

(2022) 06 J&K CK 0011

In the Jammu And Kashmir High Court

Case No : Writ Petition (Criminal) No. 86 Of 2021

Ashiq Hussain Gassi

APPELLANT

Vs

Union Territory Of J&K & Anr

RESPONDENT

Date of Decision : 03-06-2022

Acts Referred:

Citation : (2022) 06 J&K CK 0011

Hon'ble Judges : Sanjay Dhar, J

Bench : Single Bench

Advocate : M. Wajid Haseeb, Asif Maqbool

Final Decision : Allowed

Judgement

Sanjay Dhar, J

1) Challenge in this petition is thrown to order No.23/DMP/PSA/21 dated 02.06.2021, issued by District Magistrate, Pulwama (for brevity "Detaining Authority") whereby Shri Ashiq Hussain Gassi son of Gh. Mohammad Gassi resident of Kakapora Tehsil Kakapora District Pulwama (for short "detenue") has been placed under preventive detention and directed to be lodged in Central Jail, Jammu (Kotbhalwal).

2) The petitioner has contended that the Detaining Authority has passed the impugned detention order mechanically without application of mind, inasmuch as Constitutional and Statutory procedural safeguards have not been complied with in the instant case. It has also been urged that the allegations made against the detenue in the grounds of detention are vague and that the translated version of the documents/grounds of detention has not been provided to the detenue who is a semi-literate person. It has further been contended that the petitioner has not been informed as to before which authority he has to make a representation.

3) The respondents, in their counter affidavit, have disputed the averments made in the petition and stated that they have followed the provisions of J&K Public

Safety Act. It is contended that the detainee has been detained only after following the due procedure; that the grounds of detention were read over to the detainee; that there has been proper application of mind for detaining the detainee and that the detainee has been provided all the material. The learned counsel for the respondents also produced the detention record to lend support to the stand taken in the counter affidavit.

4) I have heard learned counsel for the parties and perused the detention record.

1) Learned counsel for the petitioner, while seeking quashment of the impugned order, projected various grounds but the main ground that has prevailed during discussion is that the detainee has been disabled from making an effective representation against his detention as the translated copies of grounds of detention, which are in hyper technical language, and the material on the basis of which the grounds of detention have been formulated, have not been supplied to him. It is further contended that the detainee being a semi-literate person was unable to comprehend the grounds of detention

2) Per contra, the learned counsel for the respondents has made an attempt to justify the passing of the order impugned by contending that the detainee was a habitual criminal, inasmuch as there were various FIRs pending against him and on this basis, the Detaining Authority was well within its jurisdiction to pass the impugned order of detention as there was every likelihood of the detainee indulging in similar activities. It has been further contended that all the documents relied upon by the Detaining Authority were, provided to the detainee and in token of having received the same, the detainee has signed the receipt. It is also urged that the contents of the documents were read over and explained to the detainee in the language understood by him.

3) While going through the detention records, as produced, the ground urged by learned counsel for the petitioner gets support from the material on record. The record does not suggest that the translated copies of grounds of detention/ material have been supplied to the detainee.

4) The service of the grounds of detention on the detainee is a very precious constitutional right and the object behind the same is to enable the detainee to file an effective representation. It will be an empty formality to supply the grounds of detention to the detainee unless he is in a position to understand the same. In my aforesaid view I am fortified by the judgments rendered by the Supreme Court in the case Chaju Ram Vs. The State of Jammu & Kashmir, AIR 1971 SC 263, Smt. Raziya Umar Bakshi Vs. Union of India(AIR 1980 SC 1751) and Powanammal Vs. State of T. N. and another,(1999) 2 SCC 413,

5) The detention record produced by the learned counsel for the respondents contains a copy of Execution Report, perusal of which shows that the grounds of detention have been read over and explained to the detainee by one SI Ghulam Mohammad. It is the case of the respondents that the said executing official has read over and explained the grounds of detention to the detainee. For supporting

this contention, it was incumbent on the respondents to place on record a duly sworn affidavit of the said official, but no such affidavit has been filed. To eradicate all the doubts, it was incumbent on the part of the person, who did the exercise of handing over the documents and conveying the contents thereof to the detainee, to file an affidavit in order to attach a semblance of fairness to his actions. Support, in this behalf, can be taken from the law laid down by the Supreme Court in the cases of State Legal Aid Committee, J&K Vs. State of J&K & others, AIR 2005 SC 1270, Lallubhai Jogibhai Patel vs. Union Of India &Ors, AIR 1981 SC 728 and the law laid down by this Court in the case of Mohammad Shaban Chopan Vs. State and another, 2003 (II) S.L.J 455.

6) Thus, in the instant case, it is clear from the detention record that the petitioner has not been furnished the translated version of the grounds of detention nor has he been provided the material on the basis of which grounds of detention have been formulated. Further the executing officer has not filed an affidavit to show that he has fully explained the grounds of detention to the detainee in the language he understands. Thus, vital safeguards against arbitrary use of law of preventive detention have been observed in breach by the respondents in this case rendering the impugned order of detention unsustainable in law.

7) Viewed thus, the petition is allowed and the impugned order of detention is quashed. The detainee is directed to be released from the preventive custody forthwith provided he is not required in connection with any other case.

8) The record, as produced, be returned to the learned counsel for the respondents.