

(2023) 08 J&K CK 0041

In the Jammu And Kashmir High Court

Case No : Writ Petition (Criminal) No. 429 Of 2022

Aqib Amin Rather

APPELLANT

Vs

UT Of Jammu & Kashmir & Anr

RESPONDENT

Date of Decision : 24-08-2023

Acts Referred:

Constitution Of India, 1950 — Article 21, 22
Jammu And Kashmir Public Safety. Act, 1978 — Section 8

Citation : (2023) 08 J&K CK 0041

Hon'ble Judges : M. A. Chowdhary, J

Bench : Single Bench

Advocate : Wajid Mohammad Haseeb, Faheem Nisar Shah

Final Decision : Disposed Of

Judgement

M. A. Chowdhary, J

1. In exercise of powers under Section 8 of the Jammu & Kashmir Public Safety Act, 1978 (for short 'the Act'), respondent No.2 - District Magistrate Budgam (for short 'detaining authority') has passed the Detention Order No. DMB/PSA/2022/33 dated 27.06.2022 (for short 'impugned order'), in terms whereof the petitioner Aqib Amin Rather (for short 'the detainee') was ordered to be detained under the Act.

2. The detention of the detainee has been challenged inter alia on the grounds that the allegations leveled 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; that in December 2021 the detainee was arrested by the police without any reason and justification and was kept in illegal custody; that the detainee was implicated in a case registered vide FIR no.208/2021, however, was admitted to default bail on 21.06.2022, as the prosecution failed to file charge sheet; that the detainee was subsequently detained under the provisions of Public Safety Act; that the

relevant material has not been furnished to the detainee and whatever material was furnished to him, it was not possible to make a purposeful representation, thus, the right of the detainee under Article 22 of the Constitution stands violated.

3. It is contended that the detainee submitted a representation to the Detaining authority as also to the Government for his release as the detainee is a law abiding citizen and has not committed any act, which warrants his detention under the provision of PSA. Neither representation filed by the detainee was considered nor was he produced before the Advisory Board for providing him an opportunity of being heard, so that he could prove his innocence. It is submitted that because of non-consideration of his representation, the detention order slapped upon him is liable to be quashed.

4. Respondents, pursuant to notice, have filed their reply affidavit, wherein it is stated that the order of detention was passed by the detaining authority after being satisfied on the basis of the material available by the police; that it was necessary with a view to prevent the detainee from acting in any manner prejudicial to the maintenance of security of the State, to place him under preventive detention. It is submitted that the detention of the detainee has been ordered, strictly in accordance with the provisions of the Act and the procedural safeguards prescribed under the provisions of the Act and the rights guaranteed to the detainee under the Constitution have strictly been followed in the instant case. It is further submitted that the grounds of detention transpire the activities of the detainee which, on the face of them, are highly prejudicial to the security of the State and, therefore, there was no option left to the detaining authority but to order detention of the detainee under the Act.

5. With regard to the allegation of non-consideration of the detainee's representation, the respondents in their reply affidavit have submitted that the detainee has not filed any representation against the order of detention.

6. Heard learned counsel for the parties perused the material available on record and considered.

7. On going through the grounds of detention, during perusal of detention record, it comes to fore that the detainee was working as over ground worker (OGW) with the banned terrorist organization Lashkar-e-Toiba (LeT) with an aim and object to secede the UT of J&K from the Union of India and annex it with Pakistan; that the detainee was providing shelter and logistic support to the terrorists of the said organization in order to promote terrorism in the area; that in order to prevent the detainee from indulging in the activities prejudicial to the security of the State, was found necessary to detain him under the provisions of J&K Public Safety Act.

8. It is argued by the learned counsel for the petitioner that the grounds of impugned detention order is a verbatim copy of the dossier and no other material has been considered by the detaining authority which speaks volumes about the non-application of mind on the part of the detaining authority which

does not justify the preventive detention and the detention order requires quashment.

9. In a case titled 'Jai Singh & Ors. v. State of Jammu & Kashmir' reported as AIR 1985 SC 764, it has been observed that if the detention order is verbatim copy of the dossier, it speaks about non- application of mind by the detaining authority. Para-13 of the judgment is reproduced as under:-

"13. Applying the settled legal position to the facts of the present case, I find that the order impugned cannot stand as it is based on grounds of detention, which is only verbatim copy of police dossier. The order of detention, for the reasons, exhibit total non- application of mind on the part of detaining authority and therefore, the petition is allowed and the detention order No. PSA/104 dated 16.10.2020 passed by the District Magistrate, Kathua-respondent No. 2 directing the detention of Balbir Chand S/o Rana R/o Chack Drab Khan, Tehsil and District Kathua is quashed. Respondents are directed to release the detainee forthwith, provided he is not required in connection with any other case".

10. Ratio of the judgment (supra) makes it manifestly clear, that when the grounds of detention supplied to the detainee is a verbatim copy of the police dossier, it shows total non-application of mind on the part of the detaining authority, the liberty of a subject is a serious matter and it is not to be trifled with in this casual, indifferent and routine manner, which vitiates the detention order. Applying the ratio of the judgment (supra) to the facts of the case in hand, the detention record depicts that the detention order is the verbatim copy of the dossier supplied to District Magistrate Budgam by concerned Senior Superintendent of Police. In addition to the dossier, no other material has been considered by the District Magistrate while issuing the detention order against the petitioner, which suggests about non-application of mind on part of the detaining authority which invalidates and vitiates the impugned detention order.

11. As revealed from the detention record the petitioner has been shown as over ground worker of terrorist organization Lashkar-e-Toiba (LeT) alleging that he was providing shelter and logistic support to the terrorists of the said outfit. However, without disclosing any specific incidents or activities of the petitioner as to when, how and where the said logistic support was provided by the petitioner to the terrorists, therefore, the allegations on which the detention order has been passed are general and vague.

12. The detention order based on such vague grounds is not sustainable, for the reason that the detaining authority before passing the order has not applied its mind to draw subjective satisfaction to order detention of the detainee by curtailing his liberty which is a valuable and cherishable right guaranteed under Article 21 of the Constitution of India. In this regard reliance can be placed on the judgments of Supreme Court in the cases (i) Jahangirkhan Fazal Khan Pathan Vs. Police Commissioner Ahmadabad (1989) 3 SCC 590 and, (ii) Abdul Razak Nanekhan Pathan Vs. Police Commissioner Ahmadabad AIR 1989 SC 2265.

13. In view of the facts of the instant case and the law laid down by the Hon'ble Apex Court as referred above, the order of detention, impugned herein, does not sustain and is required to be quashed.

14. Viewed thus, in the context what has been observed, analyzed and considered in the preceding paras, the instant petition is allowed and consequently the impugned order of detention bearing No. DMB/PSA/2022/33 dated 27.06.2022, is quashed. Detenue namely Aqib Amin Rather S/O Mohammad Amin Rather R/O Mochowa Chadoora Budgam, be released forthwith, if not required in connection with any other criminal case(s) pending against him.

15. Scanned copy of the record, as produced, be returned back to the learned counsel for the respondents.

16. Disposed of, accordingly.