the time of issuing as well as executing the order of detention and the petitioner was detained only because he continued to involve himself in delivering anti-national speeches, thereby posing threat to the maintenance of public order.
6. Heard and perused the record.
7. A perusal of the record reveals that in the grounds of detention, respondent No. 2 has relied upon three FIRs i.e, FIR No. 17/2016, FIR No. 168/2018 and FIR No. 228/2017. A perusal of the grounds of the detention prepared earlier by the District Magistrate Anantnag pursuant to which the detention order dated 12.03.2019 was issued, reveals that these three FIRs which have been relied upon by respondent No. 2 while issuing the present order of detention were also relied upon by the District Magistrate in the year 2019. More so in the grounds of detention as well as in the dossier submitted by respondent No. 3 to respondent No. 2, there is no whisper that the petitioner was earlier detained under the Act on the basis of these three FIRs and

the said order of detention was quashed. It was incumbent upon the sponsoring agency to have brought to the notice of respondent No. 2, the earlier order of detention which was quashed by the Court. In ***Union of India v. Ranu Bhandari*, (2008) 17 SCC 348**, the hon'ble Apex court quashed the order of detention when some of the vital documents which had a direct bearing on the detention order, were not placed before the detaining authority. On this ground alone, the order of detention is required to be quashed.

8. Perusal of the grounds of detention also reveals that the same are vague more particularly in respect of allegations leveled against the petitioner that he was delivering anti national speeches. No date, month and year of the alleged delivering of anti-national speeches have been mentioned in the grounds of detention. Law is well settled that order of preventive detention cannot be issued on vague grounds as it disables the detenue to make effective and purposeful representation against the same. Reliance is placed on judgment of the Supreme court in ***Jahangirkhan Fazalkhan Pathan V. Police Commissioner, Ahmedabad and another*** reported as **(1989) 3 SCC 590**, where in it has been held that the order of detention passed on vague grounds deprives the petitioner of his right to make an effective representation against the order of detention.

9. In view of the above, the present petition is allowed and the detention order No. 64/DMA/PSSA/DET/2022 dated 13.09.2022 passed by District Magistrate, Anantnag is quashed. However, taking into consideration the submissions made by learned counsel for the petitioner under instructions from the petitioner in respect of the voluntary offer of the petitioner to submit an undertaking, the petitioner is directed to furnish an undertaking before the District Magistrate concerned that the petitioner will not deliver any hate or anti-national speech on any occasion. The undertaking shall be furnished by the petitioner within the period of two days after his release from custody and the receipt of the same be furnished before Registrar, Judicial of this court. The petitioner is ordered to be released forthwith, provided he is not required in any other case.

10. Disposed of.

(Rajnish Oswal)
Judge

SRINAGAR

08.09.2023

“Aasif

Whether the order is speaking:

Yes/No

Whether the order is reportable:

Yes/No