
(2021) 07 J&K CK 0028
In the Jammu And Kashmir High Court
Case No : Writ Petition (Crl) No. 324 Of 2019

Abid Ahmad Shah

APPELLANT

Vs

State Of J&K And Another

RESPONDENT

Date of Decision : 28-07-2021

Acts Referred:

Constitution Of India, 1950 — Article 22(5)
Code Of Criminal Procedure, 1973 — Section 161
Jammu And Kashmir Public Safety Act, 1978 — Section 13

Citation : (2021) 07 J&K CK 0028

Hon'ble Judges : Tashi Rabstan, J

Bench : Single Bench

Advocate : Wajid Haseeb, Asif Maqbool

Final Decision : Disposed Of

Judgement

Tashi Rabstan, J

1. District Magistrate, Shopian â?" respondent no.2 herein, by Order no.33/DMS / PSA/2019 dated 10.08.2019, has placed Abid Ahmad Shah son of

Mehraj-ud-din Shah resident of Bala Nowpora, District Shopian (for brevity â?? detenuâ?) under preventive detention to prevent him from acting in

any manner prejudicial to the security of the State. It is this order of which petitioner is aggrieved and seeks quashment thereof.

2. Reply Affidavit has been filed by respondents, in which they fervently resist the petition. Detention record has also been produced by counsel for respondents to substantiate contents contained in Reply Affidavit.

3. I have heard learned counsel for parties. I have gone through detention record and considered the matter.

4. Given the case set up and submissions made by counsel for parties, it would

be apt to go through the detention record, produced by counsel for respondents, so as to ascertain as to whether the material, relied upon by detaining authority while issuing impugned detention order, has been furnished to detenu or not. The detention record, inter alia, contains â?? Execution Reportâ? of detention order. Perusal whereof divulges that only six leaves have been given to detenu.

5. Perusal of impugned detention order makes it known that on the basis of dossier placed before detaining authority by Senior Superintendent of Police, Shopian, vide no.CS/D-1/2019/3876 dated 10.08.2019, detaining authorities was satisfied that with a view to prevent detenu from acting in any manner prejudicial to the security of the State, it was necessary to detain detenu under necessary provisions of law. So, it is on the basis of dossier and other connected material/documents that impugned detention order has been issued by detaining authority. Grounds of detention, when looked into, gives reference of three FIRs, alleged to have been registered that weighed detaining authority to issue detention order. Involvement of detenu in aforesaid cases appears to have weighed with detaining authority, while making detention order. The record, as noted above, does not indicate that copies of statements recorded under Section 161 Cr.P.C. in above FIRs and other material collected in connection with investigation of aforesaid cases, was ever supplied to detenu; even copy of dossier has not been furnished to detenu on the basis whereof impugned detention order has been issued. Aforesaid material, thus, assumes importance in the facts and circumstances of the case. It needs no emphasis, that detenu cannot be expected to make a meaningful exercise of his Constitutional and Statutory rights guaranteed under Article 22(5) of the Constitution of India and Section 13 of the J&K Public Safety Act, 1978, unless and until the material on which detention order is based, is supplied to him. It is only after detenu has all the said material available that he can make an effort to convince detaining authority and thereafter the Government that their apprehensions vis-Ã -vis his activities are baseless and misplaced. If detenu is not supplied the material, on which detention order is based, he will not be in a position to make an effective representation against his detention order. Failure on part of detaining authority to supply material, relied at the time of making detention order to detenu, renders detention order illegal and

unsustainable. While saying so, I draw the support from the 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 Gulam Mohd Bham v. State of Maharashtra and others* AIR 1999 SC 3051; and *Syed Aasiya*

Indrabi v. State of J&K & ors, 2009 (I) S.L.J 219.

6. The Supreme Court in *Abdul Latief Abdul Wahab Sheikh v. B.K. Jha*, 1987 (2) SCC 22 has made it clear that it is only the procedural

requirements, which are the only safeguards available to detenu, that is to be followed and complied with as the Court is not expected to go behind the

subjective satisfaction of detaining authority. In the present case, procedural requirements, as discoursed and noted above, have not been followed and

complied with by respondents in letter and spirit and as a corollary thereof, impugned detention needs to be quashed.

10. For the foregoing reasons, this petition is disposed of and detention Order no.33/DMS/PSA/2019 dated 10.08.2019, passed by District Magistrate,

Shopian, quashed. Respondents, including Jail Superintendent concerned, are directed to release the detenu forthwith, provided he is not required in

any other case. Disposed of.

11. Registry to return detention record to counsel for respondents.