
(2021) 01 J&K CK 0012

In the Jammu And Kashmir High Court

Case No : Letters Patent Appeal No. 200 Of 2019, CM No. 5147 Of 2019

Hameed Ganie

APPELLANT

Vs

State Of J&K And Another

RESPONDENT

Date of Decision : 29-01-2021

Acts Referred:

Unlawful Activities (Prevention) Act, 1967 — Section 10, 11, 13
Jammu And Kashmir Public Safety Act, 1978 — Section 10A
Constitution Of India, 1950 — Article 22

Citation : (2021) 01 J&K CK 0012

Hon'ble Judges : Sanjeev Kumar, J;Rajnesh Oswal, J

Bench : Division Bench

Advocate : Z.A Shah, A. Hanan, B.A.Dar

Final Decision : Allowed

Judgement

Sanjeev Kumar, J

1. This appeal filed under Clause 12 of the Letters Patent is directed against the judgment and order dated 22.07.2019 passed by the learned Single

Judge in WP(Crl) No.119/2019 [HCP No.119/2019] titled Dr. Hameed Ganie v. State of J&K and another, whereby the writ petition of the detenu

for quashing his detention has been dismissed.

2. Briefly stated, the facts, as projected by the appellant in his writ petition, which has been dismissed by the learned Single Judge in terms of the

impugned judgment, are that he came to be arrested on 22.02.2019 at 4 a.m. from his residence and sent to the Police Station, Humhama. He

remained in police custody for two days and thereafter shifted to Central Jail, Srinagar. On 09.03.2019, the appellant was admitted to bail, but was re-

arrested and escorted to Police Station, Humhama. He was immediately shifted

to District Jail, Kathua on 24.03.2019 and detained in terms of the detention order No.DMB/PSA/14 of 2019 dated 20.03.2019 passed by the District Magistrate, Budgam (hereinafter â??the Detaining Authorityâ?).

Feeling aggrieved of his detention, the appellant through his son Yasir filed a Habeas Corpus Petition (HCP No.119/2019). The impugned order of detention was challenged by the appellant, inter alia, on the ground that the order of detention had been passed by the Detaining Authority in a mechanical manner and without application of mind and, therefore, liable to be set aside. It was also alleged that the relevant material relied upon in the grounds of detention was never served upon the appellant so as to enable him to make effective representation to the Government against his detention and, therefore, the detention was violative of Article 22 of the Constitution and liable to be set aside. It was also urged before the Writ Court that at the time of passing of the detention order the appellant was already in police custody, but the Detaining Authority did not show any awareness and passed the detention order without proper application of mind.

3. The writ petition was resisted by the respondents vehemently. In the counter affidavit filed by the Detaining Authority, it was pleaded that the appellant was propagating the ideology of Jamat-e-Islami and had taken over the rein of the organization as its â??Ameerâ?. The sole aim of the appellant was to spread and deepen the ideology of the organization and work towards bringing about secession of the State of Jammu & Kashmir from Union of India and its consequent merger with Pakistan. It was stated that for his activities, which were inimical to the security of the State, the appellant was booked in FIR No.328/2009 under Section 13 of ULA(P) Act registered at Police Station, Shopian and FIR No.42/2019 under Sections 10, 11 and 13 of ULA(P) Act registered at Police Station, Budgam. Resultantly, it was contended that since the activities of the detainee were highly prejudicial to the security of the State and, therefore, it was imperative to keep him under preventive detention, so as to prevent him from indulging in his nefarious and anti-national activities. It was also pleaded before the Writ Court by the Detaining Authority that all procedural safeguards, including service of grounds of detention on the detainee, making the detainee aware of his right to make representation to the Government, were strictly adhered to and, therefore, there was no infirmity in the impugned order of

detention.

4. The Writ Court, after considering the rival contentions and going through the detention record, came to the conclusion that the Detaining Authority derived subjective satisfaction on the basis of adequate material before him for detaining the appellant and the Writ Court while examining the material, which has been made the basis of subjective satisfaction of the Detaining Authority, would not act as a Court of appeal and find fault with the satisfaction on the ground that on the basis of the material before the Detaining Authority another view was possible. The Writ Court did not find any merit in the writ petition and accordingly, dismissed the same. Dissatisfied and aggrieved by the judgment impugned, the appellant is before us in this appeal.

5. The impugned judgment of the Writ Court is assailed by the detenue, inter alia, on the grounds, which the appellant had urged before the Writ Court.

6. Having heard learned counsel for the parties and perused the record, we are of the view that the judgment of the Writ Court is not sustainable for more than one reason.

7. As is apparent from a bare reading of grounds of detention, the appellant at the time of detention was found involved in two FIRs i.e. FIR

No.328/2009, which is more than a decade old and FIR No.42/2019, which is recently registered in Police Station, Budgam. Interestingly, neither in the

dossier supplied by the Senior Superintendent of Police nor in the grounds of detention, there is any whisper as to whether the appellant was ever

arrested in the aforesaid FIR/FIRs. There is no awareness shown by the Detaining Authority with regard to the status of the appellant, who is

accused in FIR No.42/2009 under Sections 10, 11 & 13 of ULA (P) Act. The Detaining Authority has also not indicated any reason as to why the

substantive laws of the State were not sufficient to deter the appellant from pursuing his activities aimed at destabilizing the State and thereby

threatening its security.

8. No doubt, allegations against the appellant, as narrated in the grounds of detention, may justify his detention under preventive custody, so as to

prevent him from acting in any manner prejudicial to the security of the State, but the preventive detention law, which provides for depriving a citizen

of his liberty without putting him to trial is required to be adhered to

scrupulously. Once the appellant was booked in FIR No.42/2019, the State was well within its powers to arrest him and keep him in police/judicial custody. The appellant in his writ petition has categorically stated that he was arrested on 22.02.2019 at 4 a.m. from his residence and sent to Police Station, Humhama where he remained in custody for two days and thereafter sent to Central Jail, Srinagar. There is no reply to this averment made by the appellant in paragraph No.2 of the writ petition. The Detaining Authority in its affidavit is silent on the issue and has not explained as to in what connection the appellant was arrested on 22.02.2019 and how on 09.03.2019 he came to be admitted to bail by the Tehsildar, Budgam. All these factual assertions made by the writ petitioner in the writ petition ought to have been replied or rebutted by the Detaining Authority in its reply affidavit. In that view of the matter, learned counsel for the appellant is correct that the impugned order was vitiated in law, as the same was passed without proper application of mind by the Detaining Authority.

9. With regard to the reliance placed by the Writ Court on the judgment of *Gautam Jain v. Union of India*, AIR 2017 SC 230, a Division Bench of this Court has already dealt into the issue in the case of *Nissar Ahmed Qazi v. State of J&K and others*, LPA(HC) No.06/2019 decided on 27.11.2020.

The Division Bench has also drawn distinction between the grounds of detention on the basis of which a citizen is detained under preventive detention

laws and the grounds of challenge urged by such citizen to assail the detention order. What is envisaged under Section 10A of the J&K Public Safety

Act is a situation where detention is ordered on two or more grounds, which are separable and independent of each other. In these circumstances, the

Section provides that the order of detention was not to be deemed invalid or inoperative merely because one or some of the grounds is/are vague, non-

existent, not relevant, not connected or not proximately connected with such person or unfounded for any other reason whatsoever.

10. Viewed thus, in light of the distinction drawn in the case of *Nissar Ahmed Qazi* (supra), it is seen that in the instant case the subjective satisfaction

is fundamentally based on one ground i.e. activities, the appellant has been persistently involved in for over a period of time, if not prevented by putting

him under preventive detention, would pose serious threat to the security of the State. All other details including reference to the involvement of the

detenue in two FIRs only constitute subsidiary facts giving rise to a ground on the basis of which the Detaining Authority has arrived at a satisfaction

that the detention of the appellant under preventive law is imperative.

11. The plea of the appellant that the subjective satisfaction of the Detaining Authority, which is sine qua non for ordering detention under preventive

detention law, is vitiated by non-application of mind, is, strictly speaking, not a ground of detention but a specific ground of challenge raised to assail

the order of detention itself. Subjective satisfaction without taking relevant material into consideration and non-application of mind by the Detaining

Authority are the grounds that go to the root of the detention and vitiate it ab initio. In that view of the matter, we are of the considered view that the

judgment of Gautam Jain (*supra*) was not attracted in the case at hand.

12. The order of detention, for the foregoing reasons, is clearly vitiated by total non-application of mind by the Detaining Authority and it should have

been held so by the Writ Court.

13. In view of the above, we find merit in this appeal and the same is, accordingly, accepted. The judgment and order of the Writ Court impugned in

this appeal is set aside and the detention of the detenue is quashed. As a result, the respondents are directed to release the detenue forthwith, if not

required in any other case.