

(2022) 11 J&K CK 0031
In the Jammu And Kashmir High Court
Case No : Writ Petition (Criminal) No. 42 Of 2022

Bilal Ahmad Ganie

APPELLANT

Vs

Union Territory Of J&K And Another

RESPONDENT

Date of Decision : 17-11-2022

Acts Referred:

Constitution Of India, 1950 — Article 22(5)
Indian Penal Code, 1860 — Section 380, 457
Prevention Of Illicit Traffic In Narcotic Drugs And Psychotropic Substances Act, 1988 —
Section 3

Citation : (2022) 11 J&K CK 0031

Hon'ble Judges : Vinod Chatterji Koul, J

Bench : Single Bench

Advocate : M. A. Wani, Zainul Abidin, Sajad Ashraf

Final Decision : Disposed Of

Judgement

Vinod Chatterji Koul, J

1. Through the medium of this writ petition, the petitioner prays for quashment of detention Order No.DIVCOM-"K"/180/2021 dated 24.12.2021, passed by Divisional Commissioner, Kashmir, whereby detenu, namely, Bilal Ahmad Ganie S/o Sonaullah Ganie R/o Batpora, Hayhama, Kupwara, has been placed under preventive detention with a view to prevent him from committing any of the acts within the meaning of Prevention of Illicit Traffic in Narcotic Drugs and Psychotropic Substances Act, 1988 (for short Act of 1988), on the grounds made mention of therein.

2. The grounds of challenge, inter alia, stated and averred by petitioner in the instant writ petition are that procedural safeguards, envisaged under the Constitution of India and in terms of the Act of 1988 have not been complied with by respondent no.2 while ordering detention of detenu; that there is a clear non-application of mind on the part of detaining authority inasmuch as detention order has been passed carelessly and with non-application of mind as detaining

authority has copied the section and has not specifically mentioned under which clause or sub-clause of Section 3 of the Act of 1988, detenu was to be detained; that there is no proximity between two FIRs for one is filed under NDPS Act in the year 2016 and the other under Section 457/380 IPC in the year 2021, which manifests clear non-application of mind; that respondent no.2 has detained detenu under the provisions of Public Safety Act on the basis of material placed before him by Senior Superintendent of Police, Kupwara; and that post detention, a representation was filed by detenu through his father, which was not considered by respondents.

3. Respondents have filed Reply Affidavit in opposition to writ petition, in which it is insisted by them that detenu is involved in illegal trade of illicit traffic in narcotic drugs and psychotropic substances.

4. I have heard learned counsel for the parties and considered the matter. I have gone through the detention record produced by counsel for respondents.

5. It is submission of learned counsel for petitioner that last alleged activity attributed to detenu in grounds of detention had taken place in the year 2016, with respect whereof an FIR no.130/2016 under 8/20 NDPS Act had been registered and impugned detention order has been passed under and in terms of provisions of the Act of 1988, and therefore, there is no live-link between the last activity and purpose to be achieved by passing impugned order of detention. Insofar as second FIR is concerned, it is stated by learned counsel for petitioner that FIR no.374/2021 has been registered under Section 457/380 IPC, which does not give any compelling reason to detaining authority to pass impugned order of detention under the Act of 1988 as both the FIRs have no nearness.

6. The question whether the prejudicial activities of a person requiring to pass a detention order is proximate to 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. Nonetheless, when there is an undue and long delay between the prejudicial activities and the passing of the detention order, the court has to scrutinise whether the detaining authority has satisfactorily examined such a delay and afforded a tenable and reasonable explanation as to why such a delay has occasioned, when called upon to answer and further the court has to investigate whether the casual connection has been broken in the circumstances of each case. Certainly, in the present case, there is no cogent explanation coming to fore from perusal of the grounds of detention with reference to the live-link between the prejudicial activities and the purpose of the detention and resultantly the impugned detention order is liable to be quashed. In this regard reference is made to the law laid down in *T. A. Abdul Rahman v. State of Kerala* (1989) 4 SCC 741 and *Rajinder Arora v. Union of India and others* (2006) 4 SCC 796].

6. Perusal of grounds of detention reveals that same are vague and ambiguous, and do not refer to any date, month or year of the activities, which have been

attributed to detenu. Detention in preventive custody on the basis of such vague and ambiguous grounds of detention cannot be justified. It may not be out of place to mention here that preventive detention is largely precautionary and is based on suspicion. The Court is ill-equipped to investigate into circumstances of suspicion on which such anticipatory action must be largely based. The nature of the proceeding is incapable of objective assessment. The matters to be considered by the detaining authority are whether the person concerned, having regard to his past conduct judged in the light of surrounding circumstances and other relevant material, is likely to act in a prejudicial manner as contemplated by the provisions of the law and, if so, whether it is necessary to detain him with a view to preventing him from so acting. These are not the matters susceptible of objective determination, and they could not have been intended to be judged by objective standards. They are essentially the matters which have to be administratively determined for the purpose of taking administrative action. Their determination is, therefore, deliberately and advisedly left by the Legislature to the subjective satisfaction of detaining authority which, by reason of its special position, experience and expertise, would be best suited to decide them. Thus, the Constitutional imperatives of Article 22(5) and the dual obligation imposed on the authority making the order of preventive detention, are twofold: (1) The detaining authority must, as soon as may be, i.e. as soon as practicable, after the detention order is passed, communicate to the detenu the grounds on which the order of detention has been made, and (2) the detaining authority must afford the detenu the earliest opportunity of making the representation against the order of detention, i.e. to be furnished with sufficient particulars to enable him to make a representation which, on being considered, may obtain relief to him. The inclusion of an irrelevant or non-existent ground, among other relevant grounds, is an infringement of the first of the rights and the inclusion of an obscure or vague ground, among other clear and definite grounds, is an infringement of the second of the rights. In either case there is an invasion of the constitutional rights of the detenu entitling him to approach the Court for relief. The reason why the inclusion of even a simple irrelevant or obscure ground, among several relevant and clear grounds, is an invasion of the detenu's constitutional right is that the Court is precluded from adjudicating upon the sufficiency of the grounds, and it cannot substitute its objective decision for the subjective satisfaction of the detaining authority. Even if one of the grounds or reasons, which led to the subjective satisfaction of the detaining authority, is non-existent or misconceived or irrelevant, the order of detention would be invalid. Where the order of detention is founded on distinct and separate grounds, if any one of the grounds is vague or irrelevant the entire order must fall. The satisfaction of detaining authority being subjective, it is impossible to predicate whether the order would have been passed in the absence of vague or irrelevant data. A ground is said to be irrelevant when it has no connection with the satisfaction of the authority making the order of detention. Irrelevant grounds, being taken into consideration for making the order of detention, are sufficient to vitiate it. One irrelevant ground is sufficient to vitiate the order as it is not

possible to assess, in what manner and to what extent, that irrelevant ground operated on the mind of the appropriate authority, and contributed to his satisfaction that it was necessary to detain the detenu in order to prevent him from committing any act/illegal activity coming within the purview of Illicit Traffic in Narcotic Drugs and Psychotropic Substances Act or for that matter any prejudicial activity. Reference in this regard is made to Mohd. Yousuf Rather v. State of J&K and others, AIR 1979 SC 1925; and Mohd. Yaqoob v. State of J&K &ors, 2008 (2) JKJ 255 [HC].

7. For the foregoing reasons and discussion, the instant petition is disposed of and Detention Order No.DIVCOM-"K"/180/2021 dated 24.12.2021, passed by Divisional Commissioner, Kashmir, is quashed. As a corollary thereof, respondents, including the Jail Superintendent concerned, are directed to set the detenu at liberty forthwith provided he is not required in any other case. Disposed of.

8. Detention record be returned to counsel for respondents.