
(2020) 08 J&K CK 0033
In the Jammu And Kashmir High Court
Case No : Writ Petition (C) No. 552 Of 2019

Abid Sidique Gujree

APPELLANT

Vs

State Of J&K And Others

RESPONDENT

Date of Decision : 25-08-2020

Acts Referred:

Jammu And Kashmir Public Safety Act, 1978 — Section 8
Code Of Criminal Procedure, 1973 — Section 107, 151
Unlawful Activities (Prevention) Act, 1967 — Section 13

Citation : (2020) 08 J&K CK 0033

Hon'ble Judges : Sindhu Sharma, J

Bench : Single Bench

Advocate : Wajid Haseeb

Final Decision : Allowed

Judgement

Sindhu Sharma, J

1. District Magistrate, Srinagar vide his order No. DMS/PSA/124/2019 dated 18.09.2019 detained Abid Sidique Gujree S/o Mohammad Sidique Gujree R/o Bohri Kadal, Srinagar under Section 8 of the Jammu & Kashmir Public Safety Act in order to prevent him from acting in any manner prejudicial to the maintenance of public order.

2. The detenu has questioned the impugned detention order through his brother on the grounds that (i) the allegations made in the grounds of detention are vague and non-existence and the same cannot be the basis for passing the order of detention; (ii) the order of detention suffers from non-application of mind as the Detaining Authority has failed to show its subjective satisfaction, while passing the order of detention; (iii) the detenu has not been furnished all the material relied upon by the Detaining Authority, while passing the order of detention. Thus, it had prevented him from making an effective and purposeful representation; (iv) the detenu was already in custody under Sections 107/151 Cr.P.C. on 02.09.2019 when impugned detention order dated 18.09.2019 was

passed and the Detaining Authority had not given any cogent and compelling reasons warranting his detention; (v) the grounds of detention are replica of police dossier, as such, there is total non-application of mind, therefore, the detention is vitiated and the same is required to be quashed.

3. Counter affidavit has been filed and detention record has also been produced by the respondents. As per the counter, the detention order has been passed on the basis of satisfaction of the Detaining Authority on reasonable probability of likelihood of the detenu acting in a manner prejudicial to the maintenance of public order similar to his past acts thereby prevented him to do the same. It is submitted that the detenu was detained pursuant to the impugned order of detention dated 18.09.2019 in terms of the provisions of J&K Public Safety Act. Therefore, on perusal of the material submitted by the SSP Srinagar and after careful examining the same, it was considered necessary to detain the detenu from acting in any manner prejudicial to the maintenance of public order.

4. It is further contended that the detention of the detenu is strictly in accordance with the provisions of the Jammu & Kashmir Public Safety Act and the procedural safeguards prescribed under the Act and rights guaranteed to the detenu under the Constitution of India were strictly followed.

5. Heard learned counsel for the detenu and perused the record.

6. It is admitted case of the parties that the detenu was arrested under Sections 107/151 Cr.P.C and the impugned detention order was passed while the detenu was still in custody. The Detaining Authority had not shown any cogent and compelling reasons for passing the order of detention while he was still in custody.

7. In *Jai Singh and others etc. etc. Vs State of J&K*, AIR 1985 SC 764, the Hon'ble Apex Court has held that :

".....These facts have not been denied in the counter- affidavit filed by the respondents. In fact we are unable to find anything in the records produced before us, either in the police dossier submitted to the District Magistrate for action or in any other document forming part of the record that the District Magistrate was aware that the petitioner was already in custody. There is nothing to indicate that the District Magistrate applied his mind to the question whether an order of detention under the Jammu & Kashmir Safety Act was necessary despite the fact that the petitioner was already in custody in connection with the criminal case. The cases of the other six petitioners are identical and in the circumstances, we have no option, but to direct their release forthwith, unless they are wanted in connection with some other case or cases."

8. The Detaining Authority was required to state compelling reasons for passing the order of detention. This question was considered by the Apex Court in *Surya Prakash Sharma vs. State of U.P.*, 1994 SCC (Cr.) 1691, in which it has been held that:-

"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*. To eschew prolixity we refrain from dealing all those cases except that the *Dharmandra Suganchand Chelawat v. Union of India*, wherein a three Judge Bench, after considering all the earlier relevant decisions including *Rameshwar Shaw* (supra) answered the question in the following words:

.....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 must show that

(i) the detaining authority was aware of the fact that the detenu was 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 that 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."

The detaining authority has to disclose the compelling reasons if the reasons are not disclosed the impugned order suffers for non-application of mind. Grounds of detention indicate the awareness of the detaining authority that the detenu was in custody of the respondents at the time of directing his preventive detention. The detaining authority has not brought on record any cogent material that ordinary law of land is not sufficient to deter the detenu from such activities. Such subjective satisfaction of the detaining authority cannot, therefore, be said to be proper and justified..."

The case of the detenu is fully covered by the judgment (supra). Respondents have not shown any material to make out that the ordinary law is not enough to prevent the detenu despite the fact that the detenu was already taken into custody for alleged commission of offence under Section 13 of Unlawful Activities Act. The subjective satisfaction arrived at, under such circumstances cannot be said to be proper and justified. The detention order, therefore, deserved to be quashed."

The detenu was already in custody at the time of passing of the order of detention. The Detaining Authority had not shown any material on record which necessitated the passing of the impugned detention order. Thus, the subjective satisfaction arrived at by the Detaining Authority was not justified.

9. This apart, there is total non-application of mind as the grounds of detention are verbatim as the copy of the dossier. The Detaining Authority had to scrutinize the same to derive its subjective satisfaction for formulating grounds of detention which had not been done, therefore, there is non-application of mind by the Detaining Authority which renders the impugned order of detention illegal. In view of the aforesaid, there is no need to advert to other grounds.

10. Accordingly, this petition is allowed. The impugned detention order of Abid Sidique Gujree S/o Mohammad Sidique Gujree R/o Bohri Kadal, Srinagar is quashed. The respondents are directed to release the detenu from the custody forthwith, if he is not required in any other case.

11. Let the detention record be returned back to learned Sr. AAG for the respondents by the Registry.