

(2024) 03 J&K CK 0014

In the Jammu And Kashmir High Court

Case No : Writ Petition (Criminal) No. 314 Of 2022

Asif Hameed Dar

APPELLANT

Vs

Union Territory Of Jammu And Kashmir And Others

RESPONDENT

Date of Decision : 11-03-2024

Acts Referred:

Citation : (2024) 03 J&K CK 0014

Hon'ble Judges : Sanjay Dhar, J

Bench : Single Bench

Advocate : Asif Nabi, Zahid Qais Noor

Final Decision : Allowed

Judgement

Sanjay Dhar, J

1. The petitioner has challenged order of detention bearing No. 35/DMP/PSA/2022 dated 19.05.2022 passed by District Magistrate, Pulwama (hereinafter to be referred as the Detaining Authority), whereby petitioner-Asif Hameed Dar S/o. Ab. Hameed Dar R/O. Koil, Tehsil Pulwama District Pulwama, has been taken into preventive custody in order to prevent him from acting in any manner prejudicial to the security of the State.

2. The petitioner has challenged the impugned order of detention on the grounds that the grounds of detention are vague, on the basis of which, no prudent person can make an effective representation. It has been further contended that the assertions made in the grounds of detention are absolutely false and frivolous and the same do not justify passing of the impugned order of detention against him. It has been contended that there has been total non application of mind on the part of the Detaining Authority, while passing the impugned order of detention, inasmuch as, the grounds of detention are replica of the Police dossier. The petitioner has also raised the plea that he has not been provided whole of the material that has formed basis of passing the impugned order of detention. It has also been submitted that the translated version of the grounds of detention

and the material on which the said grounds are based has not been provided to the petitioner, who is not well versed in English language and it has hampered him from making an effective representation against the impugned order of detention.

3. The writ petition has been contested by the respondents by filing counter affidavit of the Detaining Authority. In the counter affidavit, it has been submitted that there is no vagueness or staleness in the grounds of detention. According to the respondents, specific instances have been given in the grounds of detention regarding the involvement of the petitioner in subversive activities. It has been further contended that all the constitutional and procedural safeguards have been adhered to by the respondents, while passing the impugned order of detention. It has also been submitted that whole of the material forming basis of grounds of detention was furnished to the petitioner and the same was explained to him in the language he understands. In order to lend support to their contentions, the respondents have produced the record of detention.

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

5. The first ground that has been urged by learned counsel for the petitioner is that the grounds of detention are vague, on the basis of which, no prudent person can make an effective representation. In this regard, a perusal of the grounds of detention would reveal that it has been mentioned that in the year, 2018, the petitioner had remained in constant contact with terrorist-Ishfaq Yousuf Wani, till he was eliminated by the security forces. It has been stated that the petitioner was in touch with another terrorist, namely, Showkat Ahmad Lone. So far as the activities of the petitioner subsequent to the year, 2018 are concerned, it has been alleged in the grounds of detention that the petitioner has cooperated with active militants for evolving an efficient strategy to carry out terrorists attacks upon the security forces/police and the main stream people. It has also been alleged that the petitioner is highly motivated and along with accomplices, he has been carrying out subversive activities and exhorting the people to follow the agenda of militants and separatists. As per the grounds of detention, the petitioner is an Over Ground Worker of banned organization Lashkar-e-Taiba.

6. So far as the activities of the petitioner pertaining to the year, 2018 are concerned, the same are specific in nature, but the petitioner has been put under preventive detention on the basis of activities subsequent to the year 2018, which have led to passing of impugned order of detention dated 19.05.2022. These subsequent activities are not specific in nature inasmuch as particulars of the incidents mentioned in the grounds of detention are missing. It is not mentioned, as to whom, the petitioner is extending his cooperation and, who are his accomplices, with whose assistance, he is carrying out subversive activities. The particulars of places and period are also missing in the grounds of detention.

On the basis of these vague allegations made in the grounds of detention, it was not possible to the petitioner to make an effective representation against the impugned order of detention. It seems that it is for this reason that the petitioner could not make a representation against the impugned order of detention and his case was considered by the Advisory Board in the absence of his representation. Thus, a vital constitutional right of the petitioner to make a representation against the order of detention stands infringed, thereby rendering the impugned order of detention unsustainable in law.

7. For what has been discussed hereinbefore, the petition is allowed and the impugned order of detention bearing No. 35/DMP/PSA/2022, dated 19.05.2022 passed by District Magistrate, Pulwama, is quashed. The petitioner 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.