

(2023) 11 J&K CK 0041

In the Jammu And Kashmir High Court

Case No : Writ Petition (Criminal) No. 39 Of 2022

Ajay Singh

APPELLANT

Vs

UT Of Jammu And Kashmir And Others

RESPONDENT

Date of Decision : 20-11-2023

Acts Referred:

Jammu And Kashmir Public Safety Act, 1978 — Section 8

Citation : (2023) 11 J&K CK 0041

Hon'ble Judges : Sanjeev Kumar, J

Bench : Single Bench

Advocate : Z.S.Watali, Irfan Inqalabi

Final Decision : Allowed

Judgement

Sanjeev Kumar, J

1 Impugned in this petition is an order of detention passed by the District Magistrate, Reasi ["the Detaining Authority"] bearing No.04/PSA of 2023 dated 27.04.2023, whereby the petitioner ["the detenu"] has been detained under Section 8 of the Jammu and Kashmir Public Safety Act, 1978 ["the Act"] with a view to prevent him from acting in any manner prejudicial to the maintenance of public order.

2 The impugned order is assailed by the detenu on multiple grounds. However, before I advert to the grounds of challenge urged by learned counsel appearing for the detenu to challenge the impugned order of detention, it is necessary to briefly notice the grounds on which the detention of the detenu has been ordered by the Detaining Authority.

3 As per the dossier submitted by the Sr. Superintendent of Police, Reasi to the Detaining Authority, the detenu is alleged to be a habitual criminal involved in many criminal cases registered with Police Station, Katra.

4 Through the medium of dossier, it was also brought to the notice of the

Detaining Authority that the detenu has, by his criminal activities, created fear psychosis among the locals of Katra town as well as the Northern Railways Construction Company's employees. Further the acts of the detenu have been adversely affecting the maintenance of public order and creating feeling of insecurity among the people, thus disturbing peace and tranquility in the area. On the basis of the dossier supplied by the Sr. Superintendent of Police, Reasi, the Detaining Authority vide the impugned order of detention recorded its subjective satisfaction that the activities, the detenu was allegedly involved in, were prejudicial to the maintenance of public order and put the detenu under preventive detention in exercise of powers vested in it under Section 8 of the Act.

5 Feeling aggrieved, the detenu has filed the instant petition seeking to declare his detention as illegal. The impugned order passed by the Detaining Authority is challenged, inter alia, on the following grounds:

(i) That the detenu who is shown involved in many criminal cases was already granted bail in those cases, but the Detaining Authority has not noticed the same while passing the order of impugned detention;

(ii) that the impugned order of detention is without any application of mind;

(iii) That the Detaining Authority has not arrived at a subjective satisfaction while passing the order of detention;

(iv) that the detention order suffers from material irregularities, in that, it does not give any justification or cogent reasons as to how the activities of the detenu are prejudicial to the maintenance of public order;

(v) That all the relevant material relied upon by the Detaining Authority has not been provided to the detenu so as to enable him to make an effective and meaningful representation.

6 Per contra, the Detaining Authority in her counter affidavit has submitted that the impugned order of detention was passed against the detenu only after being fully satisfied that the activities, the detenu was indulging in, had the potential of disturbing peace and public order. It is submitted that the detenu is an incorrigible criminal and has also been found involved in activities which were anti social and disturbing the public peace and order. Regarding adherence to the procedural requirements, it is submitted by the Detaining Authority that the impugned order has been issued in compliance with the provisions of the Act and having due regard to the constitutional provisions in relation to liberty of a citizen.

7 Heard learned counsel for the parties and perused the material on record.

8 Though numerous grounds have been urged for quashment of the impugned detention order, but having gone through the detention record, I am of the considered opinion that the detention order is liable to be quashed for the following reason.

9 Perusal of the record reveals that the detenu has been detained for his

activities which are found to be disturbing the public peace and order. In the grounds of detention, it has been stated that the detenu was indulging in anti-social activities. On perusal of the grounds of detention, it can safely be said that there was no material on which the Detaining Authority could have reached subjective satisfaction that the activities of the detenu were prejudicial for maintenance of public order. There is subtle distinction between activities which are prejudicial for maintenance of public order and activities prejudicial for maintenance of law and order. If the activities are prejudicial to the maintenance of law and order, the person indulging in such activities should be dealt with under ordinary criminal law and not that he should be detained under preventive detention law. If the ordinary criminal law is sufficient to deal with such activities of the detenu, he should be dealt with in that manner. If on the other hand the activities are prejudicial to the maintenance of public order, certainly preventive detention is justified. A situation prejudicial to the maintenance of public order arises when the activities of the detenu are such as may have the tendency to disturb even tempo of life of the community and public at large. However, if disturbance is caused to single individual or a group of person, though on several occasions, it can not be said that such activities amount to activities prejudicial for maintenance of public order. What is required for an activity being prejudicial for maintenance of public order is that its potential effect should be on public at large or section thereof or section of the persons residing in the locality or in the vicinity where such incident takes place. After examining the allegations in the criminal cases registered against the detenu, it can safely be said that whatever was done by the detenu was not in any public place and, that too, his activities were confined against individual and not against public at large or even a section of public.

9 For the foregoing reasons, I find merit in this petition and the same is, accordingly, allowed. Resultantly, the impugned detention order is quashed and respondents are directed to release the detenu from the preventive detention forthwith, provided he is not required in any other case.

Detention record be returned to the State Counsel.