

(2023) 12 J&K CK 0064

In the Jammu And Kashmir High Court

Case No : Writ Petition (Criminal) No. 498 Of 2022

Bashir Ahmad Koka

APPELLANT

Vs

Union Territory Of Jammu & Kashmir And Others

RESPONDENT

Date of Decision : 26-12-2023

Acts Referred:

Constitution Of India, 1950 — Article 22
Jammu And Kashmir Public Safety Act, 1978 — Section 8(a), 13
Jammu And Kashmir State Ranbir Penal Code, 1989 — Section 302, 307
Arms Act, 1959 — Section 7, 25

Citation : (2023) 12 J&K CK 0064

Hon'ble Judges : Sanjeev Kumar, J

Bench : Single Bench

Advocate : Asif Ali Dar, Alla-Ud-Din Ganai

Final Decision : Allowed

Judgement

Sanjeev Kumar, J

1. The petitioner is aggrieved and has called in question his order of detention bearing No. 29/DMA/PSA/DET/2022, dated 25th June, 2022, passed by District Magistrate, Anantnag [“the Detaining Authority”], under Section 8(a) of the Jammu and Kashmir Public Safety Act, 1978, [“the Act”], whereby the petitioner has been detained in preventive custody with a view to prevent him from acting in any manner prejudicial to security, sovereignty, and integrity of the State.

2. Impugned detention order is assailed by the petitioner, inter alia, on the following grounds:

(i) That the entire basis of detention is registration of FIR No. 11/2004, under Sections 307, 302 RPC, 7/25 Arms Act, registered in the Police Station, Achabal. The petitioner, after having faced trial, was acquitted long back. The Detaining Authority has not shown any awareness about this aspect, which renders the subjective satisfaction derived by the Detaining Authority vitiated in law.

(ii) That on the basis of self same allegations and relying upon the same FIR, the petitioner was earlier also detained by the Detaining Authority vide order No. 44/DMA/PSA/DET/2021, dated 19th October, 2021. The aforesaid detention order was quashed by this Court vide order dated 19th April, 2022, passed in WP(Crl) No. 195/2021 titled "Bashir Ahmad Koka Vs. Union Territory of Jammu and Kashmir." The Detaining Authority could not have passed yet another order on the basis of the same material.

(iii) That the earlier detention order was quashed by this Court on 19th April, 2022, and the impugned detention order has been issued by the Detaining Authority on 25th June, 2022. The Detaining Authority has nowhere in the grounds of detention attributed any prejudicial act to the petitioner having been committed between 19th April, 2022 to 25th June, 2022.

3. The writ petition is contested by the respondents. In the reply affidavit filed by the Detaining Authority, the writ petition is opposed on the ground that all safeguards guaranteed by Article 22 of the Constitution of India and Section 13 of the Jammu and Kashmir Public Safety Act, have been scrupulously adhered to by the Detaining Authority. It is submitted by the respondents, that the detainee was detained on the basis of material supplied to the Detaining Authority by the District Police, which inter alia indicated that the petitioner had close contact with the proscribed terrorist organisation Hizbul Mujahideen. The petitioner was also found involved in providing logistic support in terms of food, shelter and transportation to the militants. The detainee was also involved in FIR No. 11 of 2004 for commission of heinous offence of murder registered in the Police Station, Achabal.

4. It is submitted that, on the basis of activities, the petitioner had been indulging in, he was placed under detention vide detention order dated 20 th October, 2021. However, the petitioner was released following the quashment of his detention by this Court vide order dated 19th April, 2022, (supra). It is contended that the petitioner was released and given an opportunity to reform and become a law abiding citizen, but he failed to avail such opportunity and continued with his activities, necessitating the passing of a fresh order of detention.

5. Having heard learned counsel for the parties and perused the material on record, I am of the considered opinion that the impugned order of detention is not sustainable in law. From reading the grounds of detention served upon the petitioner, it clearly transpires that the petitioner is detained primarily on the basis of allegations contained in FIR No. 11 of 2004. The FIR, after investigation, was challaned in the Court of law. It is not in dispute that the petitioner faced the trial but was ultimately acquitted by the Trial Court long back.

6. It is on the basis of this FIR, as also the general allegations that because of his allegiance with proscribed terrorist organisation, there was apprehension that petitioner would disturb Holy Shri Amarnath Ji Yara, a detention order was

passed against the petitioner on 19th October, 2021. This order of detention was called in question by the petitioner in WP (CrI) No. 195/2021. The writ petition was allowed, and the impugned order of detention was quashed on various grounds.

7. There is nothing on record, more particularly in the order of detention, that after the petitioner was released pursuant to the order of this Court dated 19th April, 2022, the petitioner indulged in new activities till the passing of impugned order of detention. There is not even a whisper about the prejudicial activities, the petitioner indulged in w.e.f. 19th April, 2022, till the passing of impugned order of detention dated 25th June, 2022. I also see no reason to press into service an FIR registered in the year 2004, more particularly when the petitioner has already faced trial in the aforesaid FIR and has been acquitted by the competent Court of jurisdiction. Interestingly, the Detaining Authority has not shown any awareness about the acquittal of the petitioner in the aforesaid FIR.

8. For the foregoing reasons, it is a foregone conclusion that the Detaining Authority did not take into consideration the relevant material to derive its subjective satisfaction with regard to the necessity of placing the petitioner under preventive detention. A person cannot be detained under preventive detention on the basis of totally vague and unsubstantiated allegations. The Detaining Authority could have come clear with regard to the prejudicial activities, the petitioner had indulged in, after his release from earlier detention pursuant to the order of this Court dated 19th April, 2022, till the passing of the impugned order of detention. Mere apprehension of the Detaining Authority that too based on no material cannot be a ground for detaining a person under preventive custody. [See "Suresh Mahato Vs. The District Magistrate", (1975) 3SCC 554.]

9. For all these reasons, I find merit in this petition and the same is, accordingly, allowed. The impugned order of detention dated 25th June, 2022, passed by the Detaining Authority is quashed. The respondents are directed to release the detainee forthwith from the preventive custody provided he is not required in any other case.