

(2022) 03 J&K CK 0001

In the Jammu And Kashmir High Court

Case No : Writ Petition (Criminal) No. 163 Of 2021

Abdul Karim Khuroo

APPELLANT

Vs

Union Territory Of J&K And Others

RESPONDENT

Date of Decision : 02-03-2022

Acts Referred:

Constitution Of India, 1950 — Article 22(5)

Jammu And Kashmir Public Safety Act, 1978 — Section 10A, 13

Citation : (2022) 03 J&K CK 0001

Hon'ble Judges : Tashi Rabstan, J

Bench : Single Bench

Advocate : M.A. Qayoom, Mian Tufail, Sajad Ashraf

Final Decision : Disposed Of

Judgement

Tashi Rabstan, J

1. District Magistrate, Srinagar–respondent no.2 (for brevity “detaining authority”), has, by Order No. DMS/PSA/46/2021 dated 09.10.2021, placed Sh.Abdul Karim Khuroo S/o Mohammad Ramzan Khuroo R/o Shah Colony, Parimpora, Srinagar (for short “detenue”) under preventive detention, with a view to prevent him from acting in any manner prejudicial to the maintenance public order. It is this order, of which petitioner is aggrieved and throws challenge thereto on the grounds tailored in petition on hand.

2. The detention order has been challenged on the grounds that copies of the material/documents relied by the detaining authority in the grounds of detention has not been supplied to the detenue. It is contended that in some of the FIRs mentioned in the grounds of detention challans have already been filed, however, the same has not been disclosed in the grounds of detention, which shows that the detaining authority has not properly applied its mind while issuing the impugned detention order. It is submitted by the petitioner that there is a civil dispute pending between one Fayaz Ahmed Wani and the petitioner before the

competent court of law and the said Fayaz Ahmed Wani has manipulated by lodging a complaint against the detainee and resultantly, the detaining authority has issued the impugned detention order.

3. The grounds of detention reveals that the Senior Superintendent of Police, Srinagar vide communication dated 01.10.2021 as submitted a dossier for issuance of warrant for detention under J&K Public Safety Act on the premise that the detainee is in real estate business as a land broker around the Srinagar city, has cheated innocent people by way of grabbing their hard earned money and in order to grab huge money from innocent people, the detainee started making fake documents/ agreements/deeds, thus his activities are alarming and possible threat to public order. The grounds of detention further reveals that numerous FIRs, such as, FIR Nos. 372/2019 & 221/2021 have been registered against the detainee with Police Station, Parimpora and FIR Nos. 17/2017, 40/2018 & 01/2019 have been registered with the Crime Branch, Kashmir. It is further revealed that the detainee has been an elusive land broker against whom District Police Srinagar has already under taken action in terms of substantive laws but the same has not been proved to be sufficient and despite several warnings the detainee has never mend his ways and has remained continuously engaged in such illegal activities, as a result of which the other people are also indulging in same menace, therefore, the District Magistrate, Srinagar has issued the impugned detention order against the detainee.

4. Counter affidavit has been filed by the respondents and detention record has also been produced before the Court. As per the execution report, the detention warrant has been executed by one PSI Kawsar Rehman No. 72/PAU PID No. EXK-196070 of Police Station, Parimpora and the detainee has been lodged in jail on 13.10.2021. The execution report further reveals that the content over leaf have been read over and explained to the detainee in Urdu/English and Kashmiri languages which he understood fully. It further reveals that the detainee has also been informed that he can make representation to the Government against his detention if so desires.

5. In the receipt dated 13.10.2021 annexed with the grounds of detention it is mentioned that the detainee has received four leaves through Assistant Superintendent District Jail Baramulla on 13.10.2021, however, it has not been detailed that which document has been provided. In the grounds of detention the detaining authority has mentioned five FIRs, the grounds of detention consists of two leaves and the dossier consists of three leaves and there are also other connected documents, which clearly reveals that the detainee has not been provided the complete material/documents as relied by the authority in the grounds of detention. On going through the grounds of detention, it came to fore that the grounds of detention are ditto copy of the dossier supplied by the Senior Superintendent of Police, Srinagar, which clearly shows that the District Magistrate, Srinagar has not applied its mind while issuing the impugned detention order against the detainee. It is the detaining authority, who has to go

through the reports and other inputs received by him from concerned police and other agencies and after consideration to arrive at a subjective satisfaction that a person is to be placed under preventive detention. It is, thus, for detaining authority to formulate grounds of detention and satisfy itself that grounds of detention so formulated warrant passing of an order of preventive detention. As already pointed out, the perusal of grounds of detention in the present case, would show that it is a verbatim copy of Dossier of Senior Superintendent of Police, Srinagar submitted to the concerned Magistrate. This Court as regards the verbatim reproduction of the Dossier in grounds of detention, in the case of Naba Lone v. District Magistrate 1988 SLJ 300, while dealing with a case where a similar situation arose, has observed:

"The grounds of detention supplied to the detenu is a copy of the police dossier, which was placed before the District Magistrate for his subjective satisfaction in order to detain the detenu. This shows total non-application of mind on the part of the detaining authority. He has dittoed the Police direction without applying his mind to the facts of the case."

6. This Court again in the case of Noor-ud-Din Shah v. State of J&K & Ors. 1989 SLJ 1, quashed detention order, which was only a reproduction of Dossier supplied to detaining authority on the ground that it amounted to non-application of mind. The Court observed:

"I have thoroughly examined the dossier submitted by the Superintendent of Police, Anantnag, to District Magistrate, Anantnag as also the grounds of detention formulated by the latter for the detention of the detenu in the present case, and I find the said grounds of detention are nothing but the verbatim reproduction of the dossier as forwarded by the Police to the detaining authority. He has only changed the number of paragraphs, trying in vain to give it a different shape. This is in fact a case of non-application of mind on the detaining authority. Without applying his own mind to the facts of the case. He has acted as an agent of the police. It was his legal duty to find out if the allegations levelled by the police against the detenu in the dossier were really going to effect the maintenance of public order, as a result of the activities, allegedly, committed by him. He had also to find out whether such activities were going to affect the public order in future also as a result of which it was necessary to detain the detenu, so as to prevent him from doing so. After all, the preventive detention envisaged under the Act is in fact only to prevent a person from acting in any manner which may be prejudicial to the maintenance of public order, and not to punish him for his past penal acts. The learned District Magistrate appears to have passed the impugned order in a routine manner being in different to the import of preventive detention as or detained in the Act, Passing of an order without application of mind goes to the root of its validity, and in that case, the question of going into the genuineness or otherwise of the grounds does not arise. Having found that the detaining authority has not applied his mind to the facts of the case while passing the impugned order, it is not necessary to go to

the merits of the grounds of detention, as mandated by Section 10-A of the Act.”

7. A similar situation arose in the case of *Jai Singh and ors. v. State of Jammu & Kashmir* AIR 1985 SC 764, before the Supreme Court. The Court quashed the detention as it found that there cannot be a greater proof of non-application of mind and that the liberty of a subject being a serious matter, it is not to be trifled with in this casual, indifferent and routine manner. The Court observed:

“First taking up the case of *Jai Singh*, the first of the petitioners before us, a perusal of the grounds of detention shows that it is a verbatim reproduction of the dossier submitted by the Senior Superintendent of Police, Udhampur to the District Magistrate requesting that a detention order may kindly be issued. At the top of the dossier, the name is mentioned as *Sardar Jail Singh*, father’s name is mentioned as *Sardar Ram Singh* and the address is given as village *Bharakh*, Tehsil *Reasi*. Thereafter it is recited “The subject is an important member of...”

Thereafter follow various allegations against *Jai Singh*, paragraph by paragraph. In the grounds of detention, all that the District Magistrate has done is to change the first three words “the subject is” into “you *Jai Singh*, S/o *Ram Singh*, resident of village *Bharakh*, S/o *Ram Singh*, resident of village *Bharakh*, Tehsil *Reasi*”. Thereafter word for word the police dossier is repeated and the word “he” wherever it occurs referring to *Jail Singh* in the dossier is changed into “you” in the grounds of detention. We are afraid it is difficult to find greater proof of non-application of mind. The liberty of a subject is a serious matter and it is not to be trifled with in this casual, indifferent and routine manner.”

8. Non-supplying of the material and documents to the detainee while issuing the impugned detention order is a clear violation of the mandate of Section 13 of the J&K Public Safety Act and Article 22(5) of the Constitution of India, because the petitioner could not make an effective representation against his detention. Reference in this regard may be made to law laid down in *State of Maharashtra & ors v. Santosh Shankar Acharya*; *Chaju Ram v. State of J&K* AIR 1971 SC 263; *Dr. Ram Krishan v. The State of Delhi & ors.* AIR 1953 SC 318; *Mohd Yousuf Rather v. State of J&K* AIR 1979 SC 1925; and *Ghulam Nabi Shah v. State of J&K & ors.* 2005(I) SLJ 251.

9. The failure on the part of detaining authority to supply material relied at the time of making detention order to detainee, renders detention order illegal and unsustainable. While holding so, I draw support from law laid down in *Thahira Haris Etc. Etc. v. Government of Karnataka* (AIR 2009 SC 2184); *Union of India v. Ranu Bhandari* (2008, Cr. L. J. 4567); *Dhannajoy Dass v. District Magistrate* (AIR, 1982 SC 1315); *Sofia Ghulam Mohammad Bam v. State of Maharashtra & ors* [AIR, 1999, SC 3051]; and *Syed Aasiya Indrabi v. State of J&K & ors* [2009 (I) S.L.J 219]; and *Union of India v. Ranu Bhandari* (2008 Cr. L. J. 4567);

10. Article 22(5) of Constitution provides a precious and valuable right to a person detained under preventive detention law - J&K Public Safety Act 1978, to make a representation against his detention. It needs no emphasis that a

detenu, on whom preventive detention order is slapped, is held in custody without a formal charge and trial. The detenu is held in custody on a mere suspicion that his apprehended activities may be prejudicial to the maintenance of public order or security of the State. Article 22(5), Constitution of India and Section 13 of the Act, thus make it obligatory for Detaining Authority to provide detenu an earliest opportunity of making an effective and meaningful representation against his detention. The object is to enable the detenu to convince the Detaining Authority and Government, as the case may be, that all apprehensions regarding his activities are grossly misplaced and his detention is unwarranted. To make the Constitutional and Statutory right available to detenu meaningful, it is necessary that detenu be informed with all possible clarity what is/are apprehended activity/ies that persuaded Detaining Authority to make detention order. In case grounds of detention are vague, ambiguous and confusing, the detenu cannot be expected to make a representation against his detention.

11. For the reasons discussed above, the petition is allowed and the impugned detention order No. DMS/PSA/46/2021 dated 09.10.2021 passed by the District Magistrate, Srinagar directing the detention of Sh.Abdul Karim Khuroo S/o Mohammad Ramzan Khuroo R/o Shah Colony, Parimpora, Srinagar, is quashed. Respondents are directed to release the detenu forthwith, provided he is not required in connection with any other case.

12. Disposed of as above. Detention record be returned to learned counsel for the respondents.