

(2023) 12 J&K CK 0054
In the Jammu And Kashmir High Court
Case No : Writ Petition (Criminal) No. 583 Of 2022

Asif Ali Dar

APPELLANT

Vs

UT Of J&K And Others

RESPONDENT

Date of Decision : 22-12-2023

Acts Referred:

Jammu And Kashmir Public Safety Act, 1978 — Section 8

Citation : (2023) 12 J&K CK 0054

Hon'ble Judges : Sanjay Dhar, J

Bench : Single Bench

Advocate : Parvaiz Wani, Zahid Qais Noor

Final Decision : Allowed

Judgement

Sanjay Dhar, J

1) Through the medium of instant petition veracity and legality of the detention order bearing No.61/DMP/PSA/ 22 dated 25.06.2022, passed by District Magistrate, Pulwama (the detaining authority) is assailed. In terms of the said detention order, Asif Ali Dar son of Ali Mohammad Dar resident of Niloora Tehsil Litter District Pulwama, has been placed under preventive detention with a view to prevent him from acting in any manner prejudicial to the security of the State. The impugned order is, purportedly, passed by the detaining authority in exercise of powers conferred under Section 8 of the J&K Public Safety Act, 1978.

2) The petitioner has contended that the Detaining Authority has passed the impugned detention order mechanically without application of mind and the allegations mentioned in the grounds of detention have no nexus with the detainee. It is alleged that the same have been fabricated by the police in order to justify its illegal action of detaining the detainee. It has been contended that the grounds of detention are vague, on the basis of which no prudent man can make a representation against such allegations. It has been further contended that the procedural safeguards have not been complied with in the instant case,

inasmuch as whole of the material which formed basis of the impugned detention order has not been supplied to the petitioner. It has been further contended that there was no fresh activity attributed to the petitioner and that there has been non-application of mind on the part of the detaining authority while passing the detention order.

3) On being put to notice, the respondents appeared through their counsel and filed their reply affidavit, wherein it is submitted that detention was necessitated because of involvement of the detenu in very serious offences against the State as mentioned in the FIRs registered against him. The detenu was informed that he can make a representation to the government as well as the detaining authority against his detention. It is further claimed in the reply affidavit that all statutory requirements and constitutional guarantees have been fulfilled and complied with by the detaining authority. That the order has been issued validly and legally. The respondents have placed reliance on the judgment of the Supreme Court in *Haradhan Saha v. State of W.B* (1975) 3 SCC 198. The respondents have also produced the detention record to lend support to the stand taken in the counter affidavit.

4) The impugned order has been assailed by the petitioner, inter alia, on the following grounds:

(I) That there has been non-application of mind on the part of the detaining authority while passing the order of detention.

(II) That the grounds of detention are vague and lacking in material particulars.

5) I have heard learned counsel for the parties and perused the material available on record.

6) It has been contended that the impugned detention order suffers from non-application of mind on the part of the detaining authority, inasmuch as the grounds of detention do not bear any reference to the fact that the petitioner had already been admitted to interim bail in FIR No.278/2016 registered with P/S Litter in terms of the order dated 22.12.2021 passed by the court of Principal Sessions Judge, Pulwama, a copy thereof has been placed on record. The aforesaid bail order seems to have been made absolute by the Principal Sessions Judge, Pulwama, in terms of order dated 24.03.2022. A copy of the said order has also been placed on record. Not only the Detaining Authority has not mentioned the factum regarding grant of bail to the petitioner in the grounds of detention but it has also recorded that the petitioner is in police remand and if he is enlarged on bail, he may again indulge in anti-national and anti-social activities, meaning thereby that even on 25.06.2022 when the impugned order of detention was passed by the Detaining Authority, the said Authority was not aware about the grant of bail in favour of the petitioner that had been granted in his favour on 22.12.2021.

7) There is yet another amazing fact which comes to fore from a perusal of the

grounds of detention. While recording in one para of grounds of detention that the petitioner is presently under police remand, in the subsequent para it has been recoded that the petitioner is presently at large and there is possibility that he may again indulge in subversive activities prejudicial to the security scenario.

Thus, the Detaining Authority, it seems, has not even gone through the record and he has not even cared to see whether the facts recorded in the grounds of detention are in consonance with each other. This shows complete lack of application of mind on the part of the Detaining Authority. On this ground alone, the impugned order of detention is liable to be set aside.

8) In the grounds of the detention, the Detaining Authority has, after narrating the incidents that were subject matter of earlier detention order passed against the petitioner vide No.39/DMP/PSA/20 dated 09.11.2020, that has been quashed vide judgment dated 02.12.2021 passed by this Court in WP(Crl) No.179/2020, recorded in the fresh grounds of detention which are subject matter of the present writ petition that the petitioner has been helping the militants to undertake an intensive survey of the Pulwama area and formulating an efficient design for resorting to attacks upon security forces. It has also been alleged in the grounds of detention that the petitioner and his associates in a pre-planned manner used to mobilize general public for unlawful activities and in case he remains at large, he may again indulge in subversive activities.

9) The fresh activities incorporated in the grounds of detention, which are subject matter of present writ petition, are vague and lacking in material particulars. The identity of the militants, to whom the petitioner is alleged to be lending help, as also the identity of the associates, with whom the petitioner is alleged to be planning to mobilize general public for unlawful activities, is absolutely missing in the grounds of detention. On the basis of such vague allegations, the petitioner cannot be expected to make an effective representation against his detention. Therefore, his valuable right to make an effective representation against the impugned order of detention has been hampered on account of vagueness of allegations made in the grounds of detention, thereby rendering the impugned detention order unsustainable in law.

10) For the foregoing reason, this petition is allowed. The impugned order of detention is quashed. Direction is issued to the respondents to release the detinue from the preventive custody forthwith, provided he is not required in connection with any other case.