

(2022) 07 J&K CK 0004

In the Jammu And Kashmir High Court

Case No : Writ Petition (Criminal) No. 76 Of 2021 (O&M)

Ali Hussain

APPELLANT

Vs

Union Territory Of J&K And Others

RESPONDENT

Date of Decision : 06-07-2022

Acts Referred:

Jammu And Kashmir Public Safety Act, 1978 — Section 8(1)(a)
Indian Penal Code, 1860 — Section 34, 147, 148, 307, 323, 336, 341, 353, 382, 427
Jammu And Kashmir State Ranbir Penal Code, 1989 — Section 147, 148, 307, 323, 336, 427
Arms Act, 1959 — Section 4, 25
Narcotic Drugs And Psychotropic Substances Act, 1985 — Section 8, 15, 21, 22

Citation : (2022) 07 J&K CK 0004

Hon'ble Judges : Rajnesh Oswal, J

Bench : Single Bench

Advocate : J. P. Gandhi, Saliqa Sheikh, Amit Gupta

Final Decision : Dismissed

Judgement

Rajnesh Oswal, J

1. The present petition has been filed by the petitioner through his father, Akbar Ali for quashing of order No. 11 of 2021 dated 28.09.2021 issued by the respondent No. 2 by virtue of which the petitioner has been detained under section 8 (1) (a) of the Jammu and Kashmir Public Safety Act, 1978 (hereinafter to be referred as the Act).

2. It is stated that the petitioner after passing 7th standard started farming with his father. The petitioner for the first time in the first week of September, 2021 came to know that he has been implicated in FIR No. 69 dated 07.08.2021 for commission of offences under sections 382, 341, 147, 323, 336 and 34 IPC and as such, the petitioner surrendered himself before the SHO Police Station, Bagh-e-Bahu, Jammu. On the date of arrest i.e. 06.09.2021, the petitioner came to know for the first time that the Police of Police Station, Bagh-e-Bahu, Jammu has

implicated him in four more FIRs i.e. FIR No. 39/2019 dated 02.05.2019 for commission of offences under sections 307, 323, 336, 427, 147 and 148 RPC and 4/25 Arms Act, FIR No. 49/2020 dated 04.06.2020 for commission of offences under sections 307, 341, 353, 147 and 148, 336 and 332 IPC, FIR No. 60/2020 dated 08.07.2020 for commission of offences under sections 8, 15, 21 and 22 of the NDPS Act and FIR No. 31/2021 dated 13.04.2021 for commission of offences under sections 307, 452, 382, 323, 336, 427, 147 and 148 IPC and 4 /25 Arms Act.

3. The petitioner also came to know that the challans in FIRs No. 31/2021 and 39/2019 have already been presented before the competent court in absence of the petitioner. The petitioner applied for grant of bail in three different FIRs. In FIR No. 69/2021, the petitioner was granted bail by the learned Sub Registrar (JMJC) Jammu vide order dated 24.09.2021 and the application for grant of bail moved before the aforesaid Magistrate on 22.09.2021. In FIR No. 60/2020, the petitioner was also granted bail vide order dated 27.10.2021 by the court of learned 2nd Addl. Sessions Judge, Jammu. In FIR No. 49/2020, the petitioner was granted bail by the court of learned City Judge, Jammu vide order dated 29.09.2021.

4. The petitioner has impugned the order of detention on the ground that neither in the dossier prepared by the Police nor in the order of detention, there is any whisper that the petitioner was in custody when the order of detention was issued by respondent No. 2 on 28.09.2021. The respondent No. 3 was under obligation to supply the whole information with regard to the arrest of the petitioner and subsequent grant of bail by the different bail courts, to the respondent No. 2 but the same was not done by the respondent No. 3. It is also stated that the petitioner was not made to understand the order by the jail authorities in the language which the petitioner could understand and also the copy of the detention order has not been supplied to the petitioner in the Urdu language as the petitioner can read only Urdu, as such, deprived the petitioner of his right to make an effective representation against the order of detention to the detaining authority as well as to the Government of Union Territory of J&K.

5. Despite repeated opportunities, respondents have not filed the counter-affidavit, as such, the respondents were directed to produce the detention record. The copy of the record of both the authorities i.e. District Magistrate as well as Home Department was produced by the learned counsel for the respondents.

6. Mr. J. P. Gandhi, learned counsel for the petitioner has vehemently argued that the relevant record relied upon by the detaining authority was not supplied to the petitioner and further that the respondent No. 3 had concealed the material facts from the respondent No. 2 with regard to the fact that the petitioner was already in custody when the detention order was passed by the respondent No. 2 and concealment of this fact from the respondent No. 2 renders the detention order illegal.

7. On the contrary, Mr. Amit Gupta, learned AAG appearing for the respondents has vehemently submitted that the petitioner was supplied with all the documents relied upon by the detaining authority, that is duly substantiated by the execution report where the petitioner has appended his signatures and further that the grounds of detention were explained to the detainee-petitioner in Hindi as well as Dogri languages. He further argued that all the statutory as well as constitutional safeguards have been followed while issuing and executing the order of detention.

8. Heard and perused the record.

9. A perusal of the record reveals that the order of detention has been passed on the basis of dossier prepared by the respondent No. 3 and the said dossier was prepared by the respondent No. 3 on the basis of the dossier prepared by the Deputy Superintendent of Police, SDPO, City East, Jammu. A perusal of the dossier as well as the grounds of detention reveal that the petitioner is involved in five FIRs, details of which have already been mentioned above. The dossier was prepared by the SDPO East on 18.09.2021 and on the basis of the said dossier, the dossier was prepared by Senior Superintendent of Police, Jammu on 23.09.2021 and on the basis of dossier of respondent No. 3, the order of detention came to be issued on 28.09.2021.

10. The perusal of the record further reveals that the Government has approved the order of detention vide order dated 08.10.2021 and further the Advisory Board also came to the conclusion that it is necessary to detain the petitioner under section 8 of the Act in order to prevent him in acting in any manner prejudicial to the maintenance of public order.

11. The first contention raised by the petitioner is that the petitioner was not made to understand the grounds of detention in the language which the petitioner could understand. The said ground is found to be misconceived as both the receipt of grounds of detention and other relevant record as well as the execution report prepared by the Executing Officer i.e. Sub Inspector Mohd. Fazal reveals that the petitioner has been handed over, the detention order, grounds of detention and dossier of detention and all other relevant documents those have been relied upon by the respondent No. 2 while issuing the order of detention. The execution report dated 28.10.2021 has been duly signed by the petitioner and further a perusal of the said report reveals that the contents of detention warrant and grounds of detention have been read over to the petitioner in English and explained to him in Hindi and Dogri language, as such, this Court does not find any reason to show indulgence on this ground.

12. The other contention raised by the petitioner is that the respondent No. 2 was not made aware by the respondent No. 3 with regard to the fact that at the time of passing the detention order, the petitioner was already in custody. A perusal of the record reveals that the respondent No. 3 prepared the dossier on 23.09.2021 and on the basis of said dossier, the respondent No. 2 issued the

order of detention on 28.09.2021. Neither in the dossier prepared by the respondent No. 3 nor in the grounds of detention as also in the order of detention, it has been mentioned that the petitioner was in custody of the Police at the time of passing of order of detention. The detention order was issued on 28.09.2021. Neither in the dossier nor in the order of detention, there is any whisper that the petitioner was in custody of the Police as the perusal of the order dated 24.09.2021 passed by the learned Sub Registrar, Jammu reveals that as per the police report, the petitioner was arrested on 21.09.2021. Further from the record, it is evident that he was granted bail in FIR No. 69/2021 by the Sub Registrar, Jammu vide order dated 24.09.2021 and as the petitioner was in custody at the time of passing of detention order, it was obligatory on the part of the respondent No. 3 to disclose this fact to the detaining authority and the factum with regard to the arrest of the petitioner has neither been reflected in the dossier prepared by the respondent No. 3 nor in the grounds of detention as well as order of detention.

13. More so, the factum of grant of bail vide order dated 24.09.2021 has also not been brought to the notice of respondent No. 2. Further a perusal of order dated 27.10.2021 passed by the learned 2nd Additional Sessions Judge Jammu reveals that the petitioner was granted bail in FIR No. 60/2020 and further a perusal of order of City Judge Jammu reveals that bail has been granted in FIR No. 49/2020 vide order dated 29.09.2021 to the petitioner. Thus, it is evident that right from 21.09.2021, the petitioner had been in custody of the respondent Nos. 1 and 3 and this fact was not brought to the notice of respondent No. 2. More so, the factum of grant of bail vide order dated 24.09.2021, was also not brought to the notice of respondent No. 2.

14. Thus, the order of detention is not sustainable in the eyes of law as the respondent No. 3 was under obligation to bring to the notice of respondent No. 2 all the material facts so that the respondent No. 2 would have been in a position to derive his subjective satisfaction with regard to the existence of grounds necessitating the detention of the petitioner. Reliance is placed upon the decision of the Apex Court in *Anant Sakharam Raut v State of Maharashtra and another*, (1987) AIR SC 137. Para No. 5 is reproduced as under:

"5. We do not think it necessary to go into all the grounds urged before us by the petitioner's counsel in support of his prayer to quash the order of detention. The one contention strongly pressed before us by the petitioner's counsel is that the detaining authority was not made aware at the time the detention order was made that the detainee had moved applications for bail in the three pending cases and that he was enlarged on bail on 13.01.1986, 14.01.1986 and 15.01.1986. We have gone through the detention order carefully. There is absolutely no mention in the order about the fact that the petitioner was an under trial prisoner, that he was arrested in connection with the three cases, that applications for bail were pending and that he was released on three successive days in the three cases. This indicates a total absence of application of mind on

the part of detaining authority while passing the order of detention.”

15. In view of all what has been discussed above, the present petition has merits. The order of detention No. 11 of 2021 dated 28.09.2021 is quashed. The petitioner-detenu be released forthwith, if his custody is not required in any other case.