

(2023) 06 J&K CK 0031

In the Jammu And Kashmir High Court

Case No : Writ Petition (Criminal) No. 750 Of 2022

Bilal Ahmad Sheikh

APPELLANT

Vs

Union Territory Of J&K And Another

RESPONDENT

Date of Decision : 14-06-2023

Acts Referred:

Constitution Of India, 1950 — Article 22(5)

Jammu And Kashmir Public Safety Act, 1978 — Section 13

Citation : (2023) 06 J&K CK 0031

Hon'ble Judges : Tashi Rabstan, J

Bench : Single Bench

Advocate : Asif Maqbool, Zahid Ahmad

Final Decision : Disposed Of

Judgement

Tashi Rabstan, J

1. Divisional Commissioner Kashmir– respondent no.2 herein, by Order no. DIVCOM-“K”/278/2022 dated 19.10.2022, has placed Bilal Ahmad Sheikh son of Lt. Ghulam Qadir Sheikh resident of Tujgari Mohalla Sheikh Colony District Srinagar (for brevity “detenu”) under preventive detention to prevent him from committing any of the acts within the meaning of Illicit Traffic in Narcotic Drugs and Psychotropic Substances Act, 1988. It is this order of which petitioner is aggrieved and seeks quashment thereof.

2. Reply Affidavit has been filed by respondents, in which they fervently resist the petition. Detention record has also been produced by counsel for respondents to substantiate contents contained in Reply Affidavit.

3. I have heard learned counsel for parties. I have gone through detention record and considered the matter.

4. Perusal of impugned detention order makes it known that on the basis of dossier placed before detaining authority by Senior Superintendent of Police,

Srinagar, vide no. LGL/Det-PIT/2022/20286-89 dated 24.09.2022, detaining authority was satisfied that with a view to prevent detenu from acting in any manner within the meaning of Illicit Traffic in Narcotic Drugs and Psychotropic Substances Act, 1988, it is necessary to detain detenu under necessary provisions of law. So, it is on the basis of dossier and other connected material/documents that impugned detention order has been issued by detaining authority.

5. The precise and only contention of the detenue is that the detenue could not make effective representation in terms of the provisions of the law admissible to the field because of non supply of the complete documents relied upon by the respondents in the grounds of detention. The perusal of the detention record enclosed with the copy of the execution warrant and also the grounds of detention and other relevant record, whereby, the one Farooq Ahmad ASI No. 195/S (EXK No. 901704) of Police Station Nowhatta has taken the custody of the detenue namely Bilal Ahmad Sheikh on 21.10.2022 for execution of detention warrant at District Jail Poonch on 22.10.2022, and contents of detention warrant and grounds of detention have been read over to the detenue in English and explained to him in Urdu/Kashmiri language which the detenue understood fully in lieu of which his signature has been obtained. Moreover, a copy of the detention warrant 01 leaf, grounds of detention 02 leaves, notice of detention 1 leaf and other relevant record 2 leaves, total 6 leaves have been handed over to the detenue so as to make representation to the Government as well as to the detaining authority against his detention order. The record, as noted above, does not indicate, anything regarding supply of copy of the dozier which otherwise is consisting of 4 leaves, even the counter affidavit filed by the respondents is also silent in this regard. Therefore, non supply of the dozier to the detenue assumes importance in the facts and circumstances of the case. It needs no emphasis, that detenu cannot be expected to make a meaningful exercise of his Constitutional and Statutory rights guaranteed under Article 22(5) of the Constitution of India and Section 13 of the J&K Public Safety Act, 1978, unless and until the material on which detention order is based, is supplied to him. If detenu is not supplied the material, on which detention order is based, he will not be in a position to make an effective representation against his detention order. Failure on part of detaining authority to supply material, relied at the time of making detention order to detenu, renders detention order illegal and unsustainable. While saying so, I draw the support from the law laid down in Thahira Haris Etc.

Etc. v. Government of Karnataka, AIR 2009 SC 2184; Union of India v. Ranu Bhandari, 2008, Cr. L. J. 4567; Dhannajoy Dass v. District Magistrate, AIR, 1982 SC 1315; Sofia Gulam Mohd Bham v. State of Maharashtra and others AIR 1999 SC 3051; and Syed Aasiya Indrabi v. State of J&K & ors, 2009 (I) S.L.J 219.

6. The Supreme Court in Abdul Latief Abdul Wahab Sheikh v. B.K. Jha, 1987 (2) SCC 22 has made it clear that it is only the procedural requirements, which are the only safeguards available to detenu, that is to be followed and complied with

as the Court is not expected to go behind the subjective satisfaction of detaining authority. In the present case, procedural requirements, as discoursed and noted above, have not been followed and complied with by respondents in letter and spirit and as a corollary thereof, petition on hand requires to be allowed.

7. For the foregoing reasons, this petition is disposed of and detention Order no. DIVCOM-"K"/278/2022 dated 19.10.2022, passed by Divisional Commissioner, Srinagar, is quashed. Respondents, including Jail Superintendent concerned, are directed to release the detenu forthwith, provided he is not required in any other case. Disposed of.

8. Detention record be returned to the learned counsel for respondents.