

(2019) 09 J&K CK 0073

In the Jammu And Kashmir High Court

Case No : Habeas Corpus Petition (HCP) No. 100 Of 2019, [WP(Cr1) No. 100 Of 2019]

Faisal Amin Mir

APPELLANT

Vs

State Of Jammu & Kashmir And Anr

RESPONDENT

Date of Decision : 20-09-2019

Acts Referred:

Public Safety Act, 1953 — Section 15
Constitution Of India, 1950 — Article 22(3)

Citation : (2019) 09 J&K CK 0073

Hon'ble Judges : Ali Mohammad Magrey, J

Bench : Single Bench

Advocate : M. A. Qayoor, AsifMaqbool

Final Decision : Dismissed

Judgement

Ali Mohammad Magrey, J

1. Challenge in this petition is thrown to Order No. 1 59/DMS/PSA/20 19 dated 26.02.20 19, passed by the District Magistrate, Shopian- respondent No.2 herein (for short "detaining authority") placing under preventive detention Faisal Amin Mir Chota GeelaniS/o Mohammad Amin Mir Rio BonbazarShopian, District Shopian (for brevity the "detenu") with a view to preventing him from acting in any manner prejudicial to the maintenance of public order and has been lodged in Central Jail, Kot Bhalwal, Jammu.

2. The detention order, inter a/ia, is challenged on the grounds:

a) That there are no compelling reasons given in the order or the grounds of delentior.' to lake the detenu in prc'venlive detention, moreso in view of the fact that as on the date of passiig of the aforesaid order of detention, the detenu was already' in custody;]

b) That the detenu has not been provided the material Jb;ming basis of the detention order, to make an effective representation against his detention order;

c) That the grounds of detention have not been furnished to the detenu in a language which he understood.

d) That the detention order suffers from non-application of mind as the Detaining Authority did not take note of the fact that the detenu had been in the preventive detention and was discharged also of the allegations forming basis of such detention

3. Pursuant to notice respondents appeared through their learned counsel and filed the counter affidavit stating therein that the detention order is well founded, in fact and law, and seeks dismissal of the Habeas Corpus Petition.

4. Mr. M. A. Qayoom, learned counsel for the detenu, has invited the attention of this Court to the detention order bearing No. 131/DMS/PSA/2018 dated 05.09.2018, in terms whereof the detenu namely Faisal Amin Mir Chota Geelani was detained and lodged in Central Jail, Kot Bhalwal, Jammu. It is submitted that the said detention order was challenged before this Court in HCP No. 279/2018 and this Court in terms of final order/Judgment dated 20.12.2018, while allowing the petition quashed the detention order. The relevant portion of the Judgment is reproduced as under:-

The cumulative effect of the aforesaid discussion leads to the only conclusion, i.e., the order of detention impugned bearing No. 131/DMS/PSA/2018 dated 05.09.2018, passed by respondent No. 2-District Magistrate, Shopian is not valid, as such, quashed. Further custody of the detenu shall be governed by the order as shall be passed by the Court of competent jurisdiction relating to the criminal cases registered against him."

5. Learned counsel for the detenu submitted that the detenu in terms of said order of this Court dated 20.12.2018, was required to be released, but instead of releasing the detenu, the detaining authority retained the custody and detained him in terms of detention order dated 05.09.2018.

6. The learned counsel for the petitioner has raised primarily four issues before the Court questioning the validity of the detention. The first point taken by the learned counsel for the petitioner is that the detention order was passed while the detenu was already in custody even after quashing of earlier detention order. In these circumstances, it was submitted by the learned counsel for the petitioner, the detaining authority ought to have satisfied himself with the fact that there was imminent likelihood of release of the detenu in that case and that it was necessary to detain the detenu in order to prevent him from indulging in prejudicial activities. According to the learned counsel for the petitioner-detenu, there is no such satisfaction recorded in the grounds of detention. He placed reliance on the decision of the Supreme Court in the case titled, "Anant v. State of Maharashtra reported as AIR 1987 Supreme Court, 137; Suija Prakash Sharma v. State of U.P. and others: 2017 (II) SLJ 650; AIR 1999 Supreme Court 3051; 1994 SCC (Cr1) 1691; 2007 (I) SLJ 136, to submit that since the said satisfaction was not recorded, the detention order was vitiated.

7. The second point taken by the learned counsel for the petitioner was that non-supply of relevant material documents also vitiated the detention order. In this context, it was the case of the petitioner-detenu that no documents at all were supplied to the petitioner-detenu. The non-supply of relevant documents seriously undermines the capacity of a detenu to make an effective representation against the detention order and that itself would be a ground to declare the detention void.

8. The third point raised by the learned counsel for the petitioner was based on non-application of mind of the detaining authority with reference to having not mentioned that the earlier detention was; quashed by the Court.

9. The fourth point raised by the learned counsel for the petitioner-detenu was based on vagueness in grounds of detention.

10. The learned counsel for petitioner (detenu) further submits that the detenu has not been provided the material referred to in the grounds of detention resultantly the right of making effective representation against the impugned order of detention, as enshrined under Article 22 (3) of the Constitution, has been violated.

11. On the other hand, Mr. Asif Maqboo, learned GA, defended the order of detention, and he responded to each of the points. With regard to the first point he submitted that there is a mention in the grounds of detention about the arrest of the detenu with reference to the various earlier FIRs as also to new six FIRs in which the detenu was again detained. Therefore, according to him, the detaining authority was aware of the fact that the detenu was already in custody when the detention order was passed. He, therefore, submitted that the point raised by the learned counsel for the petitioner on this score was untenable.

12. With regard to the plea of non-supply of material documents, Mr. Asif Maqbool, learned GA, placed before me the record pertaining to the detention. On going through the same, I find that there is a signed document said to have been signed by the detenu, Faisal Amin Mir, in English. The said document is titled "Receipt of Grounds of Detention".

The text of the said document is set out herein below:

13. 'RECEIPT OF GROUNDS OF DETENTION

Received the detention order (01) leaf, Notice of Intention to th. detenu (01 leaf), Grounds of detention (04 leaves), copies of FIR (06 leaves) Total 12 leaves through executing officer SI Mohd Yousuf No. 236-A of P/S Zainpora at Central Jail Janintu Kot Balwal today on 08.03.20 19, by reading over in English language and explained to me in Kashmiri language which I understood fully. I have been also informed that I can make representation to the Government against this detention order if I so desire.

Handed

over

by

Attested
over by

Taken

Sd:-
Sd:-

Sd:-

SI Mohd Yousuf
Faisal
Arnin Mir @Chota Geelani
No. 236-A

so Mammad Amin Mir

PS Zainpora

R/c F: onbazar Shopian

14. Based upon the said receipt, Mr. Asif Maqbool, learned GA submits that the grounds of detention had been supplied along with other relevant documents and, therefore, the petitioner-detenu cannot make any grievance on this ground.

15. With regard to the non-application of mind, detaining authority having not mentioned in the detention order that earlier detention was quashed. It is very candidly mentioned in the new grounds of detention that the earlier detention was quashed, but it needs special mention as reported by the agencies that during the detention period at Kotbailwal the detenu have not desisted from inculcating hatred by propagating the secessionism among the jail inmates especially those who were jailed in connection with anti-national activities as such have been able to flare up their cherished goal of freedom from India by resorting to violent means in this respect the detenu have been ably directed and guided by hard core terrorists lodged in the said jail. With regard to plea of vagueness of the grounds is concerned, Mr. Asif Maqbool, learned GA submits that the grounds are clear and without any ambiguity.

16. Mr. Asif Maqbool, learned GA, submits that insufficiency of supply of material shall not form a ground for vitiating the detention of the detenu.

He further submits that the detenu was required to file representation on the material whatever supplied and could have projected the grounds of non-supply of the material before the detaining authority, which he has failed, therefore, non-supply of material vitiates the detention, has no substance.

He further averred that there is no non-application of mind or vagueness in grounds. He has referred to and relied upon the Judgment reported as AIR 2001 Supreme Court 301 titled R. Keshava Vs. M. B. Prakash and Ors.

18. Mr. Asif Maqbool, GA further, submits that the impugned order of detention is

well founded and there is nothing had about it. He submits that the detenu has been provided the material relied upon by the detaining authority while detaining him in second detention. He further submits that the detenu has also been informed about his right of making representation against his detention. He submitted that the detaining authority has fully applied its mind while issuing the detention order and there is nothing on record to controvert it. Learned State Counsel referred to and relied upon the law laid down in 1981 (4) SCC 216; AIR (SC) 7975 1143, 2002 (6) SCC 735 ; AIR 2000 SC 301.

19. Heard learned counsel for the parties. Perused the record and considered the matter. Photo copy of detention record has been produced by the learned counsel for respondents.

20. Perusal of the records would reveal that the detenu has been furnished the grounds of detention along with the requisite material. He has also been informed about his right of making representation against his detention, but the detenu has chosen not to make the representation, therefore, the fault, if any, is attributable to the detenu and not to the detaining authority. Thus, the ground raised vis-à-vis non-furnishing of material to the detenu is rejected.

21. The perusal of the record would further reveal that the grounds of detention have been explained to the detenu in the language he understands and the copy has been handed over to him along with the records and the detenu has been informed about his right of making representation against his detention. This would mean that the requirement of Section 15 of the Public Safety Act has been fulfilled.

22. The next contention of the learned counsel for petitioner that the impugned order is an outcome of non-application of mind is also belied by the records produced by the learned State Counsel. The detailed grounds of detention and the records referred to by the detaining authority were sufficient to derive satisfaction as regards the detention of detenu under the provisions of the Act. Thus the order does not appear to be suffering from non-application of mind.

23. As per the settled position of law if a detention order is issued on more than one ground independent of each other, the detention order will survive even if one of the grounds is found to be unfound or legally unsustainable. In the present case the detention order is issued on more than one ground independent of each other, therefore, the detention order does not get vitiated even if one of the grounds taken in support of the petition is found affirmative. My this view is fortified by a law laid down by the Supreme Court in case titled 'Gautam Jam v. Union of India' and anr. ", reported as 2017 (1) Jammu Kashmir Law Times, Vol. 1 (SC) p. 1.

24. The next ground taken by the detenu that the detaining authority did not record as to under which compelling reasons the detenu is required to be kept in custody under preventive laws when he was already in jail and was not released even after quashing of the earlier detention order.

26. Since the court has already held that the detention survives even if one of the grounds taken in support of the petition remains unexplained or proves to be bad in law, therefore, the detention order is maintained in absence of any explanation on this count by the respondent.

27. In view of the above fact situation and having regard to the law laid down by the Hon'ble Supreme Court, this petition fails and is dismissed as such. The impugned detention order challenged in it is set aside, accordingly, and is maintained. Photo copy of records returned to the learned State Counsel in the open court.