

(2023) 03 J&K CK 0041

In the Jammu And Kashmir High Court

Case No : Writ Petition (Criminal) No. 3 Of 2022

Altaf Ahmad Bhat

APPELLANT

Vs

Union Territory Of J&K & Anr

RESPONDENT

Date of Decision : 28-03-2023

Acts Referred:

Constitution Of India, 1950 — Article 22, 22(5)
Jammu And Kashmir Public Safety Act, 1978 — Section 8, 8(1)(a)(i), 8(2)(ii), 13
Narcotic Drugs And Psychotropic Substances Act, 1985 — Section 8, 21
Code Of Criminal Procedure, 1973 — Section 51, 107

Citation : (2023) 03 J&K CK 0041

Hon'ble Judges : MD. Akram Chowdhary, J

Bench : Single Bench

Advocate : T.A.Lone, Umar Mir, Rais Ud Din, Sajad Ashraf

Judgement

MD. Akram Chowdhary, J

1. District Magistrate Kupwara- respondent No.2 (hereinafter for short 'detaining authority') in exercise of powers conferred on him under Section 8(1)(a)(i) read with Clause (ii) of sub section (2) of Section 8 of the J&K Public Safety Act, 1978, passed the detention order No. 19-DMK/PSA of 2021 dated 04.12.2021 (for short 'impugned order'), in terms whereof the petitioner Altaf Ahmad Bhat (for short 'the detainee') has been detained with a view to prevent him from acting in any manner prejudicial to the maintenance of security of the State. The said detention order has been challenged through the medium of instant petition, allegedly being in breach of the provisions of Article 22(5) of the Constitution of India.

2. It is being pleaded in the petition that the detainee was arrested by the police without any justification and was placed in illegal confinement. It is being contended that the allegations/grounds of detention are vague and mere assertions of the detaining authority and no prudent man can make an effective representation against these allegations. Furthermore, it is stated that the

allegations whose mention is made in the grounds of detention have no nexus with the detenue and have been fabricated by the police in order to justify its illegal action of detaining the detenue. In addition, it is stated that the detaining authority has not prepared the grounds of detention by itself, whileas, same is replica of the police dossier. Also it is being pleaded that the detaining authority has not furnished the material and other connected documents, relied upon, to the detenue to enable him to make an effective representation; that the detenue has also not been informed that within what time-frame he can make representation against his detention, which clearly shows violation of the right of the detenue guaranteed in terms of the Article 22(5) of the Constitution of India.

3. Respondents in their counter affidavit/reply have stated that the grounds of detention are precise, proximate, pertinent and relevant. There is no vagueness or staleness in the grounds coupled with definite indications as to the impact thereof, which has been precisely stated in the grounds of detention. Further it is contended that the grounds of detention give complete account of the activities of the detenue which on the face of it are highly prejudicial for maintenance of security of the State, as such, there was no option left but to order detention of the detenue under Public Safety Act.

4. The main plea of learned counsel for the detenue is that the allegations made in the grounds of detention are vague, non-existent and no prudent man can make a representation against such allegations and passing of detention on such grounds is unjustified and unreasonable. The detaining authority has not mentioned any FIR in the grounds of detention and if the detenue was involved in any unlawful activity, why criminal law has not been set in motion and why they have chosen to preventive detention directly. All the allegations levelled against the detenue are far from reality and that the detenue is not involved in any unlawful activity.

5. In rebuttal, learned Dy.AG submits that the record reveals that there is no vagueness in the grounds of detention. The procedural safeguards prescribed under the provisions of Public Safety Act and the rights guaranteed to the detenue under the Constitution have strictly been followed in the instant case. The detenue has been furnished all the material, as was required, and was also made aware of his right to make representation to the detaining authority against his detention.

6. Heard, perused the detention record and considered.

7. On perusal of the grounds of detention, it transpires that the detaining authority had received the dossier from Sr. Superintendant of Police Kupwara wherein it has been stated that the detenue has studied upto 10th class and soon after his schooling had indulged into felonious activities including antinational acts, drug peddling and thefts etc; that notwithstanding the counselling measures adopted by the police, the subject graduated into a hardcore OGW of Hizbul Mujahideen and had been found to have extorted money

from the innocent people of Kupwara particularly Kralpora at the behest of his terrorist handlers mainly Bashir Ahmad Peer @ Imtiyaz Alam of Kralpora, who was operating as a launching commander of HM from PoK. The grounds of detention further reveals that the detainee was arrested in a case of Narcotic smuggling registered vide FIR No. 82/2020 under Section 8/21 NDPS Act of P/S Kralpora, besides some complaints under Sections 107, 151 CrPC.

8. The detainee has been shown as a security risk mainly on the ground that he was involved in antinational acts, drug peddling and thefts, however, just one FIR, that too in the year 2020, had been registered against the detainee. No other specific allegations against the detainee have been unfolded as to where he committed thefts, trafficking illegal drugs or extorted money from any person, so as to help in terrorist activities.

9. 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 unless and until the material on which the detention is based, is supplied to the detainee. If the detainee is not supplied the material on which detention order is based, the detainee cannot be in a position to make an effective and meaningful representation against his detention.

10. It is also a fact that time frame within which representation was required to be filed has not been conveyed to the detainee. This too has to be treated a breach of right of the detainee under Section 13 of Public Safety Act and Article 22 of the Constitution of India. Allahabad High Court has rendered the judgment in the case 'Jitendra Vs. District Magistrate (2004 CriLJ 2967) in this regard and has observed that:

"...There is another reason as to why in our judgment the impugned detention order would be vitiated. Since the detainee's right to make a representation to the detaining authority was only available to him till the approval of the detention order by the Government, it follows as logical imperative that the detaining authority should have communicated to the detainee in the grounds of detention the time limit, in which, he could make a representation to him i.e. till the approval of the detention order by the State Government."

11. On the touchstone of the law laid down above and the rival submissions, the order of detention, impugned in the instant petition, does not sustain on the aforesaid grounds.

12. In the afore-stated backdrop, this petition is allowed. Impugned a Order of detention No. 19-DMK/PSA of 2021 dated 04.12.2021 passed by District Magistrate Kupwara is, as such, quashed. The detainee namely Altaf Ahmad Bhat S/O Late Khazir Mohammad Bhat R/O Panzgam Kralpora Kupwara, is ordered to be released from the preventive custody forthwith provided he is not required in connection with any other case(s).

13. Disposed of, as such.