

(2021) 03 J&K CK 0105
In the Jammu And Kashmir High Court
Case No : Writ Petition (Crl) No. 270 Of 2019

Ghulam Hassan Wagay

APPELLANT

Vs

State Of Jk And Ors

RESPONDENT

Date of Decision : 10-03-2021

Acts Referred:

Jammu And Kashmir Public Safety Act, 1978 — Section 13
Jammu And Kashmir State Ranbir Penal Code, 1989 — Section 147, 148, 149, 307, 332, 336, 353, 427
Constitution Of India, 1950 — Article 22(5)

Citation : (2021) 03 J&K CK 0105

Hon'ble Judges : Rajnesh Oswal, J

Bench : Single Bench

Advocate : Wajid Haseeb, Asifa Padroo

Final Decision : Disposed Of

Judgement

1. The present petition has been filed by the petitioner through his wife seeking quashing of order dated 11th August 2019 bearing No.

50/DMK/PSA/19 (hereinafter referred to as "order impugned") issued by respondent No. 2 by virtue of which the petitioner has been detained

under the provisions of J&K Public Safety Act.

2. It is submitted that the petitioner was arrested on 10th August 2019 by Police Station Yaripora and thereafter the petitioner was detained by virtue

of the order impugned.

3. The order impugned has been challenged on the grounds that the grounds of detention are vague and on the basis of such vague grounds, no

prudent man can make an effective representation; that the petitioner has not been provided with the documents relied upon by respondent No. 2

while issuing order impugned; that the petitioner has not been informed as to the time frame within which he can make representation against the

order impugned, that there is delay of three years in passing the order impugned.

4. Counter stands filed in which it is stated that all the constitutional as well as procedural safeguards as envisaged by Article 22 (5) of the Constitution

of India and Section 13 of the J&K Public Safety Act have been followed by the respondents while issuing the order impugned. It is further stated in

the counter affidavit that the detaining authority has passed the order of detention after deriving a subjective satisfaction and the grounds of detention,

the order of detention as well as entire material relied upon by the detaining authority have been furnished to the petitioner. The said detention order

was executed by Shri Jangsheer Singh, ASI on 12th August 2019 and petitioner was handed over to Superintendent Central Jail Srinagar for lodgment.

The contents of the detention order and the grounds of detention were read over and explained to the detenu in Urdu/Kashmiri language which he

fully understands and in lieu of which his signatures have been obtained in the execution report. Further the case of the petitioner was referred to the

Advisory Board for its opinion and after considering the material, the Advisory Board opined that the detention of the petitioner is necessary and

thereafter, the said order was confirmed by the Government. The respondents have placed on record the detention record.

5. The petitioner has reiterated the grounds taken in the memo of petition during the course of arguments.

6. Per contra, Ms. Asifa Padroo, learned AAG submits that the detention order is legal and all the constitutional and procedural safeguards have been

strictly followed while issuing the impugned order.

7. Heard and perused the records.

8. The perusal of the grounds of detention reveal that the detaining authority has relied upon two FIRs i.e., FIR No. 20/2013 registered under Section

147, 148, 332, 353 RPC registered by P/S Yaripora, and FIR No. 87/2016 under Section 147, 148, 149, 336, 307, 427 RPC registered with P/S

Yaripora. The perusal of the execution report reveals that the detenu at the time of execution of the detention order on 12th August 2019, the detenu

was handed over copy of warrant (One Leaf), notice(One Leaf), ground of detention (Two Leaves) , i.e. total four leaves. As already mentioned

above, the detaining authority has relied upon two FIRs but these two FIRs have not been supplied to the detenu. This Court is of the opinion that the

detention order is not sustainable on the ground that the detenu (petitioner) has not been furnished the material relied upon by the detaining authority

so as to enable him to make a proper and meaningful exercise of his Constitutional right of making effective representation. It is only after the detenu is supplied all the material relied upon by the detaining authority while passing the detention order that he can make an effective representation to the

Detaining Authority and also to the Government and if the same is not done, he is deprived of his valuable constitutional right as well as statutory

right.. Reliance is placed upon the decision of Apex Court in *Thahira Haris v. Govt. of Karnataka*, reported in (2009) 11 SCC 438 and the relevant

para is reproduced as under:

“30. Our Constitution provides adequate safeguards under clauses (5) and (6) of Article 22 to the detenu who has been detained in pursuance of

the order made under any law providing for preventive detention. He has the right to be supplied with copies of all documents, statements and other

materials relied upon in the grounds of detention without any delay. The predominant object of communicating the grounds of detention is to enable the

detenu at the earliest opportunity to make effective and meaningful representation against his detention.”

9. Otherwise also, the respondent No. 2 has relied upon two FIRs for the purpose of issuance of detention order i.e., FIR No. 20/2013 under Section

147, 148, 332, 353 RPC registered with P/S Yaripora and FIR No. 87/2016 under Section 147, 148, 149, 336, 307, 427 RPC registered with P/S

Yaripora and after the year 2016, there is no whisper in the grounds of detention that the petitioner has ever indulged in any illegal activity that

necessitated the issuance of detention order by the respondent No. 2 in the year 2019. There is a delay of more than three years in passing the order

impugned from the date of last alleged illegal activity attributed to the petitioner.

10. The Apex Court in *Laxhman Khatik vs State of Bengal*, 1974 (4) SCC 1 while considering the detention order under the maintenance of

Maintenance of Internal Security Act, 1971, has held that prompt action in such matter should be taken as soon as the incident like those which are

referred to in the grounds have taken place. It is also profitable to take note of

the judgment of the Apex Court in case titled, Saeed Zakir Hussain

Malik vs State of Maharashtra, reported in (2012) 8 SCC 233. The relevant paragraph Nos. 27 and 28 read as under:

27) As regards the second contention, as rightly pointed out by learned counsel for the appellant, the delay in passing the detention order, namely, after 15 months vitiates the detention itself. The question whether the prejudicial activities of a person necessitating to pass an order of detention is proximate to the time when the order is made or the live-link between the prejudicial activities and the purpose of detention is snapped depends on the facts and circumstances of each case. Though there is no hard and fast rule and no exhaustive guidelines can be laid down in that behalf, however, when there is undue and long delay between the prejudicial activities and the passing of detention order, it is incumbent on the part of the court to scrutinize whether the Detaining Authority has satisfactorily examined such a delay and afforded a reasonable and acceptable explanation as to why such a delay has occasioned.

28) It is also the duty of the court to investigate whether casual connection has been broken in the circumstance of each case. We are satisfied that in the absence of proper explanation for a period of 15 months in issuing the order of detention, the same has to be set aside. Since, we are in agreement with the contentions relating to delay in passing the Detention Order and serving the same on detenu, there is no need to go into the factual details.

11. In view of what has been discussed above, on these counts only, the detention order dated 11th August 2019 bearing No. 50/DMK/PSA/19 is required to be quashed, and, as such, the same is quashed. The detenu is ordered to be released forthwith provided he is not required in any other case.

12. Detention record be returned.