

(2022) 11 J&K CK 0010

In the Jammu And Kashmir High Court

Case No : Writ Petition (Criminal) No. 288 Of 2021

Farooq Ahmad Chopan

APPELLANT

Vs

Union Territory Of J&K & Ors

RESPONDENT

Date of Decision : 04-11-2022

Acts Referred:

Constitution Of India, 1950 — Article 22(5)
Indian Penal Code, 1860 — Section 307
Arms Act, 1959 — Section 7, 27
Unlawful Activities (Prevention) Act, 1967 — Section 18, 20, 38, 39

Citation : (2022) 11 J&K CK 0010

Hon'ble Judges : Sanjay Dhar, J

Bench : Single Bench

Advocate : Bilal Ahmad Khan, Asif Maqbool, Ilyas Nazir Laway

Final Decision : Allowed

Judgement

Sanjay Dhar, J

1) By the instant petition, veracity and legality of the detention order No.59/DMP/PSA/21 dated 30.10.2021, issued by District Magistrate, Pulwama (for brevity "detaining authority") has been challenged. In terms of the aforesaid order, Farooq Ahmad Chopan son of Gh. Mohammad Chopan resident of Chopan Mohalla Seer Jagir Tehsil Aripal District Pulwama (for short "detenue") has been placed under preventive detention and lodged in Central Jail, Kothbalwal, Jammu.

2) The petitioner has contended that the Detaining Authority has passed the impugned detention order mechanically without application of mind, inasmuch as the allegations mentioned in the grounds of detention have no nexus with the detenue and the same have been fabricated by the police in order to justify its illegal action of detaining the detenue. It has been contended that the grounds of detention are vague, on the basis of which no prudent man can make a representation against such allegations. It has been further contended that the Statutory procedural safeguards have not been complied with in the instant case,

inasmuch as whole of the material which formed basis of the impugned detention order has not been supplied to the petitioner.

3) The respondents, in their counter affidavit, have disputed the averments made in the petition and insisted that the activities of detainee are highly prejudicial to the security of the State. It is pleaded that the detention order and grounds of detention along with the material relied upon by the detaining authority were handed over to the detainee and the same were read over and explained to him. That the grounds urged by the petitioner are legally misconceived, factually untenable and without any merit. To substantiate their stand taken in the counter affidavit, the respondents have produced the detention record.

4) I have heard learned counsel for parties and perused the record.

5) Learned counsel for the petitioner, while seeking quashment of the impugned order, projected various grounds but his main thrust during the course of arguments was on the ground that the detainee was not provided whole of the material to enable him to make an effective representation against his detention.

6) So far as the ground of challenge urged by the petitioner is concerned, a perusal of the detention record produced by learned counsel for the respondents reveals that certain material is stated to have been received by the petitioner on 31.10.2021. Report of the Executing Officer in this regard forms part of the detention record, a perusal thereof reveals that it bears the signature of the petitioner. According to it, copy of detention order (01 leaf), notice of detention (01 leaf), grounds of detention (02 leaves), dossier of detention (Nil), copies of FIR, statements of witnesses and other related relevant documents (Nil), total 04 leaves, have been supplied to him.

7) It is clear from the execution report, which forms part of the detention record, that copy of the police dossier has not at all been supplied to the detainee. If we have a look at the grounds of detention, it bears reference to FIR No.97/2021 for offences under section 307 IPC, 7/27 Arms Act and Sections 18, 20, 38 and 39 ULA(P) Act of Police Station, Tral. It was incumbent upon respondents to furnish not only the copy of the FIR but also the statements of witnesses recorded during investigation of the said FIR and other material on the basis of which petitioner's involvement in the said FIR is shown. Thus, 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 these vital documents in making an effective representation before the Advisory Board, as a result whereof his case has been considered by the Advisory Board in the absence of his representation, as is clear from the detention record. Thus, vital safeguards against arbitrary use of law of preventive detention have been observed in breach by the respondents in this case rendering the impugned order of detention unsustainable in law.

8) It needs no emphasis that the detainee cannot be expected to make an

effective and purposeful representation which is his constitutional right guaranteed under Article 22(5) of the Constitution of India, unless and until the material, on which the detention is based, is supplied to the detainee. The failure on the part of detaining authority to supply the material renders the detention order illegal and unsustainable. While holding so, I am fortified by the judgments rendered in *Sophia Ghulam Mohd. Bham V. State of Maharashtra and others* (AIR 1999 SC 3051) and, *Thahira Haris Etc. Etc. V. Government of Karnataka & Ors.* (AIR 2009 SC 2184).

9) 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.

10) The detention record be returned to the learned counsel for the respondents.