

(2023) 06 J&K CK 0037

In the Jammu And Kashmir High Court

Case No : Writ Petition (Criminal) No. 771 Of 2022

Aijaz Ahmad Mir

APPELLANT

Vs

Principal Secretary & Ors

RESPONDENT

Date of Decision : 16-06-2023

Acts Referred:

Jammu And Kashmir Public Safety Act, 1978 — Section 8
Indian Penal Code, 1860 — Section 147, 148, 149, 307, 336
Code Of Criminal Procedure, 1973 — Section 161

Citation : (2023) 06 J&K CK 0037

Hon'ble Judges : Sanjay Dhar, J

Bench : Single Bench

Advocate : Arshad Andrabi, Jahangir Dar

Final Decision : Dismissed

Judgement

Sanjay Dhar, J

1) Impugned in this petition is the detention order bearing No.80/DMB/PSA/2022 dated 10.11.2022, issued by District Magistrate, Baramulla (respondent No.2) whereby the petitioner has been taken into preventive custody with a view to prevent him from acting in any manner prejudicial to the maintenance of public order. The said order has been passed by respondent No.2 in exercise of his powers under Section 8 of the Jammu & Kashmir Public Safety Act, 1978.

2) The petitioner has challenged the impugned order of detention on the grounds that at the time when the impugned order of detention was passed, he was already in custody in connection with FIR Nos.109/2021 and 163/2021 for offences under Sections 307, 147, 148, 149 and 336 IPC of Police Station, Sopore, and, as such, there were no compelling reasons for the detaining authority to pass the detention order. It is further contended that the material forming basis of the grounds of detention in the form of copies of FIRs, copy of dossier, copies of statements of witnesses recorded under Section 161 Cr. P. C have not been supplied to the detinue thereby curtailing his right to make an

effective representation against impugned order of detention and that the petitioner has not been informed about his right to make a representation to the Government/Detaining Authority.

3) The petition has been resisted by the respondents by filing a counter affidavit thereto. In their counter affidavit, the respondents have submitted that all the safeguards have been adhered to and complied with by the detaining authority and that the order has been issued validly and legally. It is pleaded that the detention order and grounds of detention along with the material relied upon by the detaining authority were handed over to the detainee and the same were read over and explained to him. That the detainee was informed that he can make a representation to the government as well as to the detaining authority against his detention. That the grounds urged by the petitioner are legally misconceived, factually untenable and without any merit. It is further averred that the impugned detention order has been passed after following the due procedure of law. In order to buttress the contentions raised in the counter affidavit, learned counsel for the respondents has also produced the detention record.

4) I have heard learned counsel for the parties and perused the record.

5) Learned counsel for the petitioner has, during the course of arguments, laid much emphasis on the following grounds:

(I) That the material that has been relied upon by the detaining authority while framing the grounds of detention has not been supplied to the petitioner;

(II) That the petitioner was already booked in substantive offences, as such, there were no compelling reasons for the detaining authority to resort to his preventive detention;

(III) That earlier detention order of the petitioner on similar grounds has been quashed by this Court and, as such, it was not open to the respondents to pass a fresh detention order on the same grounds;

(IV) That the petitioner was not informed about his right to file a representation before the detaining authority and before the Government;

(V) That the representation of the petitioner against the impugned order of detention has not been considered;

6) So far as the first ground is concerned, if we have a look at the detention record, the petitioner has been provided 13 leaves, which include detention order, notice of detention, grounds of detention and other documents. The grounds of detention bear reference to two FIRs bearing Nos. FIR No.109/2021 and 163/2021 of Police Station, Sopore, and along with grounds of detention, copies of these FIRs, copies of seizure memos, site plan and statements under Section 161 of the Cr. P. C have been enclosed. Thus, along with grounds of detention, all the aforesaid documents have been furnished to the petitioner.

Though copy of the police dossier appears to have not been provided to the petitioner but a perusal of the copy of police dossier reveals that its sole basis is the FIRs, mentioned hereinbefore. Therefore, once the copies of these FIRs and other documents relating to these FIRs are stated to have been furnished to the petitioner, it can safely be stated that the petitioner has been provided whole of the material that has formed basis of the grounds of detention. The contention of learned counsel for the petitioner in this regard is without any substance.

7) It has been next contended by learned counsel for the petitioner that there were no compelling reasons for the detaining authority to pass the impugned order of detention once the petitioner had been booked for substantive offences. In this regard, it has to be noted that initially the petitioner was booked in FIR No.109/2021 for offences under Section 307, 147, 148, 149 and 336 IPC. The incident which is subject matter of this FIR is dated 4th May, 2021. Another FIR bearing No.163/2021 had to be registered against the petitioner for his similar activities within one and a half month of the aforesaid FIR, meaning thereby that the petitioner despite having been booked in FIR No.109/2021, did not deter him from indulging in similar activities. In these circumstances, action of the respondents in passing the impugned order of detention appears to be justified as the normal criminal law was not sufficient to deter the petitioner from indulging in similar activities.

8) In the above context, it would also be apt to make reference to certain averments made by the petitioner in the instant petition. The said averments are reproduced as under:

".....This is a case of sheer abuse of power and misuse of discretion on the part of the respondents, who are pushing the youth of Kashmir to extremism, radicalism, with a design. The arrest, torture and subjecting the youth to severe and harsh treatment will have an adverse effect on the psychology and mental health of such persons.

The detainee being a highly educated person is entitled to have his opinion on various political issues and might have raised his voice against the brutal atrocities, historical killing and prevalent violation of rights at the hands of police and security forces, who have been given unbridled powers of arrest, torture and killing of innocent citizens on mere suspicion. The raising of slogans and participation in the funerals of persons killed by security forces, in fake encounters and in custody, causes spontaneous public reactions and does not constitute any offence and does not pose any threat to the security of the State. The power drunk bureaucracy has no concept of respecting the human rights of citizens living in this part of the world, but are following a fascist agenda of the ruling party to gag the voice of the common people by adopting a muscular policy."

9) From a perusal of the aforesaid averments made by the petitioner in his petition, it is clear that he has no respect for the Government established by law.

These averments clearly indicate the mindset of the petitioner, who, it appears, has a propensity and tendency to make provocative statements so as to incite the people against the Government established by law. Therefore, the detaining authority has rightly drawn subjective satisfaction that in order to prevent the petitioner from indulging in activities which are prejudicial to maintenance of public order, his detention is necessary.

10) The other ground urged by learned counsel for the petitioner is that on an earlier occasion on similar grounds, the petitioner was detained and the detention order was quashed by this Court in terms of judgment dated 13th October, 2020 passed in WP(Crl) No.176/2019.

11) The petitioner has not placed on record the grounds of detention that were subject matter of adjudication in WP(Crl) No.176/2019. Therefore, it cannot be stated whether the grounds of detention in the said case and in the present case are similar. Even otherwise, a perusal of the judgment dated 13th October, 2020, shows that the earlier detention order of the petitioner has been quashed on technical grounds as according to the judgment, whole of the material forming basis of the grounds of detention had not been supplied to the petitioner. Therefore, the respondents are not debarred from passing a fresh order against the petitioner.

12) Next it has been contended that the petitioner was not informed about his right to make a representation against the detention order. The petitioner has placed on record copy of notice dated 10.11.2022, in which it has been clearly mentioned that the petitioner is at liberty to make representation to the Government in the Home Department or to the detaining authority. Therefore, the ground urged by learned counsel for the petitioner in this regard is without any substance.

13) Lastly, it has been submitted that the representation made by the petitioner to the respondents has not been considered. A perusal of the detention record shows that no such representation has been made by the petitioner and even the petitioner has not placed on record any copy of the representation alleged to have been made by him to the respondents nor any receipt executed by the respondents in this regard has been placed on record. The contention of learned counsel for the petitioner in this regard is without any substance.

14) For the foregoing reasons, I do not find any merit in this petition. The same is, accordingly, dismissed.

15) The detention record be returned to the learned counsel for the respondents.