

(2024) 05 J&K CK 0022

In the Jammu And Kashmir High Court

Case No : ?Habeas Corpus Petition No. 81 Of 2023

Ajaz Ahmad Alias Ajaz Mughal

APPELLANT

Vs

UT Of J&K And Ors

RESPONDENT

Date of Decision : 07-05-2024

Acts Referred:

Constitution Of India, 1950 — Article 22(5)
Narcotic Drugs And Psychotropic Substances Act, 1985 — Section 8, 20
Jammu And Kashmir Public Safety Act, 1978 — Section 8(1), 13

Citation : (2024) 05 J&K CK 0022

Hon'ble Judges : Moksha Khajuria Kazmi, J

Bench : Single Bench

Advocate : Tuba Manzoor, Mohsin Qadri, Nadiya Abdullah

Final Decision : Disposed Of

Judgement

Moksha Khajuria Kazmi, J

1. Challenge is made in the instant petition to the order No. DIVCOM "K"/110/2023 dated 27.07.2023 of Divisional Commissioner, Kashmir—respondent No.2 herein, whereby one Ajaz Ahmad Gojri @ Ajaz Mughal Son of Noor Din Gojri Resident of Malpora Pattan District, Baramulla (herein after referred to as "detenue") has been placed under preventive detention, on the grounds taken in the memo of petition.

BRIEF FACTS

2. Precisely, the preventive detention of the detenue finds its origin in case FIR No.179/2023 punishable under Section 8/20 NDPS Act, of Police Station Pattan, in terms whereof, the detenue has been termed as a drug peddler and a member of drug mafia. It is pertinent to point out that the Detaining Authority, in the grounds of detention, after detailing out background in which aforesaid case was registered against the detenue, proceeds to opine:-

"However, your activities have posed a potential threat to the health and welfare

of the people of the area as you started usage and motivation of youth for consumption of drugs so as to increase your earnings.”

3. The challenge to the impugned detention order is primarily made on the grounds that the copy of the police dossier, FIR, Investigation reports, seizure memos and the connected documents have not been furnished to the detainee to enable him to make an effective representation against his detention. The representation made by the wife of the detainee on 21st August, 2023, before the Divisional Commissioner, Kashmir, has not been decided by the respondents. The detainee has been enlarged on bail by the court of learned 1st Additional Sessions Judge, Baramulla, in the aforesaid FIR in terms of order dated 14.07.2023 which factum has not been taken into consideration by the detaining authority.

4. Per contra, the respondents, in their counter affidavit, have controverted the plea that the material relied upon by the respondents for detaining the detainee, including the dossier was not furnished to the detainee.

5. Heard learned counsel for the parties and considered the submissions made.

6. It appears that the detainee had applied for bail which was granted to him in the aforesaid FIR by the Court of Additional Sessions Judge, Baramulla vide order dated 14.07.2023. Pursuant to the said order, the detainee was released and after his release from the custody on 14.07.2023, till he was taken into preventive custody vide the impugned detention order, the detainee was not convicted in any kind of illegal activity and in fact no illegal activity of any kind has been attributed to him during the said period. There is no whisper made either in the counter affidavit or in the grounds of detention as also in the detention order itself that the detainee had been granted bail by the competent court of jurisdiction in the case on the basis of which his preventive detention has been ordered, therefore, the impugned detention order reflects non-application of mind. In this regard reference is made to the Judgment titled *Anant Sakharan Raut Vs. State of Maharashtra and ors.* reported as AIR 1987 SC 137 and also by the Judgment rendered recently in case titled *Ameena Begum Vs. State of Telangana* reported as (2023) 9 SCC 587.

7. It needs no emphasis that the detainee 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 Jammu and Kashmir Public Safety Act, 1978, unless and until the material on which the detention order is based, is supplied to detainee. It is only after the detainee has the entire material available, that he can make an effort to convince the Detaining Authority and thereafter Government that their apprehensions, as regards his activities, are baseless and misplaced. The failure on the part of Detaining Authority to supply material relied at the time of making detention order to the detainee, renders the detention order illegal and unsustainable. Although the respondents have controverted the stand taken by the petitioner that entire

material was not supplied to him, however, the execution report forming part of the detention record, clearly reflects that the detainee has not been furnished the copy of the Police Dossier, which is of utmost importance. While holding so, I draw support from Tahira Haris etc. etc. Vs. Government of Karnataka, reported as AIR 2009 SC 2184.

8. Article 22(5) Constitution of India provides a precious and valuable right to a person detained under preventive detention, to make a representation against his detention. It mandates the Detaining Authority to provide detainee an earliest opportunity of making an effective and meaningful representation against his detention. The object is to enable the detainee to convince the Detaining Authority and Government, as the case may be, that all apprehensions regarding his activities are grossly misplaced and his detention is unwarranted. To make the Constitutional and Statutory right available to detainee meaningful, it is necessary that detainee be informed with all possible clarity what is/are his apprehended activity(ies) that persuaded Detaining Authority to issue detention order against him. In case grounds of detention are vague, ambiguous and confusing, the detainee cannot be expected to make a representation against his detention. The detention order thus suffers from non-application of mind on part of detaining authority and cannot stand legal scrutiny.

9. The very vital aspect of the matter is that the wife of the detainee is on record of having submitted a representation to the detaining authority on whatever possible material she was able to collect, which does not appear to have been considered and decided as there is nothing available on the file to suggest so. Once the fundamental right envisaged by the Constitution is violated with impunity by the detaining authority while issuing the detention order, the whole detention order itself gets clouded. Reliance in this behalf is placed on the Judgment of Supreme Court titled as Sarabjeet Singh Mokha Vs. The District Magistrate, Jabalpur & Ors., reported as 2021 SCC online SC 1019. Para 46 being relevant is taken note of:-

"46 By delaying its decision on the representation, the State Government deprived the detenu of the valuable right which emanates from the provisions of Section 8(1) of having the representation being considered expeditiously. As we have noted earlier, the communication of the grounds of detention to the detenu "as soon as may be" and the affording to the detenu of the earliest opportunity of making a representation against the order of detention to the appropriate government are intended to ensure that the representation of the detenu is considered by the appropriate government with a sense of immediacy. The State Government failed to do so. The making of a reference to the Advisory Board could not have furnished any justification for the State Government to not deal with the representation independently at the earliest. The delay by the State Government in disposing of the representation and by the Central and State Government in communicating such rejection, strikes at the heart of the procedural rights and guarantees granted to the detenu. It is necessary to

understand that the law provides for such procedural safeguards to balance the wide powers granted to the executive under the NSA. The State Government cannot expect this Court to uphold its powers of subjective satisfaction to detain a person, while violating the procedural guarantees of the detenu that are fundamental to the laws of preventive detention enshrined in the Constitution.”

10. Viewed thus, the petition is allowed and detention order No. DIVCOM “K”/110/2023 dated 27.07.2023 of Divisional Commissioner, Kashmir–respondent No.2 herein, whereby one Ajaz Ahmad Gojri@ Ajaz Mughal Son of Noor Din Gojri Resident of Malpora Pattan, District, Baramulla was detained, is quashed.

11. The respondents in view of quashment of detention order are stripped of any authority to detain the detenu under order No. DIVCOM “K”/110/2023 dated 27.07.2023. The respondents are directed to produce the detenu before the Registrar Judicial of this Court on 10.05.2024 wherefrom he shall be released and handed over to his legal heirs in accordance with law.

12. Disposed of.