

(2023) 04 J&K CK 0009

In the Jammu And Kashmir High Court

Case No : Writ Petition (Criminal) No. 177 Of 2022

Bashir Ahmad Sualiah

APPELLANT

Vs

Union Territory Of J&K & Ors

RESPONDENT

Date of Decision : 07-04-2023

Acts Referred:

Constitution Of India, 1950 — Article 22(5)

Citation : (2023) 04 J&K CK 0009

Hon'ble Judges : Sanjay Dhar, J

Bench : Single Bench

Advocate : Z. A. Qureshi, Raziya, Jahangir Ahmad Dar

Final Decision : Allowed

Judgement

Sanjay Dhar, J

1) By the instant petition, quashment of order No.45/DMB/PSA/2022 dated 09.04.2022, issued by District Magistrate, Baramulla (for brevity "detaining authority") is sought. In terms of the aforesaid order, Bashir Ahmad Sualiah son of Gh. Mohammad Sualiah resident of Mohalla Jadeed Tehsil Baramulla District Baramulla, (for short "detenu") has been placed under preventive detention and lodged in Central Jail Kotbhalwal, Jammu.

2) The petitioner has contended that the Detaining Authority has passed the impugned detention order mechanically without application of mind, inasmuch as the grounds of detention are mere reproduction of the dossier. It has been further contended that the statutory procedural safeguards have not been complied with in the instant case. It has been further urged that the material which formed basis of the grounds of detention and the consequent order of detention has not been provided to the detainee. It has also been contended that the grounds of detention are vague, non-existent and stale.

3) The respondents, in their counter affidavit, have disputed the averments made in the petition and insisted that the activities of detainee are highly prejudicial to

the security of the State. It is pleaded that the detention order and grounds of detention were handed over to the detainee and same were read over and explained to him; that the grounds urged by the petitioner are legally misconceived, factually untenable and without any merit and that the impugned detention order has been passed strictly in accordance with law occupying the field. In support of their stand taken in the counter affidavit, the respondents have 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 following grounds:

(I) That the detainee's right of making an effective representation against his detention has been violated as the material, on the basis of which the grounds of detention have been formulated, has not been supplied to him.

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

6) The first ground projected by the learned counsel for the petitioner that the detainee has been disabled from making an effective representation against the order of detention as the material, which formed basis of the grounds of detention and the consequent order of detention, has not been furnished to him, appears to have substance. A perusal of the detention record reveals that the petitioner has been provided copies of detention warrant (01 leaf), notice of detention (01 leaf), grounds of detention (03), copy of dossier of detention (Nil), copies of FIR, statements of witnesses and other relevant documents (03 leaves), (total 08 leaves). If we have a look at the grounds of detention, it bears reference to three FIRs Viz. FIR Nos.273/2016, 326/2016, and 330/2016. It was incumbent upon respondents to furnish not only the copies of these FIRs but also the statements of witnesses recorded during investigation of these FIRs and other material on the basis of which petitioner's involvement in these FIRs is shown. All this material would run in dozens of pages and it is impossible that all this material would be covered in only three leaves. Even the copy of the dossier of detention has not been supplied to the petitioner.

7) 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. 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) The next ground projected by the petitioner is that the the grounds of detention are vague and cryptic, inasmuch as the material particulars of the terrorists of LeT, as mentioned in the grounds of detention, have not been

disclosed.

9) On perusal of the detention record produced by learned counsel for the respondents, the ground projected regarding vagueness of the averments made in the grounds of detention, appears to be forceful. There is no mention of the particulars of the places and the identity of the terrorists, with whom the petitioner is alleged to have been in touch. The particulars of the period when the detainee is alleged to have been in touch with the terrorists are also not mentioned in the grounds of detention. Thus, the grounds, being vague and lacking in material particulars, the detainee could not have made an effective representation against his detention. Therefore, there has been violation of constitutional guarantees envisaged under Article 22(5) of the Constitution. The detention order, as such, is illegal and unsustainable. In my aforesaid view, I am fortified by the judgments of the Supreme Court in the case of Jahangirkhan Fazal Khan Pathan vs. Police Commissioner, Ahmadabad, (1989) 3 SCC 590, Abdul Razak Nane khan Pathan v. Police Commissioner, Ahmadabad, AIR 1989 SC 2265, , Mohd. Yousuf Rather vs. State of J&K & Ors, 1979 4 SCC 370 and Piyush Kantilal Mehta vs. The Commissioner of Police, Ahmedabad City and Ors. 1989 (1) Crimes 176 (SC).

10) 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.

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