

(2023) 04 J&K CK 0014

In the Jammu And Kashmir High Court

Case No : Writ Petition (Criminal) No. 250 Of 2022

Faisal Ramzan Mir

APPELLANT

Vs

Union Territory Of Jk & Anr

RESPONDENT

Date of Decision : 13-04-2023

Acts Referred:

Constitution Of India, 1950 — Article 22(5)
Jammu And Kashmir Public Safety Act, 1978 — Section 8

Citation : (2023) 04 J&K CK 0014

Hon'ble Judges : Moksha Khajuria Kazmi, J

Bench : Single Bench

Advocate : Malik Mushtaq, Shabir Ahmad

Final Decision : Allowed

Judgement

Moksha Khajuria Kazmi, J

1. Through the medium of instant writ petition, quashment of Order No. 33 DMP/PSA/22 dated 16.04.2022, passed by the respondent No. 2- District Magistrate, Pulwama (hereinafter called 'Detaining Authority') in exercise of powers under Section 8 of the Jammu & Kashmir Public Safety Act, 1978, in terms whereof son of the petitioner namely, Faisal Ramzan Mir S/O Mohammad Ramzan Mir R/O Dadsoora Tehsil Tral District, Pulwama (for short 'detenue') was ordered to be detained and lodged in Central Jail Kotbhalwal, Jammu, has been sought.

2. Though the detention order has been challenged on several grounds, but the main ground taken by the petitioner is that the order has been passed without application of mind, as the allegations attributed to the detenue as per grounds of detention as also in the dossier are fabricated and have no nexus with the detenue; that the name of the detenue has been reflected in the detention order as Faisal Ramzan Dar instead of Faisal Ramzan Mir which clearly depicts non-application of mind on the part of the Detaining Authority; it has been further urged that the grounds of detention are vague, non-existent and no prudent man

can make a representation against such allegations; the constitutional and statutory procedural safeguards have not been followed in the instant case, inasmuch as, the entire material which formed basis of the impugned detention order has not been supplied to the detainee.

3. The respondents in their counter have tried to defend the impugned detention order, stating therein that the Detaining Authority after getting satisfied on the basis of the material made available before him came to the conclusion, that it is necessary to prevent the detainee from acting in any manner prejudicial to the 'Security of State, and placed him under preventive detention. It is submitted that the detention order has been passed strictly in accordance with the provisions of J&K Public Safety Act, 1978 (for short 'the Act') and the procedural safeguards prescribed under the provisions of the Act have been followed and the rights guaranteed to the detainee under the Constitution are protected.

4. I have heard learned counsel for the parties and perused the record produced by learned counsel for the respondents.

5. During the course of arguments, Mr. Malik Mushtaq, learned counsel for the petitioner raised many grounds but laid main emphasis on the ground that the material/documents on which the impugned detention order has been passed have not been provided to the detainee, resultantly, he couldn't make an effective representation. It has been further submitted that the grounds of detention are cryptic, insofar as the grounds of detention do not disclose as to how the detainee is affiliated with the banned organization of "Ansar Gazwat-ul-Hind (AGUH). The detainee was shown to be involved in FIR No. 37/2022, of Police Station Tral, and is still in police custody.

6. The ground that entire material has not been furnished to the detainee also gets substantiated from the record which demonstrates that only few documents have been furnished to the detainee. The document styled as "receipt of grounds of detention & other relevant record" which bears signature of the detainee reflects that only grounds of detention/notice/detention order, (total five leaves) have been handed over to the detainee.

7. It is thus clear from the execution report, forming part of the detention record, that police dossier, copies of FIR and statements of witnesses have not at all been supplied to the detainee. Therefore, the arguments advanced by Mr. Malik, learned counsel for the petitioner that entire material relied upon by the detaining authority, while framing the grounds of detention, has not been supplied to the detainee, gains significance. The detainee has thus been prevented from making an effective representation against his detention.

8. It needs no emphasis that the detainee cannot be expected to make an effective and purposeful representation against his detention order which is his constitutional right, guaranteed under Article 22(5) of the Constitution of India, unless the material on which the detention is based, is supplied to him in its entirety. The failure on the part of the Detaining Authority to supply the entire

material renders the detention order illegal and unsustainable under law. The support can be had from the judgments rendered in *Sophia Ghulam Mohd. Bham V. State of Maharashtra and others* (AIR 1999 SC 3051) and, *Tahira Haris Etc. V. Government of Karnataka & Ors* (AIR 2009 SC 2184)

9. Another ground that has been raised by learned counsel for the petitioner while seeking quashment of the impugned detention order is that there is total non-application of mind on the part of the Detaining Authority while passing the detention order. Perusal of the detention record also demonstrates that the name of the detainee has also been written as Faisal Ahmad Dar instead of Faisal of Mir and furthermore, no cogent reason has been assigned either in the grounds of detention or in the dossier as to what prompted the Detaining Authority to place the detainee under preventive detention when he was already in police custody under Unlawful Activities Act, and there was no likelihood of him to be enlarged on bail in near future. The very basis of the satisfaction recorded by the Detaining Authority in issuing the impugned order of detention is inconsistent and suffers from complete non-application of mind.

10. Failure on the part of detaining authority to supply material, relied upon at the time of making detention order, to detainee, renders detention order illegal and unsustainable. I am drawing the support from the law laid down in *Thahira Haris 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.

11. 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.

12. The detention record be returned to the learned counsel for the respondents against proper receipt.