

(2023) 10 J&K CK 0008

In the Jammu And Kashmir High Court

Case No : Writ Petition (Criminal) No. 696 Of 2022

Abdul Majeed Dar Alias Madnee

APPELLANT

Vs

UT Of Jammu And Kashmir & Others

RESPONDENT

Date of Decision : 05-10-2023

Acts Referred:

Constitution Of India, 1950 — Article 22(5)

Jammu And Kashmir Public Safety Act, 1978 — Section 13

Citation : (2023) 10 J&K CK 0008

Hon'ble Judges : Javed Iqbal Wani, J

Bench : Single Bench

Advocate : Molvi Aijaz, Mubashir Majid Malik, Mohammad Younis Hafiz

Final Decision : Disposed Of

Judgement

Javed Iqbal Wani, J

1. The instant writ petition arises out of the detention order bearing No. DMB/PSA/42 of 2022 dated 16.09.2022, (hereinafter for short the impugned order) passed against the detenu, namely, Abdul Majeed Dar alias Madnee, by Respondent no.2-District Magistrate, Budgam (for brevity detaining authority), under and in terms of provisions of the Jammu & Kashmir Public Safety Act, 1978 (for short the 'Act').

2. The impugned order is being challenged, inter alia, on the grounds that impugned detention order has been passed without any independent application of mind and detaining authority has been influenced by dossier furnished by the sponsoring agency and is based on an FIR No. 17/2011 wherein the detenu stands already acquitted by the court of competent jurisdiction in the year 2020 and that the impugned detention order has been passed on conjectures inasmuch as no specific occurrence has been attributed to the detenu endangering security of the State or public order and that there was no compelling reason expressed in the order or grounds of detention necessitating

the detention of the detenu and that the allegations in grounds of detention, while being replica of dossier, are of general nature; and that the detenu was neither provided material referred to and relied upon by detaining authority in the grounds of detention nor the dates of the incidences of hatred speeches alleged to have been delivered by the detenu, thereby deprived the detenu from making an effective representation against his detention, infringing his constitutional and statutory rights guaranteed under Article 22(5) of the Constitution of India and Section 13 of Jammu & Kashmir Public Safety Act.

3. Per contra, respondents, in their reply affidavit filed to the petition have resisted and controverted the contentions raised and grounds urged by the petitioner in the petition and have insisted that the order of detention is preventive and not punitive in nature, while it is being admitted by respondents that detenu was detained pursuant to the impugned order. It is being further stated that all statutory requirements and constitutional guarantees have had been fulfilled and complied with while detaining the detenu.

Heard learned counsel for the parties, perused the record and considered the matter.

4. Learned appearing counsel for the parties while making the respective submissions reiterated the contentions raised and grounds urged in their respective pleadings.

5. In regard to the contention urged by learned counsel for petitioner qua non-recording of compelling reasons for detaining the detenu when he was already in custody, it would be appropriate to refer to the judgement of the Apex Court in this behalf passed in case titled as Surya Prakash Sharma v. State of U.P and Others, reported in 1994 (3) SCC 195, wherein at paragraph 5 following has been noticed and laid down:

"5. The question as to whether and in what circumstances an order for preventive detention can be passed against a person who is already in custody has had been engaging the attention of this Court since it first came up for consideration before a Constitution Bench in Rameshwar Shaw V. District Magistrate, Burdwan (1964) 4 SCR 92: AIR 1964 SC 334: (1964) 1CrL LJ 257. To eschew prolixity we refrain from detailing all those cases except that of Dharmendra Suganchand Chelawat V. Union of India (1990) 1 SCC 746: 1990 SCC (CrL) 249: AIR 1990 SC 1196, wherein a three Judge Bench, after considering all the earlier relevant decisions including Rameshwar Shaw answered the question in the following words (SCC 754 para 21:

"The decisions referred to above lead to the conclusion that an order for detention can be validly passed against a person in custody and for that purpose it is necessary that the grounds of detention must show that (i) the detaining authority was aware of the fact that the detenu is already in detention; and (ii) there were compelling reasons justifying such detention despite the fact that the detenu is already in detention. The expression 'compelling reasons' in the

context of making an order for detention of a person already in custody implies that there must be cogent material before the detaining authority on the basis of which it may be satisfied that (a) the detenu is likely to be released from custody in the near future, and (b) taking into account the nature of the antecedent activities of the detenu, it is likely that after his release from custody he would indulge in prejudicial activities and it is necessary to detain him in order to prevent him from engaging in such activities.”

Perusal of the grounds of detention/order of detention would manifestly reveal that the detaining authority has not drawn any satisfaction as per the mandate laid down by the Apex Court in the case of Surya Parkash Sharma (supra), while passing the impugned detention order against the detenu and in fact has failed to express any compelling reason thereof. The impugned order, thus, in law, does not sustain on this count alone.

6. The contention urged by learned counsel for petitioner as regards grounds of detention being the ditto copy of the dossier prepared by the Senior Superintendent of Police, Budgam, has necessitated the perusal of the record which reveals that the grounds of detention are admittedly the ditto copy of the dossier. In law, it is the detaining authority, which has to go through the reports and other inputs received from concerned police and other agencies and on such perusal draw subjective satisfaction that a person is to be placed under the preventive detention. It is, thus, for the detaining authority to formulate the grounds of detention and satisfy itself that the grounds of detention so formulated warrant passing of the order of preventive detention. A reference in this regard to the judgment of this Court passed in case titled as Naba Lone v. District Magistrate reported in 1988 SLJ 300, would be relevant wherein following has been noticed and laid down:

“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.”

7. Further more, perusal of the record tends to show that the grounds of detention bear reference to FIR (supra) in which the detenu is stated to have been acquitted. There is nothing stated in the reply filed by the respondent no. 2 regarding the acquittal of the detenu in the said FIR reflecting complete unawareness of the respondents.

8. In view of the aforesaid position obtaining in the matter the other grounds urged in the petition need not to be dealt with as the same essentially pale into insignificance.

9. Viewed thus, in the context of what has been observed, analyzed and considered in the preceding paragraphs, instant petition is allowed and consequent to which the impugned order of detention bearing No. DMB/PSA/42

of 2022 dated 16.09.2022 is quashed, with the direction to the respondents including the Jail authorities concerned to release the detenu forthwith from preventive custody unless required in any other case.

10. Disposed of.

11. No orders as to costs.

12. The record produced by counsel for respondents for perusal of the Court shall be returned to him.