

(2021) 09 J&K CK 0012
In the Jammu And Kashmir High Court
Case No : Case No. ([WP CrI] No. 04 Of 2020

Bilal Ahmad Kumar

APPELLANT

Vs

Union Territory Of J&K And Ors

RESPONDENT

Date of Decision : 10-09-2021

Acts Referred:

Constitution Of India, 1950 — Article 22(5)
Unlawful Activities (Prevention) Act, 1967 — Section 39
Code Of Criminal Procedure, 1973 — Section 161, 164A
Indian Penal Code, 1860 — Section 148, 149, 307, 336, 353
Arms Act, 1959 — Section 39

Citation : (2021) 09 J&K CK 0012

Hon'ble Judges : Ali Mohammad Magrey, J

Bench : Single Bench

Advocate : Sajad A. Geelani, Asif Maqbool

Final Decision : Disposed Of

Judgement

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Ali Mohammad Magrey, J

1. Detenu, Bilal Ahmad Kumar son of Abdul Salam Kumar resident of Hilal Imam Sahib Shopian, District Shopian through his brother seeks quashment of detention order no. 20/DMS/PSA/2019 dated 10.08.2019 purporting to have been passed by District Magistrate, Shopian, with consequent prayer for release of the detenu forthwith.

2. Before advertng to the grounds of challenge taken by the petitioner to assail the impugned order, it would be appropriate to briefly notice the grounds of detention on the basis of which the preventive detention of the petitioner has been ordered.

3. As per the dossier supplied by the police, the detenu-petitioner was born on 01.01.1998 at his native village Hillow Imam sahib and was admitted in Public

Model School where the detenu got primary and middle school education. It is submitted that the subject joined a private High School at Nagbal by the name of CNEI and passed matriculation from the said school. It is submitted that thereafter joined Govt Higher Secondary School Imam Sahib and passed 12th class from the said school. It is submitted that subsequently the subject passed graduation from Govt Degree College Shopian. It is submitted that the subject is follower of Jamat-e-Islami ideology, the detenu used to propagate that ideology among the masses. It is submitted that the subject started indulging in activities prejudicial to the security of the state. It is submitted that the subject indulged in stone pelting, therefore, taken into custody in case FIR no. 211/2018 u/s 307, 336, 353, 148, 149, 7/27 Arms Act, 39 ULA (P) Act registered at Police Station Shopian, which is under investigation. The dossier as also the grounds of detention narrates whole sequence of events leading to the involvement of the detenu in the aforesaid FIR. The detaining authority, on the basis of dossier of activities supplied by the police and after going through the allegations contained in FIR No 211/2018, arrived at satisfaction that the detenu though under judicial remand in the aforesaid FIR, would, in every likelihood, indulge in subversive activities if he is admitted to bail by the Court and, therefore, it was imperative to put him under preventive detention. It is in the aforesaid backdrop, the impugned order of detention is passed by the detaining authority.

4. The petitioner has assailed the impugned order of detention, inter alia, on the following grounds:

(a) That the allegations in the grounds of detention are vague and indefinite and no prudent man can make an effective representation against these allegations;

(b) That at the time of passing of the detention order, the detenu was already in custody in FIR No.211/2018 though bail was granted but not released, particularly in view of the fact that the offences alleged against him were covered under Section 39 of ULA(P) Act. The detaining authority despite having knowledge of the custody of the detenu has not spelled out any justified and compelling reasons to detain the petitioner under preventive detention;

(c) That the relevant material, like copy of dossier, FIR, statements under Section 161 and 164-A Cr. P. C, seizure memos etc. etc. which have been relied upon in the grounds of detention, was never supplied to the detenu to enable him to make an effective representation nor he was made aware of his right to make representation against his detention to the detaining authority or the government.

5. Learned counsel for the petitioner has reiterated the aforesaid grounds while addressing his arguments.

6. On being put on notice, the detaining authority has filed a detailed reply affidavit and has justified the detention of the detenu on the ground that the activities in which the detenu was indulged are highly prejudicial to the security of the Union Territory, therefore, his remaining at large is a threat to the security

of Union Territory. The activities narrated in the grounds of detention have been reiterated in the reply affidavit filed by the detaining authority. The factual averments that the detenu was not supplied with the relevant material relied upon in the grounds of detention have been refuted. It is submitted that all the relevant material, which has been relied upon by the detaining authority, was provided to the petitioner at the time of execution of warrant and that the detenu never made any representation either to the detaining authority or to the Government.

7. Learned counsel for the petitioner submitted that the detenu was already under custody but the detaining authority, in the grounds of detention, has indicated that there is every likelihood of the detenu being admitted to bail, therefore, passed the detention order. It is, thus, submitted that the impugned order of detention is vitiated for total non-application of mind on the part of detaining authority.

8. Having heard learned counsel for the parties and perused the record, I find substance in the submission of learned counsel for the detenu-petitioner that there is non-application of mind on the part of detaining authority. The detenu has been detained under preventive detention for his alleged involvement in subversive activities which led to the registration of various FIRs and 39 of ULA(P) Act and 7/25 Arms Act. The bail was granted in favour of the detenu but was not released instead detained under Public Safety Act, interestingly, did not bring the factum of detenu having been released on bail in FIRs registered against the detenu to the notice of detaining authority. It is because of this omission on the part of Senior Superintendent of Police, the detaining authority has categorically stated in the grounds of the detention that the detenu was under judicial remand and that there was every likelihood of his being admitted to bail. The detaining authority has also noted that there was well-founded apprehension based on report received from field information that the detenu, if released on bail, would again indulge in subversive activities.

9. The only precious and valuable right guaranteed to a detenu is of making an effective representation against the order of detention. Such an effective representation can only be made by a detenu when he is supplied the relevant grounds of detention, including the materials considered by the detaining authority for arriving at the requisite subjective satisfaction to pass the detention order. Since the material is not supplied to the detenu, the right of the detenu to file such representation is impinged upon and the detention order is resultantly vitiated. Judgements on this point, both of the Supreme Court and of various High Courts, including our own High Court, are galore. I may refer to one such judgment of the Supreme Court herein.

In Ibrahim Ahmad Batti v. State of Gujarat, (1982) 3 SCC 440, the Apex Court, relying on its earlier judgments in Khudiram Das v State of W. B., (1975) 2 SCR 81; Icchu Devi Choraria v. Union of India, (1980) 4 SCC 531, in paragraph 10 of the judgment, has held as under:

"Two propositions having a bearing on the points at issue in the case before us, clearly emerge from the aforesaid resume of decided cases: (a) all documents, statements and other materials incorporated in the grounds by reference and which had influenced the mind of the detaining authority in arriving at the requisite subjective satisfaction must be furnished to the detenu alongwith the grounds or in any event not later than 5 days ordinarily and in exceptional circumstances and for reasons to be recorded in writing not later than 15 days from the date of his detention, and (b) all such material must be furnished to him in a script or language which he understands and failure to do either of the two things would amount to a breach of the two duties cast on the detaining authority under Article 22(5) of the Constitution".

10. In Khudiramcase (supra), the Apex Court has explained what is meant by 'grounds on which the order is made' in context of the duties cast upon the detaining authority and the corresponding rights accruing to the detenu under Article 22(5).

11. In view of aforesaid, it is clear that either there is lapse on the part of police to provide all relevant material to the detaining authority or there is lack of application of mind on the part of detaining authority. The fact, however, remains that at the time of passing of the detention order, the detaining authority was not aware whether the detenu was in police/judicial custody or he stood released on bail. It is difficult for me to say as to what impact it would have made on the satisfaction of the detaining authority but it cannot be denied that it was a relevant information that was required to be produced before the detaining authority to enable it to derive subjective satisfaction with regard to necessity of placing the detenu under preventive detention.

12. The non-application of mind by the detaining authority is fatal and goes to the root of the detention and, therefore, is sufficient to vitiate the impugned order of detention. For that reason, there is hardly any necessity to consider other grounds of challenge urged by the learned counsel for the petitioner.

13. In view of the aforesaid position, this petition is allowed and the impugned order of detention 20/DMS/PSA/2019 dated 10.08.2019 is quashed. The Detenu Bilal Ahmad Kumar son of Abdul Salam Kumar resident of Hilal Imam Sahib Shopian, District Shopian is directed to be released from preventive custody forthwith. No order as to costs.

14. Registrar Judicial of this Court shall send copy of the judgment to Director Prisons and Jail Superintendent concerned for compliance of the order forthwith. Detention records be returned to Mr. Asif Maqbool, Dy AG.

Disposed of.