

(2023) 02 J&K CK 0058

In the Jammu And Kashmir High Court

Case No : Writ Petition (Criminal) No. 279 Of 2022

Adil Ahmad Shah

APPELLANT

Vs

Union Territory Of J&K And Anr

RESPONDENT

Date of Decision : 17-02-2023

Acts Referred:

Constitution Of India, 1950 — Article 22(5)

Jammu And Kashmir. Public Safety Act, 1978 — Section 13

Citation : (2023) 02 J&K CK 0058

Hon'ble Judges : Vinod Chatterji Koul, J

Bench : Single Bench

Advocate : Mukhtar A. Makroo, Irfan Andleeb

Final Decision : Disposed Of

Judgement

Vinod Chatterji Koul, J

1. Through the medium of this writ petition, Order No.12/DMP/PSA/2022 dated 07.04.2022, passed by District Magistrate, Pulwama, whereby detenu, namely, Adil Ahmad Shah S/o Azad Ahmad Shah R/o Galchibal Chandhara Tehsil Pampore District Pulwama has been placed under preventive detention with a view to prevent him from indulging in the activities which are prejudicial to the security of the State, is sought to be quashed and the detenu set at liberty on the grounds made mention of therein.

2. Mr. Irfan Andleeb learned Dy. AG appearing on behalf of the respondents, has filed counter affidavit as well as produced the detention record. He submits that there is no illegality in the order of detention, as it was necessary to place the detenu under preventive detention so as to prevent him from acting in any manner prejudicial to the security of the State. All the material relied upon by the detaining authority was communicated to the detenu in the language he understands. Thus, all statutory requirements and constitutional guarantees have been fulfilled and complied with by the detaining authority and the detaining

authority after arriving at subjective satisfaction has passed the order of detention.

3. I have heard learned counsel for the parties and considered the matter.

4. The main grounds on which the detention is sought to be quashed are that the grounds of detention are vague, indefinite and no prudent man can make an effective representation against these allegations inasmuch as case mentioned in grounds of detention has no nexus with detenu and detaining authority has not given any reasonable justification to pass impugned order of detention; that the material relied upon including dossier by the detaining authority to pass detention order has not been furnished to the detenu to enable him to make an effective representation against his detention, as a consequence of which impugned order of detention is liable to be quashed.

5. Taking into account the rival contentions of parties and submissions made by learned counsel for parties, it would be relevant to go through the detention record produced by counsel for respondents. The detention record, inter alia, contains "Execution Report" and "Receipt of detention Papers". It would be advantageous to reproduce relevant portion of "Execution Report" hereunder:

"The detention order (01 leaf), Notice of detention (01 leaf) grounds of detention (03 leaves), Dossier of detention (Nil) Copies of FIR, Statements of witnesses and other related relevant documents (Nil), (Total 05 Leaves) have been handed over to the above said detenu....."

6. It would also be appropriate to reproduce relevant portion of "Receipt of Grounds of Detention" herein:

"Received copies of detention order (01 leaf), Notice of detention (01 leaf) grounds of detention (03 leaves) Dossier of detention (Nil) Copies of FIR, Statements of witnesses and other related relevant documents (Nil) Total 05 leaves through executing officer....."

Thus, it is unambiguously clear and evident from perusal of Execution Report and Receipt of grounds of detention that only five leaves have been given to detenu.

7. Perusal of the file reveals that on the basis of material produced by the Senior Superintendent of Police, Awantipora, the detaining authority has passed order impugned, which includes FIR no.04/2021. However, the material as required has not been given to detenu to enable him to make an effective representation against his detention.

8. 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-à-vis his activities are baseless and misplaced. If detenu is not supplied the material, on which the detention order is based, he will not be in a position to make an effective representation against his detention order. The failure on the part of the detaining authority to supply the material, relied at the time of making the detention order to the detenu, renders the detention order illegal and unsustainable. In this regard, I may draw support from the law laid down in the cases of 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.

9. The Supreme Court in Abdul Latief Abdul Wahab Sheikh v. B.K. Jha, 1987 (2) SCC 22 has held that it is only the procedural requirements, which are the only safeguards available to the detenu, that is to be followed and complied with as the Court is not expected to go behind the subjective satisfaction of the detaining authority. In the present case, the procedural requirements, as discussed above, have not been followed and complied by the respondents in letter and spirit and resultantly, the impugned detention needs to be quashed.

10. Another important aspect of the matter that needs mention here is that perusal of the writ file reveals that the "Dossier", which is generally being signed and submitted by District Police Officer along with the material before the detaining authority/District Magistrate for its perusal so as to arrive at subjective satisfaction for issuance or non-issuance of preventive detention order, has been, in the present case, signed by the District Magistrate. This reflects and shows casualness and non-application of mind on the part of detaining authority. The detaining authority is himself required to frame and formulate the "grounds of detention" on the basis of Dossier and other connecting material produced by the District Police Head/Officer before him.

11. In the instant case, when the detention record, produced by counsel for respondents, is perused it reveals that the Dossier submitted by Senior Superintendent of Police, Awantipora has been copied in verbatim by detaining authority, even the expression/word "Dossier" has been made mention of instead of "Grounds of Detention" muchless the body of the "Dossier". So, on this count as well impugned order is liable to be quashed.

12. Based on the above discussion, the petition is disposed of and Detention Order No. 12/DMP/PSA/2022 dated 07.04.2022, issued against the detenu is quashed. As a corollary, respondents are directed to set the detenu at liberty forthwith provided he is not required in any other case. Disposed of.

13. Detention record be returned to counsel for respondents