
(2021) 01 J&K CK 0023
In the Jammu And Kashmir High Court
Case No : Writ Petition (Crl) No. 78 Of 2020

Aijaz Ahmed Sheikh

APPELLANT

Vs

Union Territory Of J&K And Another

RESPONDENT

Date of Decision : 28-01-2021

Acts Referred:

Citation : (2021) 01 J&K CK 0023

Hon'ble Judges : Puneet Gupta, J

Bench : Single Bench

Advocate : Wajid M. Haseeb, Mir Suhail

Final Decision : Disposed Of

Judgement

1. Petitioner-Aijaz Ahmad Sheikh through his brother Tawseef Ahmad Sheikh has challenged his detention order No. 09/DMP/PSA/20 dated

20.06.2020, passed by respondent No.2, on the ground that there was no justification to pass the detention order against the said Aijaz Ahmad Sheikh;

that the two F.I.Rs mentioned in the grounds of detention do not reflect the reality against the petitioner; that the grounds of detention are vague; that

the detenue was already in custody in F.I.R No. 132/2020 and had neither applied for bail nor was bail otherwise due to him and that the detaining

authority has not mentioned the fact of his custody in the aforesaid F.I.R thus vitiating the detention order; that the detaining authority has not applied

its mind of his own but relied upon the police dossier only; that the relevant material has not been furnished to the petitioner thereby effecting his right

to have effective representation against his detention order; that the order of detention was passed in English and the translated version of the order

was not made available in Kashmiri/Urdu language to the detenue who was

having knowledge of the above languages only.

2. The reply affidavit has been filed on behalf of the respondent No.2. The respondent has justified the order of detention by submitting that the order has been passed as per the provisions of the Public Safety Act after fulfilling all the statutory requirements. The respondent has denied the grounds on which the detention order has been challenged as it is submitted that the contents of warrants were read over and explained to the detainee who also put his signatures on the same and was also informed of his right to make representation against his detention order. The order has been passed with complete independent application of mind by the authority. Indeed, the prayer is for dismissal of the petition.

3. Heard learned counsel for the parties and perused the digital record provided to the Court.

4. Learned counsel for the petitioner has reiterated the submissions made in the petition.

5. Learned counsel for the respondents has referred to the record in order to impress upon the court that the order of detention has been passed as per the provisions of the Public Safety Act.

6. The words "preventive detention" speak for themselves the meaning.

The preventive detention and prosecution have different purposes and the nature of proceedings is also entirely different. The difference between the preventive detention and prosecution is aptly described in the following observations of the Apex Court in Haradhan Saha's case reported in (1975) 3 SCC 198:

"32. The power of preventive detention is qualitatively different from punitive detention. The power of preventive detention is a precautionary power exercised in reasonable anticipation. It may or may not relate to an offence. It is not a parallel proceeding. It does not overlap with prosecution even if it relies on certain facts for which prosecution may be launched or may have been launched. An order of preventive detention, may be made before or during prosecution. An order of preventive detention may be made with or without prosecution and in anticipation or after discharge or even acquittal. The pendency of prosecution is no bar to an order of preventive detention. An order of preventive detention is also not a bar to prosecution.

33. Article 14 is inapplicable because preventive detention and prosecution are

not synonymous. The purposes are different. The authorities are different. The nature of proceedings is different. In a prosecution an accused is sought to be punished for a past act. In preventive detention, the past act is merely the material for inference about the future course of probable conduct on the part of the detenu.â??

7. The order of detention is approved by Government Order No. Home/PB-V/1304 of 2020 dated 24.06.2020. The Advisory Board constituted under the Public Safety Act has approved the detention order vide dated 20.07.2020. Consequently, the Government vide order No. Home/PB-V/1505 of 2020 dated 06.08.2020 confirmed the order of detention of 20.06.2020 for a period of three months in the first instance. This period has been further extended by the Government also vide order No. Home/PB-V/1609 of 2020 dated 02.09.2020 for a further period of three months. The detainee has been lodged in Central Jail, Jammu, Kot Bhalwal. It is submitted on behalf of the petitioner that the order of detention has further been extended against the petitioner.

8. Perusal of the record reveals that the order of detention of 20.06.2020 has been executed on 24.06.2020 in Central Jail, Srinagar. The execution of detention order reveals the signature of the detainee-Aijaz Ahmad. The receipt of detention papers also records the signature of detainee. The Court finds no reason not to believe the contents of the aforesaid documents.

9. The point which is required to be considered is if the detention order and the grounds of detention comply with the provisions of the Public Safety Act. The record reveals that the dossier with regard to the petitioner was prepared by Superintendent of Police, District Pulwama and the same was made available to respondent No.2 with the finding that the acts of the petitioner are highly prejudicial to the maintenance of public order and peace and the detention of the petitioner under the provisions of the Public Safety Act, 1978 has become imperative. The respondent No.2 while passing the order of detention has separately recorded the grounds of detention and thus form part of the detention order itself. The respondent No.2 has taken into consideration the dossier submitted by the Superintendent of Police, District Pulwama while passing the detention order and agreed with what has been stated in the dossier. As per the grounds of detention the petitioner is indulging in anti-national and anti-social activities which are highly

prejudicial to the maintenance of public order. F.I.R No. 374/2016, Police Station, Pulwama has been registered against the petitioner for various offences. The F.I.Rs No. 482/2016, 94/2017, 74/2019 and 132/2020 of Police Station, Pulwama also stand registered against the petitioner. All the F.I.Rs stand registered against the detinue on more or less the same grounds. The F.I.Rs are the basic reason for passing of the detention order against the petitioner. Perusal of the file further reveals that the petitioner has been provided five leaves while executing the detention order and it includes contents of the PSA warrant, notice consisting of one leaf and grounds of detention consisting of three leaves. It is apparent from the record that the detaining authority has, as stated above, relied upon mainly on the dossier provided by the Superintendent of Police, District Pulwama. The dossier contains copies of F.I.R and the statements of the witnesses recorded in F.I.R No. 132/2020. Undoubtedly, the petitioner has not been provided any material supporting the detention order. What prevented the detaining authority or the authority executing the warrant from providing the material to the detinue is not forthcoming from the record as well as the reply submitted to the petition. Merely providing the grounds of detention without providing the other material which has formed the basis for the detention order, without doubt, is in violation of the statutory requirement provided under the Public Safety Act, more so when the respondents have not been able to explain the omission in this regard. The non-supply of the all important material which may be in the form of F.I.R or the statements of the witnesses or any other document not only keeps the petitioner unaware of the relevant material on the basis of which the detention order was passed, it also effects the statutory right of the petitioner to make effective and purposeful representation before the Advisory Board constituted under the Public Safety Act or the government. The right of representation cannot be taken away by the detaining authority which is statutory right of the petitioner. The courts have deprecated the execution of the detention order in a manner which deprives the detinue from knowing the material relevant. The non-compliance of the aforesaid statutory requirement itself makes the detention order untenable in law. The detention order is required to be quashed on the above score alone.

10. The mere passing of the detention order is not sufficient compliance in terms of the provisions of the Act unless its execution is also in accordance

with law.

11. In view of the fact that the substantive right of the detenue to have necessary material has been violated as held above and the same being

sufficient ground for quashing of detention order, the Court need not go into other aspects of the case.

12. In the light of the above, the detention order passed by respondent No.2 is liable to be quashed. Accordingly, the detention order in question is

quashed. The petitioner-Aijaz Ahmad Sheikh be released forthwith if not otherwise required in any other case.