
(2020) 06 J&K CK 0031
In the Jammu And Kashmir High Court
Case No : Writ Petition (C) No. 303 Of 2019

Arshid Ahmad Allie

APPELLANT

Vs

State Of J&K And Others

RESPONDENT

Date of Decision : 29-06-2020

Acts Referred:

Jammu And Kashmir State Ranbir Penal Code, 1989 — Section 147, 148, 307, 323, 427
Constitution Of India, 1950 — Article 22(3)

Citation : (2020) 06 J&K CK 0031

Hon'ble Judges : Ali Mohammad Magrey, J

Bench : Single Bench

Advocate : Wajid Haseeb, S. Naqashbandi

Judgement

Ali Mohammad Magrey, J

1. Through the instant petition, petitioner father of detenu seeks quashment of detention order bearing no. 49/DMK/PSA/19 dated 10.08.2019, passed by District Magistrate Kulgam, whereby the detenu namely Arshid Ahmad Allie S/o Abdul Rashid Allie R/o Malpora Mirbazar, District Kulgam, is under detention.

2. In the dossier it is alleged that the detenu is involved in anti-national activities, disturbing the public tranquility and peace in the area of Malpora and its adjacent areas. It is submitted that the detenu was found indulging in disturbing the maintenance of public order by way of resorting to stone pelting. It is submitted that the detenu is a constant threat to the security of the State. It is submitted that the detenu was arrested in cases FIR no. 188/2016 U/s 147, 148, 323, 427, 307 RPC, 3 PPPD, 3 PSS Act of P/S Qazigund. Therefore, on these allegations he was slapped under Public Safety Act, 1978.

3. The detenu, through his father challenges the aforesaid detention order through the medium of aforesaid petition, inter alia, on the grounds that the order of detention suffers from non-application of mind;

"a) that no compelling reason or circumstance was disclosed in the order or

grounds of detention to take the detenu in preventive detention, moreso in view of the fact that as on the date of passing of the aforesaid order of detention, the detenu was already in custody under various FIRs, even though had not applied for any bail.

b) that there is total non application of mind while passing the detention order without reflecting any plausible ground.

c) that the detenu has not been provided the material forming basis of the detention order, to make an effective representation against his detention order;

d) that the detaining authority has not prepared the grounds itself, which is a pre-requisite for him before passing any detention order."

e) that while passing the order of detention against the detenu, the respondent no.2 has violated all the procedural safeguards enshrined in Art. 22 (5) of the Constitution of India."

f) 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 order on such grounds is unjustified and unreasonable."

4. Notice was issued to respondents. They appeared through their learned counsel and filed counter affidavit wherein they submitted that the detention order is well founded in fact and law and seeks dismissal of the Habeas Corpus petition. Detention records have been produced.

5. The learned counsel for the petitioner has raised primarily four issues before the Court questioning the validity of the detention. The first point taken by the learned counsel for the petitioner is that the detention order was passed while the detenu was already in custody in FIR No. 188/2016 of Police Station Qazigund. In these circumstances, it was submitted by the learned counsel for the petitioner, that the detaining authority ought to have satisfied himself with the fact that there was imminent likelihood of release of the detenu in that case so it was necessary to detain the detenu in order to prevent him from indulging in prejudicial activities. According to the learned counsel for the petitioner-detenu, there is no such satisfaction recorded in the grounds of detention. He placed reliance on the decision of the Supreme Court in the case titled, "Anant v. State of Maharashtra reported as AIR 1987 Supreme Court, 137; Surya Prakash Sharma v. State of U.P. and others: 2017 (II) SLJ 650; AIR 1999 Supreme Court 3051; 1994 SCC (Cri) 1691; 2007 (I) SLJ 136, to submit that since the said satisfaction was not recorded, the detention order was vitiated.

6. The second point taken by the learned counsel for the petitioner was that non-supply of relevant material/ documents also vitiated the detention order. In this context, it was the case of the petitioner- detenu that no documents at all were supplied to the petitioner-detenu. The non-supply of relevant documents seriously undermines the capacity of a detenu to make an effective representation against the detention order and that itself would be a ground to

declare the detention void.

7. The third point raised by the learned counsel for the petitioner was based on non-application of mind of the detaining authority with reference to having not mentioned in the order that detenu was already under custody in FIR No. 18/2019 Police Station Bandipora while passing the detention order.

8. The fourth point raised by the learned counsel for the petitioner-detenu was based on vagueness in grounds of detention.

9. The learned counsel for petitioner (detenu) further submits that the detenu has not been provided the material referred to in the grounds of detention resultantly the right of making effective representation against the impugned order of detention, as enshrined under Article 22 (3) of the Constitution, has been violated.

10. On the other hand, Mr. S. Naqashbandi, AAG defended the order of detention, and he responded to each of the points. With regard to the first point he submitted that there is a mention in the grounds of detention about the arrest of the detenu with reference to FIR nos. 188/2016 U/s 147, 148, 323, 427, 307 RPC, 3 PPPD 3 PSS Act of Police Station Qazigund. Therefore, according to him, the detaining authority was aware of the fact that the detenu was already in custody when the detention order was passed. He, therefore, submitted that the point raised by the learned counsel for the petitioner on this score was untenable.

11. With regard to the plea of non-supply of material/ documents, Mr. S. Naqashbandi, AAG, placed before me the record pertaining to the detention. Ongoing through the same, I find that there is a signed document said to have been signed by the detenu, Arshid Ahmad Allie in English. Marked as "A". The said document is titled "Receipt of Grounds of Detention".

12. Based upon the said receipt, Mr. S. Naqashbandi, AAG submits that the grounds of detention had been supplied along with other relevant documents, therefore, the petitioner-detenu cannot make any grievance on this ground.

13. With regard to the non-application of mind, detaining authority having not mentioned in the detention order that the detenu was already under custody while passing the detention order. It is submitted that there is no non-application of mind, the detaining authority was well aware of the activities of the detenu while passing the detention order, the authority have mentioned each and every FIR in which the detenu is involved. With regard to plea of vagueness of the grounds is concerned, Mr. S. Naqashbandi, AAG submits that the grounds are clear and without any ambiguity.

14. Mr. S. Naqashbandi, AAG, submits that insufficiency of supply of material shall not form a ground for vitiating the detention of the detenu. He further submits that the detenu was required to file representation on the material whatever supplied and could have projected the grounds of non-supply of the material before the detaining authority, which he has failed, therefore, non-

supply of material vitiates the detention, has no substance. He further averred that there is no non-application of mind or vagueness in grounds. He has referred to and relied upon the Judgment reported as AIR 2001 Supreme Court 301 titled R. Keshava Vs. M. B. Prakash and Ors.

15. Mr. S. Naqashbandi, AAG further, submits that the impugned order of detention is well founded in fact and law and there is nothing bad about it. He submits that the detenu has been provided the material relied upon by the detaining authority while passing the detention order. He further submits that the detenu has also been informed about his right of making representation against his detention. He submitted that the detaining authority has fully applied its mind while issuing the detention order and there is nothing on record to controvert it. Learned State Counsel referred to and relied upon the law laid down in 1981 (4) SCC 216; AIR (SC) 1975 1143; 2002 (6) SCC 735 ; AIR 2000 SC 301.

16. Heard learned counsel for the parties. Perused the record and considered the matter. Detention records have been produced by the learned counsel for respondents.

17. Perusal of the records would reveal that the detenu has been furnished the grounds of detention along with the requisite material. He has also been informed about his right of making representation against his detention, but the detenu has chosen not to make the representation, therefore, the fault, if any, is attributable to the detenu and not to the detaining authority. Thus, the ground raised vis-à-vis non-furnishing of material to the detenu is rejected.

18. The next contention of the learned counsel for petitioner that the impugned order is an outcome of non-application of mind is also belied by the records produced by the learned Government Counsel. The detailed grounds of detention and the records referred to by the detaining authority were sufficient to derive satisfaction as regards the detention of detenu under the provisions of the Act. Thus, the order does not appear to be suffering from non-application of mind.

19. As per the settled position of law, if a detention order is issued on more than one ground, independent of each other, the detention order will survive, even if, one of the ground is found to be unfound or legally unsustainable. In the present case the detention order is issued on more than one ground, independent of each other, therefore, the detention order does not get vitiated, even if, one of the grounds taken in support of the petition turns affirmative. My this view is fortified by a law laid down by the Supreme Court in case titled "Gautam Jain v. Union of India and anr.", reported as 2017 (1) Jammu Kashmir Law Times, Vol. 1 (SC) p. 1.

20. The next ground taken by the detenu that the detaining authority did not record as to under which compelling reasons the detenu is required to be kept in custody under preventive laws when he was already in jail, though not applied for bail.

21. Since the court has already held that the detention survives even if one of the ground taken in support of the petition remains unexplained or proves to be bad in law, therefore, the detention order can be maintained in absence of any explanation on this count by the respondents.

22. In view of the above fact situation and having regard to the law laid down by the Hon'ble Supreme Court, the activities of the detenu attracting the provisions of Public Safety Act, continuous and habitual in disrupting the maintenance of public order as is reflecting from the aforesaid FIRs registered against the detenu, particularly in the area of Malpora District Kulgam. Therefore, this petition fails and is dismissed, as such. The impugned detention order, challenged in this petition, accordingly, sustains and is maintained. Detention records are returned to the learned Additional Advocate General in the open court.