

(2024) 04 J&K CK 0022

In the Jammu And Kashmir High Court

Case No : Writ Petition (Criminal) No. 407 Of 2022

Fareed Ahmad Chouhan

APPELLANT

Vs

Union Territory Of J & K & Anr

RESPONDENT

Date of Decision : 23-04-2024

Acts Referred:

Constitution Of India, 1950 — Article 22(5)

Jammu And Kashmir Public Safety Act, 1978 — Section 8(1)(a), 10A, 13

Citation : (2024) 04 J&K CK 0022

Hon'ble Judges : M.A. Chowdhary, J

Bench : Single Bench

Advocate : M.A.Qayoom, Satinder Singh Kala

Final Decision : Disposed Of

Judgement

M.A.Chowdhary, J

1. District Magistrate, Kupwara (hereinafter called ?Detaining Authority?) in exercise of powers conferred on him under Section 8 (1) (a) of the Jammu & Kashmir Public Safety Act, 1978, passed the detention Order No. 19/DMK/PSA of 2022 dated 24.06.2022 (for short impugned order), in terms whereof Fareed Ahmad Chouhan (FAC) S/O Shams-ud-din R/O Reshiwari Awoora Tehsil Trehgam District Kupwara (for short ?detenue?) has been detained and lodged in Central Jail Jammu.

2. The impugned detention order has been challenged through the medium of the instant petition, being in breach of the provisions of Article 22(5) of the Constitution of India read with Section 13 of the J&K Public Safety Act, 1978.

3. Petitioner has contended that the Detaining Authority has passed the impugned detention order mechanically without application of mind, inasmuch as the grounds of detention are mere reproduction of the dossier submitted by the Senior Superintendent of Police concerned; further contended that the Constitutional and Statutory procedural safeguards have not been complied with,

in the instant case; that the allegations made against the detainee in the grounds of detention are vague and that the translated version of the documents/grounds of detention has not been provided to the detainee in Kashmiri /Urdu language which he fully understood. It has also been contended that the petitioner has not been informed before whom he had to make a representation against his detention.

4. The respondents, in their counter affidavit, have disputed the averments made in the petition and stated that they have followed the provisions of J&K Public Safety Act. It is contended that the detainee has been detained only after following due procedure; that the grounds of detention were read over to the detainee; that there has been proper application of mind for detaining the detainee and that the detainee has been provided all the material. The learned counsel for the respondents also produced the detention records to lend support to the stand taken in the counter affidavit.

5. Heard learned counsel for both the sides at length, perused the record and considered.

6. Learned counsel for the petitioner, while seeking quashment of the impugned order projected various grounds but the main ground that has prevailed during discussion is that the grounds of detention are replica of dossier which reflects non-application of mind on the part of detaining authority.

7. While going through the detention record, I also thought it proper to go through dossier prepared by police, which forms part of detention record. While comparing grounds of detention with dossier, it comes to fore that grounds of detention are ditto copy of dossier. It may be made clear here that detaining authority may get inputs from different agencies, including Senior Superintendent of Police of the concerned District, but the responsibility to formulate grounds of detention, however, exclusively rests with detaining authority. It is detaining authority, who has to go through the reports and other inputs received by him from concerned police and other agencies and on such perusal arrive at a subjective satisfaction that a person is to be placed under preventive detention. It is, thus, for detaining authority to formulate grounds of detention and satisfy itself that grounds of detention so formulated warrant passing of order of preventive detention. Perusal of grounds of detention, in the present case, would show that it is a verbatim copy of Dossier of Senior Superintendent of Police, submitted by him to the concerned Magistrate.

8. This Court as regards the verbatim reproduction of the Dossier in the grounds of detention, in case of *Naba Lone v. District Magistrate* (1988 SLJ 300), while dealing with a case where a similar situation arose, has observed:

"The grounds of detention supplied to the detainee is a copy of the police dossier, which was placed before the District Magistrate for his subjective satisfaction in order to detain the detainee. This shows total non-application of mind on the part of the detaining authority. He has dittoed the Police direction without applying his

mind to the facts of the case.”

9. This Court again in the case of Noor-ud-Din Shah v. State of J&K & Ors. (1989 SLJ 1), quashed the detention order, which was only a reproduction of the Dossier supplied to the detaining authority on the ground that it amounted to non-application of mind holding as under:

“I have thoroughly examined the dossier submitted by the Superintendent of Police, Anantnag, to District Magistrate, Anantnag as also the grounds of detention formulated by the latter, for the detention of the detainee in the present case, and I find the said grounds of detention are nothing but the verbatim reproduction of the dossier as forwarded by the Police to the detaining authority. He has only changed the number of paragraphs, trying in vain to give it a different shape. This is in fact a case of non-application of mind on the detaining authority. Without applying his own mind to the facts of the case. He has acted as an agent of the police. It was his legal duty to find out if the allegations levelled by the police against the detainee in the dossier were really going to effect the maintenance of public order, as a result of the activities, allegedly, committed by him. He had also to find out whether such activities were going to affect the public order in future also as a result of which it was necessary to detain the detainee, so as to prevent him from doing so. After all, the preventive detention envisaged under the Act is in fact only to prevent a person from acting in any manner which may be prejudicial to the maintenance of public order, and not to punish him for his past penal acts. The learned District Magistrate appears to have passed the impugned order in a routine manner being indifferent to the import of preventive detention as are detailed in the Act, Passing of an order without application of mind goes to the root of its validity, and in that case, the question of going into the genuineness or otherwise of the grounds does not arise. Having found that the detaining authority has not applied his mind to the facts of the case while passing the impugned order, it is not necessary to go to the merits of the grounds of detention, as mandated by Section 10-A of the Act.”

10. A similar situation arose in the case of ‘Jai Singh & ors. v. State of Jammu & Kashmir’ (AIR 1985 SC 764), before the Supreme Court. The Court quashed the detention as it found that there cannot be a greater proof of non-application of mind and that the liberty of a subject being a serious matter, it is not to be trampled with in this casual, indifferent and routine manner. The Court observed:

“First taking up the case of Jai Singh, the first of the petitioners before us, a perusal of the grounds of detention shows that it is a verbatim reproduction of the dossier submitted by the Senior Superintendent of Police, Udhampur to the District Magistrate requesting that a detention order may kindly be issued. At the top of the dossier, the name is mentioned as Sardar Jail Singh, father’s name is mentioned as Sardar Ram Singh and the address is given as village Bharkh, Tehsil Reasi. Thereafter it is recited “The subject is an important member of....”

Thereafter follow various allegations against Jai Singh, paragraph by paragraph. In the grounds of detention, all that the District Magistrate has done is to change the first three words "the subject is" into "you Jai Singh, S/O Ram Singh, resident of village Bharakh, Tehsil Reasi". Thereafter word for word the police dossier is repeated and the word "he" wherever it occurs referring to Jail Singh in the dossier is changed into "you" in the grounds of detention. We are afraid it is difficult to find greater proof of non-application of mind. The liberty of a subject is a serious matter and it is not to be trifled with in this casual, indifferent and routine manner."

11. The execution report available on the record reveals that the detainee has been supplied 05 leaves comprising detention order (one leaf), notice of detention (one leaf), grounds of detention (03 leaves), dossier of detention (Nil), copies of FIR, statements of witnesses and other relevant documents (01 leave). Thus, it appears that the detainee has not been provided the copy of dossier. Police dossier is the basic document on the basis of which the detaining authority derives its satisfaction and, as such, non-supply of the said document to the detainee strikes at the very root of the right of a detainee to make an effective representation against the order of detention.

12. Thus, the contention of the petitioner that whole of the material relied upon by the detaining authority while framing the grounds of detention, has not been supplied to him, appears to be well-founded. Obviously, the petitioner has been hampered by non-supply of the relevant material in making an effective representation against his detention before the concerned authority/Government.

13. The Hon'ble Apex Court in the judgment rendered in the case of "Sophia Gulam Mohd. Bham V. State of Maharashtra & Ors. (AIR 1999 SC 3051), has held as under:

"The right to be communicated the grounds of detention flows from Article 22(5) while the right to be supplied all the material on which the grounds are based flows from the right given to the detenu to make a representation against the order of detention. A representation can be made and the order of detention can be assailed only when all the grounds on which the order is based are communicated to the detenu and the material on which those grounds are based are also disclosed and copies thereof are supplied to the person detained, in his own language."

14. Learned counsel for the petitioner has also placed reliance on cases of 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; and Syed Aasiya Indrabi v. State of J&K & Ors, 2009 (I) S.L.J 219 in support of his contentions. .

15. The requirement of law is that whole of the record, on which the detention order is based, has to be made available to the detainee in the language that he understands. There is nothing like execution report on the record to suggest that

material relied upon to base detention has been furnished to the detenu in his language, so as to make an effective representation. The failure on the part of the detaining authority to supply material renders detention illegal and unsustainable.

16. For the foregoing reasons and the law stated hereinabove, this petition is allowed and the impugned detention Order No.19/DMK/PSA of 2022 dated 24.06.2022, passed by District Magistrate, Kupwara whereby petitioner was ordered to be detained, is quashed. Respondents, including Jail Superintendent concerned, are directed to release the detenu forthwith, provided he is not required in any other case(s). Detention record produced by Learned Counsel for the respondents be returned to him.

17. Disposed of accordingly.