

(2023) 04 J&K CK 0032

In the Jammu And Kashmir High Court

Case No : Writ Petition (Criminal) No. 213 Of 2021

Adil Ahmad Wagay

APPELLANT

Vs

Union Territory Of J&K & Other

RESPONDENT

Date of Decision : 20-04-2023

Acts Referred:

Constitution Of India, 1950 — Article 22, 22(5)

Citation : (2023) 04 J&K CK 0032

Hon'ble Judges : Moksha Khajuria Kazmi, J

Bench : Single Bench

Advocate : Wajid Mohammad Haseeb, Faheem Shah

Final Decision : Allowed

Judgement

Moksha Khajuria Kazmi, J

1. In the instant petition, petitioner (wife of the detainee) challenges the order of District Magistrate, Anantnag-respondent no. 2 herein, bearing No. 45/DMA/PSA/DET/2021 dated 19.10.2021, whereby, Adil Ahmad Wagay S/o Mohamamd Ramzan Wagay R/o Mattan Chowk Anantnag, District, Anantnag (for short "detenue") has been placed under preventive detention to prevent him from indulging in the activities prejudicial to the security of the state and directed his lodgment in Central Jail Kotbhalwal, Jammu.

2. It is urged that detainee is a law abiding citizen, has never been involved in any subversive activity, prejudicial to the public order or security of the state. The detainee is the lone bread earner of his family. It is maintained that detainee was arrested in the month of October, 2021, without any rhyme or reason and was taken to Police Station Anantnag where he was detained illegally for several days and thereafter was shifted to Central Jail, Agra, to be detained under the provisions of J&K Public Safety Act in terms of the impugned order. The grounds of detention have no nexus with the detainee and the allegations made therein are vague, non-existent and no prudent man can make a representation against

such an order which is based on unjustified and unreasonable grounds. It is also stated that despite attributing several allegations in the grounds of detention, no specific allegation has been made regarding the unlawful activities. The satisfaction recorded by the detaining authority suffers from complete non-application of mind on the part of detaining authority. The grounds of detention are replica of police dossier and have not been prepared by the detaining authority itself which is prerequisite for issuing a detention order. The detaining authority has acted on the dictates of police authorities and has not enquired about the existence of the facts by perusing the supporting material. The relevant material like, copy of dossier and the so-called connected material has not been furnished to the detainee, so as to enable him to make an effective and meaningful representation for recalling the order of detention. The material furnished to the detainee is not sufficient for making an effective representation, therefore, Constitutional rights guaranteed to the detainee under Article 22(5) stand infringed. It is urged that the detainee is not an English literate person and understands only Kashmiri/Urdu language but the order of detention is in English and no translated script in Kashmiri/urdu was furnished to the detainee nor were the grounds read over and explained to in order to enable him to make an effective representation. Non-supply of translated script and non-explanation of the grounds of detention has prevented the detainee from making an effective representation, thereby violating the fundamental rights of the detainee guaranteed under Article 22 of the Constitution. In post execution, the detainee was not given any opportunity to make a representation and also, was not informed about the right to make such representation which is also in violation of Article 22 of the Constitution.

3. The petitioner has raised several other grounds to challenge the detention order. The counsel for the detainee, however only presses aforesaid grounds of challenge.

4. Respondents have filed their reply affidavit stating therein that the activities of the detainee were found to be highly prejudicial to the security of the state and accordingly, police concerned has prepared a dossier and in terms of the impugned detention order, detainee has been detained under the provisions of the J&K Public Safety Act, 1978. It is submitted that detainee has developed contacts with various terrorist organizations to carry out the activities of secessionism and credible information/report received from various agencies suggest that detainee has associated himself with various terrorist organizations.

5. I have heard learned counsel for the parties and have gone through the averments made in the writ petition as also in the counter affidavit filed by the respondents.

6. Learned counsel for the petitioner, while seeking quashment of the impugned order, projected various grounds but the main ground that has prevailed during discussion is that the detainee has been disabled from making an effective representation against his detention as the translated copies of grounds of

detention, which are in hyper technical language, and the material on the basis of which the grounds of detention have been formulated, have not been supplied to him. It is further contended that the detainee being a semi-literate person was unable to comprehend the grounds of detention.

7. While going through the detention records, as produced, the ground urged by learned counsel for the petitioner gets support from the material on record. The record does not suggest that the translated copies of grounds of detention/ material have been supplied to the detainee.

8. The service of the grounds of detention on the detainee is a very precious constitutional right and the object behind the same is to enable the detainee to file an effective representation. It will be an empty formality to supply the grounds of detention to the detainee unless he is in a position to understand the same. In my aforesaid view I am fortified by the judgments rendered by the Supreme Court in the case Chaju Ram Vs. The State of Jammu & Kashmir, AIR 1971 SC 263, Smt. Raziya Umar Bakshi Vs. Union of India(AIR 1980 SC 1751) and Powanammal Vs. State of T. N. and another,(1999) 2 SCC 413.

9. The detention record produced by the learned counsel for the respondents contains a copy of Execution Report, perusal of which shows that the grounds of detention have been read over and explained to the detainee by one SI Mohammad Ashraf. It is the case of the respondents that the said executing officer has read over and explained the grounds of detention to the detainee. For supporting this contention, it was incumbent on the respondents to place on record a duly sworn affidavit of the said official/officer, but no such affidavit has been filed. To eradicate all the doubts, it was incumbent on the part of the person, who did the exercise of handing over the documents and conveying the contents thereof to the detainee, to file an affidavit in order to attach a semblance of fairness to his actions. Support, in this behalf, can be taken from the law laid down by the Supreme Court in the cases of State Legal Aid Committee, J&K Vs. State of J&K & others, AIR 2005 SC 1270, Lallubhai Jogibhai Patel vs. Union Of India &Ors, AIR 1981 SC 728 and the law laid down by this Court in the case of Mohammad Shaban Chopan Vs. State and another, 2003 (II) S.L.J 455.

10. Thus, in the instant case, it is clear from the detention record that the detainee has not been furnished the translated version of the grounds of detention nor has he been provided the material on the basis of which grounds of detention have been formulated. Further the executing officer has not filed an affidavit to show that he has fully explained the grounds of detention to the detainee in the language he understands. Thus, vital safeguards against arbitrary use of law of preventive detention have been observed in breach by the respondents in this case rendering the impugned order of detention unsustainable in law.

11. Viewed thus, the petition is allowed and the impugned order of detention is

quashed. The detenue is directed to be released from the preventive custody forthwith provided he is not required in connection with any other case.

12. The record, as produced, be returned to the learned counsel for the respondents.