
(2021) 02 J&K CK 0074
In the Jammu And Kashmir High Court
Case No : Writ Petition (Crl) No. 654 Of 2019

Atta Mohammad Malik

APPELLANT

Vs

Union Territory Of J&K And Another

RESPONDENT

Date of Decision : 12-02-2021

Acts Referred:

Jammu And Kashmir State Ranbir Penal Code, 1989 — Section 120B, 302, 307
Arms Act, 1959 — Section 7, 27
Unlawful Activities (Prevention) Act, 1967 — Section 13, 16, 18, 20, 38, 39
Explosive Substances Act 1883 — Section 3, 4
Indian Penal Code, 1860 — Section 307

Citation : (2021) 02 J&K CK 0074

Hon'ble Judges : Rajnesh Oswal, J

Bench : Single Bench

Advocate : Wajid Haseeb, Asifa Padroo

Final Decision : Disposed Of

Judgement

1. Through the medium of this petition filed through his father, the petitioner has questioned the order of detention bearing No. 78/DMK/PSA/2019

dated 10.10.2019 issued by the respondent No. 2 by virtue of which the petitioner has been ordered to be detained under the J&K Public Safety act, 1978 (for short the Act).

2. It is stated in the petition that the petitioner was arrested by the police in the year 2018 and was taken to Police Station, D. H. Pora wherein he was

implicated in case FIR No. 108/2017 and on 21.07.2018, the learned Principal Sessions Judge, Kulgam admitted the petitioner to bail. However, the

petitioner was not released and was detained under preventive custody in terms of order No. 06/DMK/PSA/2018 dated 24.07.2018. The petitioner

challenged the said detention order before this court in HCP No. 231/2018 and

the coordinate bench of this court vide order dated 28.12.2018 was

pleased to quash the detention order. The petitioner was once again called in Police Station D.H. Pora in the first week of October 2019 and was

detained there. The petitioner approached the office of respondent No. 2 and obtained the photocopies of the communication letter and the grounds of

detention. The petitioner has questioned the order of detention primarily on the grounds inter alia :

(i) That the allegations made in the grounds of detention are vague, non-existent and no prudent man can make representation against such allegations.

(ii) That the petitioner was already admitted to bail in case FIR No. 108/2017, the mention of which is made in the grounds of detention however, this

important fact has not been reflected in the detention order and also that the petitioner has been admitted to bail in other cases.

(iii) That the detention order has been passed after a delay of more than two years from the date of the last alleged activity and the delay has not been

explained by the respondents.

(iv) That the petitioner was already detained under preventive custody for these set of allegations and the said order was quashed by this Court and

after the earlier order was quashed, no fresh activity was attributed to the petitioner. Passing of detention order on same allegations upon which an

order has been quashed by the Court is illegal and unlawful.

(v) That the fact that earlier detention order was quashed by this Court was not brought to the notice of detaining authority as such the order of

detention is not sustainable.

(vi) That the respondent No. 2 has not furnished the relevant material relied upon by the detaining Authority while passing the order of detention as

mentioned in the grounds of detention to the petitioner as such the same deprived the petitioner of his right to make effective representation against the

order of detention.

3. The respondents have filed the counter affidavit in which they had stated that all statutory and constitutional guarantees have been fulfilled and

complied with by the detaining authority, indisputably keeping in mind the very object of law of preventive detention being not punitive, but only

preventive. It is further stated that grounds of detention, order of detention as well as the entire material relied upon by the detaining authority came to

be furnished to the detainee within the statutory period provided under section 13 of the Act. In compliance to the detention order, the warrant was

accordingly executed by the Executing Officer and detainee was handed over to SP Central Jail Srinagar for lodgment. It is further submitted that

Advisory Board in terms of section 16 of the Act, after considering the material placed before it, held that there is sufficient cause for the detention in

the instant case and only after the report/opinion of the Advisory Board, the Government has confirmed the order of detention issued against the

detainee. It is further stated that the petitioner is a native of Ringath D.H. Pora who has studied up to 8th class and thereafter left studies due to lack

of interest in the same. The petitioner was motivated by some active militants of the banned Hizbul Mujahideen outfit to work as an over ground

worker for the said organization. The petitioner has been involved in motivating the youth of area to facilitate militants by various ways. The petitioner

has been involved in activities of a criminal nature and for the same acts, has been named in FIR No. 106/2017 under sections 302, 307, 120-B RPC,

7/27 Arms Act and 13, 16, 18, 20, 38 and 39 ULA(P) Act registered with Police Station D.H Pora. The petitioner has also been named in FIR No.

108/2017 under section 307 IPC and 3/4 Explosive Substance Act with Police Station D.H. Pora and FIR No. 313/2017 under sections 302 and 307

RPC, 7/27 Arms Act and 13, 18, 20, 38 and 39 ULA(P) Act registered with Police Station Qazigund. It is further stated that in view of abrogation of

Articles 370 and 35-A from the Constitution of India and keeping in view the activities of the detainee, he is looked upon as a threat to the security of

the State(now Union Territory) prompting the respondent No. 2 to order for his preventive detention under the J&K Public Safety Act 1978.

4. Learned counsel for the petitioner has reiterated the grounds taken in the petition and has laid much stress that the order of detention has been

passed on the stale grounds and also that on similar grounds, the petitioner was earlier detained and the said detention order was quashed by this

Court.

5. Per contra Learned AAG, Ms. Asifa Padroo appearing for the respondents has argued that all the statutory as well as constitutional requirements

have been fulfilled by the respondents while passing the order of detention and, as such, the detention order is legal and was passed while taking into

consideration the past activities of the petitioner.

6. Heard and perused the detention record meticulously.

7. The perusal of record reveals that the petitioner was earlier detained by virtue of detention order bearing number 06/DMK/PSA/2018 dated

24.07.2018 and the same order was quashed by this Court vide order dated 28.12.2018 and this fact has not been disputed by the respondents. The

perusal of grounds of detention reveals that a reference has been made to three FIRs. One is bearing No. 106/2017 registered with Police Station

D.H. Pora, second FIR No. 108/2017 registered with Police Station, D.H. Pora and a third FIR bearing No. 313/2017 registered with Police Station

Qazigund. The last illegal activity attributed to the petitioner pertains to the year 2017 in which the petitioner was granted bail by the court of Learned

Principal Sessions Judge, Kulgam on 21.07.2018. In the grounds of detention, there is no whisper by the respondents that the petitioner has committed

any illegal activity either in the year 2018 or 2019 after the grant of bail. The Articles 370 and 35-A of the Constitution of India were abrogated on

05.08.2019 but there is no allegation against the petitioner in the grounds of detention that he had indulged in any illegal activity from 05.08.2019 till the

date of passing of detention order. It is evident that there is delay in passing the order of detention as last illegal activity attributed to the petitioner

pertains to the year 2017 and the detention order has been passed on 10.10.2019. The delay in passing the detention order renders the same illegal.

Reliance is placed upon the decision of the Apex Court in Laxhman Khatik vs State of Bengal, 1974 (4) SCC 1 wherein while considering the

detention order under the maintenance of Maintenance of Internal Security Act, 1971, has held that prompt action in such matter should be taken as

soon as the incident like those which are referred to in the grounds have taken place. It is also profitable to take note of the judgment of the Apex

Court in case titled, Saeed Zakir Hussain Malik vs State of Maharashtra, reported in (2012) 8 SCC 233. Relevant paragraph Nos. 27 and 28 read as

under:

â??27) As regards the second contention, as rightly pointed out by learned counsel for the appellant, the delay in passing the detention order, namely,

after 15 months vitiates the detention itself. The question whether the prejudicial activities of a person necessitating to pass an order of detention is

proximate to the time when the order is made or the live-link between the prejudicial activities and the purpose of detention is snapped depends on the facts and circumstances of each case. Though there is no hard and fast rule and no exhaustive guidelines can be laid down in that behalf, however, when there is undue and long delay between the prejudicial activities and the passing of detention order, it is incumbent on the part of the court to scrutinize whether the Detaining Authority has satisfactorily examined such a delay and afforded a reasonable and acceptable explanation as to why such a delay has occasioned.

28) It is also the duty of the court to investigate whether casual connection has been broken in the circumstance of each case. We are satisfied that in the absence of proper explanation for a period of 15 months in issuing the order of detention, the same has to be set aside. Since, we are in agreement with the contentions relating to delay in passing the Detention Order and serving the same on detenu, there is no need to go into the factual details.â??

8. Besides, there is no whisper either in the grounds of detention or in the dossier that the petitioner was earlier detained by the respondents under Act and the said detention order was quashed by the Co-ordinate Bench of this Court. Also there is no whisper both in the grounds of detention as well as dossier that the petitioner was enlarged on bail. Both these important facts were required to be brought to the notice of the respondent No. 2 through the medium of dossier, those could have enabled the respondent No. 2 to derive its satisfaction as to whether the detention of the petitioner was necessary or not. The suppression of these facts from the detaining authority further makes the detention order not sustainable in the eyes of law. As the order of detention has been found to be unsustainable in the eyes of law on these grounds only, so there is no necessity for considering the other grounds.

9. In view of what has been discussed above, the petition succeeds and the order of detention bearing No. 78/DMK/PSA/2019 dated 10.10.2019 is quashed. The petitioner is ordered to be released forthwith provided his custody is not required in any other case.

10. Disposed of accordingly.