

(2022) 12 J&K CK 0013

In the Jammu And Kashmir High Court

Case No : Writ Petition (Criminal) No. 554 Of 2022

Azad Ahmad Shah Alias Dr. Faisal

APPELLANT

Vs

Union Territory Of J&K &Ors

RESPONDENT

Date of Decision : 06-12-2022

Acts Referred:

Constitution Of India, 1950 — Article 22(5)

Citation : (2022) 12 J&K CK 0013

Hon'ble Judges : Sanjay Dhar, J

Bench : Single Bench

Advocate : G. N. Shaheen, Faheem Nisar Shah

Final Decision : Allowed

Judgement

Sanjay Dhar, J

1) The petitioner, by the medium of instant petition, has challenged the legality and veracity of order No.41/DMA/PSA/DET/2022 dated 29.06.2022 issued by District Magistrate, Anantnag (for brevity "Detaining Authority"), whereby he has been placed under preventive detention with a view to prevent him from acting in any manner prejudicial to the security of the State.

2) It has been contended by the petitioner that the Detaining Authority has passed the impugned detention order mechanically without application of mind, inasmuch as the grounds of detention are vague, non-existent on which no prudent man can make a representation against such allegations. It has been further contended that the Statutory safeguards have not been complied with in the instant case, inasmuch as whole of the material has not been provided to the petitioner. It has been further urged that there has been non-application of mind on the part of detaining authority while passing the impugned detention order which renders the impugned order unsustainable in the eyes of law.

3) The petition has been resisted by the respondents by filing a counter affidavit thereto. In their counter affidavit, the respondents have submitted that all the

safeguards have been adhered to and complied with by the detaining authority and that the order has been issued validly and legally. It is pleaded that the detention order and grounds of detention along with the material relied upon by the detaining authority were handed over to the detainee and the same were read over and explained to him. It is contended that the grounds urged by the petitioner are legally misconceived, factually untenable and without any merit. That the detainee was informed that he can make a representation to the government as well as to the detaining authority against his detention. It is further averred that the impugned detention order has been passed after following the due procedure of law. In order to buttress the contentions raised in the counter affidavit, learned counsel for the respondents has also produced the detention record.

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

5) Learned counsel for the petitioner, while seeking quashment of the impugned order, projected various grounds but his main thrust during the course of arguments was on the ground that the detainee was not provided whole of the material to enable him to make an effective representation against his detention.

6) So far as the ground of challenge urged by the petitioner is concerned, a perusal of the detention record produced by learned counsel for the respondents reveals that certain material is stated to have been received by the petitioner. Report of the Executing Officer in this regard forms part of the detention record, a perusal whereof reveals that it bears the signature of the petitioner. According to it, copies of grounds of detention (02 leaves), PSA warrant (01 leaf), dossier along with letter of SSP, Anantnag (04 leaves), copies of FIR's, statements of witnesses and other relevant documents (0 leaves), total (07) leaves, have been supplied to him.

7) If we have a look at the grounds of detention, it bears reference to three FIRs Viz. FIR Nos.280/2010, 57/2011 and 120/2016. It was incumbent upon the respondents to furnish not only the copies of these FIR's but also the statements of the witnesses recorded during investigation of the FIR's and other material on the basis of which petitioner's involvement in the said FIR's is shown. Thus, contention of the petitioner that whole of the material relied upon by the detaining authority, while framing the grounds of detention has not been supplied to him, appears to be well-founded. Obviously, the petitioner has been hampered by non-supply of these vital documents in making an effective representation before the Advisory Board, as a result whereof his case has been considered by the Advisory Board in the absence of his representation, as is clear from the detention record. 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.

8) It needs no emphasis that the detainee cannot be expected to make an effective and purposeful representation which is his constitutional right

guaranteed under Article 22(5) of the Constitution of India, unless and until the material, on which the detention is based, is supplied to the detainee. The failure on the part of detaining authority to supply the material renders the detention order illegal and unsustainable. While holding so, I am fortified by the judgments rendered in *Sophia Ghulam Mohd. Bham V. State of Maharashtra and others* (AIR 1999 SC 3051) and, *Thahira Haris Etc. Etc. V. Government of Karnataka & Ors.* (AIR 2009 SC 2184) and *Lallubhai Jogibhai Patel vs. Union of India*, AIR 1981 SC 728.

9) 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.

10) The detention record be returned to the learned counsel for the respondents.