

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

Reserved on : 14.06.2023

Pronounced on : 16.06.2023

WP(Crl) No. 31/2023

Ashfaq Ahmed

.....Petitioner(s)

Through: Mr. K. S. Johal, Sr. Advocate with
Mr. Supreet Singh Johal, Advocate.

Vs

UT of J&K and Ors.

..... Respondent(s)

Through: Mrs. Monika Kohli, Sr. AAG.

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

JUDGEMENT

01. Heard both sides.

02. There can be no better prologue to this judgment than the echoing words of **Greek philosopher Plato**, **“The worst form of injustice is pretended justice.”**

03. When it comes to a matter of privation of a citizen's fundamental right to life and personal liberty, as enshrined under article 21 of the Constitution of India, by a decision/order of a government/public authority, purportedly acting under the umbrella of procedure established by law, then the onus of vigilance and

diligence is always resting on the shoulders of the government /public authority, by whose stroke of pen results a decision/ order to subject a person to suffer loss of his fundamental right to life and personal liberty, to ensure that the decision/order bearing such a consequence is made without any iota of deviation from the procedure as established by the law. In a case if there happens to be any lapse of vigilance and diligence at the end of the government/ public authority, then a decision/order so issued from its end qua a person suffering loss of his fundamental right under article 21 of the Constitution of India is liable to suffer a judicial checkmate for the reason that the fundamental right to life and personal liberty of a citizen is not a matter of play thing for the erring government/ public authority. The present case is a live exhibit of that lapse of vigilance and diligence on the part of the government/public authority which has come to subject the petitioner to suffer preventive detention for a period lasting up to three months in the first instance reckoning from 21/03/2023 of the preventive detention arrest of the petitioner.

04. The Senior Superintendent of Police (SSP), Ramban came forward with a communication no. CB/DOSSIER/23/1731 dated 07.02.2023 thereby putting up a dossier before the District Magistrate, Ramban (UT of Jammu & Kashmir) for seeking slapping of preventive detention under the Jammu and Kashmir Public Safety Act, 1978 against the petitioner. The SSP Ramban in its dossier came forward with a narration that the petitioner is the younger brother of one

Mushtaq Ahmed who is a militant and in contact with militant organization LET whose founder is Saifullah Sajid Jatt Al-Marroof namely Sajid R/o Khas Kasur Patoki Province, Punjab, Pakistan. The apprehension of the SSP Ramban was that the petitioner may provide information regarding the sensitive matters of UT to his brother Mushtaq Ahmed and as such the activities of the petitioner came to be perceived harmful and prejudicial for the peace, prosperity, integrity and tranquility of the UT of Jammu & Kashmir particular in Gool area with a further input that the petitioner may motivate the youths to join Jihad and create communal tension in the area.

05. In this regard, in its said dossier, the SSP Ramban came to refer to five consecutive Daily Diary Register Reports dated 24.01.2023, 25.01.2023, 27.01.2023, 30.01.2023 & 03.02.2023 all of them generated within a period of eleven days but without having anything else as adverse in antecedent against the petitioner. This dossier came to be laid by the SSP Ramban before the District Magistrate, Ramban (UT of Jammu & Kashmir) with his covering letter no. CB/DOSSIER/23/1731 dated 07.02.2023. Thus, through his dossier, the SSP Ramban asked for prevention detention of the petitioner to prevent him from anti-national activities.

06. The District Magistrate, Ramban (UT of Jammu & Kashmir) felt satisfied and persuaded to reckon the petitioner deserving of deprivation of his fundamental right to personal liberty, and accordingly an Order no. 40/PSA of 2023 dated 20.03.2023 came to be

passed by him thereby directing the petitioner to be detained and lodged in the District Jail, Amphalla, Jammu so as to prevent him from acting in any manner which is highly prejudicial to the maintenance of public order.

07. In passing said detention order no. 40/PSA of 2023 dated 20.03.2023, the District Magistrate, Ramban (UT of Jammu & Kashmir) formulated his subjective satisfaction in the grounds of detention which are the verbatim reproduction of the dossier itself. The petitioner came to be detained by a warrant of detention on 21.03.2023 i.e. on the very next day of passing of the order of detention.

08. Said Order no. 40/PSA of 2023 dated 20.03.2023 with respect to the detention of the petitioner came to be approved by the Govt. vide its Order no. HOME/PBV/570 of 2022 dated 28.03.2023. The detention case of the petitioner was even submitted to the Advisory Board for its opinion in response where to the Advisory Board vide its opinion dated 10.04.2023 lend its approval to the detention so inflicted upon the petitioner thereby resulting in passing of the Govt. Order no. Home/PB-V/831 of 2023 dated 17.04.2023 whereby the petitioner's detention came to be ordered for a period of three months in the first instance and to be lodged in the District Jail, Jammu. Spell of said three months of the petitioner's detention is still to expire.

09. The petitioner came forward with the present writ petition under article 226 of the Constitution of India throwing challenge to his preventive detention leaving with the order vide which he has come to be deprived of his personal liberty being contrary to law and fact and prompted by false, frivolous and stale reports generated by the Police while the petitioner was already suffering illegal arrest effected from his house on 22.01.2023 without any FIR by the Police Station Gool only to be released on 11.02.2023, again to be arrested on 15.02.2023 to be again released to be called back to the Police Station on 24.02.2023 when he came to be again taken under custody on 19.03.2023 when on the very next day of preventive detention of the petitioner came to be passed.

10. The petitioners in this writ petition has highlighted the facts about the non-application of mind on the part of the District Magistrate, Ramban by reference to the fact that in the grounds of detention no.DMR/1721-29 dated **20.03.2022** with signature date 20-03.2023 in its operative part the District Magistrate, Ramban (UT of Jammu & Kashmir) is actually referring to the activities of one Sadam Hussain Ganie S/o Abdul Salam Ganie R/o Fagow Doligam, Tehsil Banihal, District Ramban as being anti-national, anti-social and prejudicial to the maintenance of public order, security and peaceful atmosphere in the area mentioned and, therefore, directing detention of Sadam Hussain Ganie S/o Abdul Salam Ganie R/o Fagow Doligam,

Tehsil Banihal, District Ramban under the J&K Public Safety Act, 1978.

11. Copy of the grounds of detention were forwarded to nine addresses right from the Additional Chief Secretary, Home Department, Civil Secretariat, Jammu/ Srinagar and the Superintendent, District Jail, Amphalla, Jammu.

12. The petitioner has also pleaded in his writ petition the procedural violation attending his preventive detention by virtue of which the impugned detention of the petitioner is alleged to be vitiated.

13. This writ petition came to be filed on 06.04.2023.

14. In their reply/objections to the writ petition, besides denying and dislodging the averments and assertions of the petitioner as made in the writ petition, the respondents bearing a narration of facts which are loaded with reference only to the petitioner's militant brother Mushtaq Ahmed and by that reference drawing a possibility of the petitioner providing information regarding sensitive matters of the UT of Jammu & Kashmir to his brother Mushtaq Ahmed are meaning to defend the preventive detention of the petitioner.

15. In its reply/objections to the writ petition, the respondents came forward with a disclosure that the grounds of detention accompanying the preventive detention order passed by the District Magistrate, Ramban (UT of Jammu & Kashmir), there came to be a corrigendum no. DMR/1812-17 dated 03.04.2023 issued by the

District Magistrate, Ramban (UT of Jammu & Kashmir) bearing the correction that instead of Sadam Hussain Ganie, the name of Ashfaq Ahmed and also instead of 20-03-2022 be read as 20-03-2023. This corrigendum is pleaded to have been necessitated on account of a typographical error.

16. After hearing the submissions from both sides and perusing the detention record produced in the case, this Court is not inclined to extend an acceptance to the excuse being addressed in the form of persuasion by Mrs. Monika Kohli, learned Sr. AAG representing the respondents, urging for a benefit of doubt to the District Magistrate, Ramban (UT of Jammu & Kashmir) that in grounds of detention, which purportedly formed the basis for generating the subjective satisfaction with District Magistrate, Ramban (UT of Jammu & Kashmir) to snap the personal liberty of the petitioner, the mention of name of Sadam Hussain Ganie S/o Abdul Salam Ganie R/o Fagow Doligam, Tehsil Banihal, District Ramban in the operative part in the grounds of detention was firstly an inadvertent error and that too of a typographical nature.

17. This Court is not convinced that the error and omission of application of mind on the part of the District Magistrate, Ramban (UT of Jammu & Kashmir) can be diluted by referring it to be a typographical error. Even a bare summon from a court of law meant for a particular person to appear before it in a legal proceedings if addressed to the name of a wrong person is not a matter of typographical error but a matter of slip of mind of the judicial officer who lend his seal and signature to send summon to a person to appear

in the Court, who otherwise was not supposed to be called. Any judicial officer having acted in such a manner is not entitled to earn good performance commendation from higher judicial authority.

18. In the present case the fact of mention of name of Sadam Hussain Ganie S/o Abdul Salam Ganie R/o Fagow Doligam, Tehsil Banihal, District Ramban in the grounds of detention, that too in its operative part, renders the entire consequent preventive detention exercise against the petitioner a farce and nothing else and the reasons for the same are self exhibiting.

19. In terms of communication no. DMR/1730-32 dated 20.03.2023 of the District Magistrate, Ramban (UT of Jammu & Kashmir), accompanying the preventive detention Order no. 40/PSA of 2023 dated 20.03.2023, addressed to the petitioner and one of the copies whereof addressed to the Superintendent District Jail, Jammu for the purpose of handing over and reading upon the subject of the grounds of detention in the language which the petitioner understands, the petitioner was meant to be apprised of the grounds of detention to be read over to him by the Superintendent District Jail, Amphalla, Jammu. In the preventive detention order no. 40/PSA of 2023 dated 20.03.2023 the District Magistrate, Ramban (UT of Jammu & Kashmir) addressing a copy of the same to the SSP, Ramban requiring him to read over and explain the preventive detention order to the petitioner and also to read and explain the grounds of detention.

20. Thus, going by this direction, the SSP, Ramban while executing the warrant of detention against the petitioner, is supposed to have read over the grounds of the preventive detention to the

petitioner in the language which he is supposed to have understood, then how the operative part of the grounds of detention, in which the District Magistrate, Ramban (UT of Jammu & Kashmir) is referring to Sadam Hussain Ganie S/o Abdul Salam Ganie R/o Fagow Doligam, Tehsil Banihal, District Ramban in the context of his activities and directing his detention, came to be read over and explained to the petitioner is just a matter of puzzle for prudence to understand. Even the petitioner would have found himself at loss and perplexed to hear that while preventive detention order is addressed against him but in the grounds of detention, which is the soul part of the order of preventive detention, the person in the mindset and perspective of the District Magistrate, Ramban (UT of Jammu & Kashmir) was one Sadam Hussain Ganie S/o Abdul Salam Ganie R/o Fagow Doligam, Tehsil Banihal, District Ramban.

21. Similarly, the Superintendent District Jail, Jammu was also under a direction from the District Magistrate, Ramban (UT of Jammu & Kashmir) to hand over and read over the grounds of detention to the petitioner immediately upon his coming under detention custody in the District Jail, Jammu. The petitioner came to be detained on 21.03.2023 and thus on this date in the grounds of detention supposedly read over by the Superintendent District Jail, Jammu, he is supposed to have carried out the mention of name of Sadam Hussain Ganie S/o Abdul Salam Ganie R/o Fagow Doligam, Tehsil Banihal, District Ramban, as being a person with respect to whom the District Magistrate, Ramban (UT of Jammu & Kashmir) had addressed the direction to be detained under preventive custody.

22. Two officers of high rank i.e. SSP Ramban and Superintendent District Jail Jammu reading and explaining the grounds of detention, obviously carried out the reading of grounds of detention as a ritual otherwise it is worth not acceptance that the SSP, Ramban would not have noticed a glaring contradiction in the grounds of detention which he or she himself read over to the petitioner and similar is the case of Superintendent District Jail, Jammu in reading over the grounds of detention as a matter of ritual. There has to be serious doubt whether the said two officers had actually read over the grounds of detention to the petitioner or not because if that would have been so then none of the two officers would have lost the opportunity to remind the District Magistrate, Ramban (UT of Jammu & Kashmir) with a return communication that his grounds of detention is seriously flawed bearing reference to Sadam Hussain Ganie S/o Abdul Salam Ganie R/o Fagow Doligam, Tehsil Banihal, District Ramban.

23. Thus, it may not and cannot heard to be said at the end of the respondents to impress upon this Court that the grounds of detention were read over and explained to the petitioner in the language in which he understood. Surely, the petitioner did not hear the name of Sadam Hussain Ganie being read over to him so as to understand said person as being the petitioner. Thus there is a very inviting strong inference that the grounds of detention were read over to the petitioner either in edited form or not read at all.

24. The grounds of detention along with the detention order, so served by the District Magistrate, Ramban (UT of Jammu & Kashmir) forwarded to the Govt. for its approval also seem to have enjoyed the

same ritualistic mindset from the Government's end as the Government approved the detention order along with its grounds of detention vide its Order no. HOME/PBV/570 of 2022 dated 28.03.2023 (as is found written in the Govt. Order no. Home/PB-V/831 of 2023 dated 17.04.2023 itself).

25. Thus, even the Government was approving of the grounds of detention which was suffering from a split personality disorder and it did not interest the Government to spare even a cursory reading lest a serious reading to the flawed grounds of detention so served upon the petitioner. Thus, the District Magistrate, Ramban (UT of Jammu & Kashmir) and the Govt. of UT of Jammu & Kashmir are found operating on the same page in terms of its respective state of absentminded application of mind. Thus, the consequent Govt. Order no. Home/PB-V/831 of 2023 dated 17.04.2023 also stood vitiated with a serious inherent and implicit flaw and contradiction.

26. With such a serious infirmity eroding the detention order and consequent Govt. order, the entire prevention detention exercise with respect to the petitioner collapses under its own weight.

27. This Court is left seriously constrained to register its concern on record in the manner the District Magistrate, Ramban (UT of Jammu & Kashmir) came up with a so called corrigendum no. DMR/1812-17 dated 03.04.2023 whereby he meant to introduce correction in the grounds of detention to the effect that instead of Sadam Hussain Ganie S/o Abdul Salam Ganie R/o Fagow Doligam, Tehsil Banihal, District Ramban and the date inscribed as on 22.03.2023 in the grounds of detention to be read in the name of Ashfaq Ahmed s/o

Abdul Rashid Malik r/o Moila, tehsil Gool, district Ramban bearing date 20.03.2023.

28. By the time, the District Magistrate, Ramban (UT of Jammu & Kashmir) came to issue so-called corrigendum, his detention order no. 40/PSA of 2023 dated 20.03.2023 along with accompanying grounds of detention bearing reference to the name of Sadam Hussain Ganie S/o Abdul Salam Ganie R/o Fagow Doligam, Tehsil Banihal, District Ramban and date 22.03.2022, had already been approved by the Govt. in terms of its Order no. HOME/PBV/570 of 2022 dated 28.03.2023 and thus there was no room for the District Magistrate, Ramban (UT of Jammu & Kashmir) to provide a cover up to his concoction by the cover of corrigendum. It seems that even this corrigendum was a sham corrigendum, inasmuch as, when the Govt. came to pass its Order Home/PB-V/831 of 2023 dated 17.04.2023 thereby confirming the detention order no. HOME/PBV/570 of 2022 dated 28.03.2023 passed by the District Magistrate, Ramban (UT of Jammu & Kashmir) and directing the petitioner to be detained for a period of three months in the first instance, there is found no such reference by the Government to the effect that a corrigendum dated 03.04.2023 has been received by it from the District Magistrate, Ramban (UT of Jammu & Kashmir). Thus, even the corrigendum was nothing but a bad make-up.

29. So, by reference to the aforesaid scenario for this Court to borrow the submission of the respondents that the petitioner is a person whose activities are seriously positioned against the maintenance of public order loses its purported appeal and impression

for this Court to register and bail out the flawed detention order of the District Magistrate Ramban against the petitioner. The petitioner, as being a citizen of India, has equal stakes in the impartiality of a judgment of constitutional court to see obvious facts without allowing any escape.

30. The preventive detention jurisdiction is sourced to article 22 of the Constitution of India. Such a jurisdiction of constitutional character is meant to be exercised by the government/public authority/ies with a corresponding heightened consciousness of the constitutional principle and spirit under which a constitutional trust has been delegated to the government/public authority/ies that fundamental rights of a citizen of India are meant to be honored/protected and preserved because those rights are the first and last possession of a citizen of India which the Constitution of India has ensured to him. If by any act of omission or commission on the part of a citizen of India which warrants deprivation of his fundamental rights in accordance with the procedure established by law then that procedure so established by law is to be followed with due diligence and accountability and not by default mode of application as has been done in the present case by the District Magistrate, Ramban (UT of Jammu & Kashmir) followed by the Govt. of UT of Jammu & Kashmir.

31. Thus, this Court holds the preventive detention of the petitioner as inherently illegal and accordingly set aside the preventive detention order no. 40/PSA of 2023 dated 20.03.2023 read with Govt. order no. Home/PB-V/831 of 2023 dated 17.04.2023. The petitioner is directed to be released forthwith by the Superintendent District Jail,

Amphalla, Jammu or by the Superintendent of any other Jail, wherever the petitioner is lodged.

32. The detention record produced by Mrs. Monika Kohli, learned Senior AAG is returned back.

33. Copy of this judgment to be forwarded to the Superintendent District Jail Amphalla by the Registrar Judicial Jammu for notice and compliance.

Disposed of accordingly.

Jammu
16.06.2023
Muneesh

(Rahul Bharti)
Judge

Whether the order is reportable: **Yes**

Whether the order is speaking : **Yes**