

(2023) 09 J&K CK 0008

In the Jammu And Kashmir High Court

Case No : Latters Patent Appeal No. 150 Of 2023

Hamid Farooq Bhat

APPELLANT

Vs

UT Of Jammu And Kashmir And Others

RESPONDENT

Date of Decision : 08-09-2023

Acts Referred:

Jammu And Kashmir State Ranbir Penal Code, 1989 — Section 147, 148, 149, 336
Unlawful Activities (Prevention) Act, 1967 — Section 13

Citation : (2023) 09 J&K CK 0008

Hon'ble Judges : Sanjeev Kumar, J;Rajesh Sekhri, J

Bench : Division Bench

Advocate : Mubashir Majid Malik, Younis Hafiz

Final Decision : Allowed

Judgement

Sanjeev Kumar, J

1 This intra-Court appeal is directed against the judgment dated 12-08-2022 passed by a Single Bench of this Court [‘the Writ Court’] in WP(Crl) No. 246/2021 titled ‘Hamid Farooq Bhat vs. UT of Jammu and Kashmir and another, whereby the Writ Court has declined to set aside the order of detention of the petitioner issued by the District Magistrate, Kulgam vide his No. 10/DMK/PSA/2021 dated 18.10.2021.

2 Before we advert to the grounds of challenge urged by learned Senior Counsel appearing for the appellant, it is necessary to notice few relevant facts. On the basis of some material such as dossier and other connected documents, like copies of FIRs registered against the appellant, the District Magistrate, Kulgam vide his order dated 18.10.2021 ordered detention of the appellant under Public Safety Act, 1978 [‘the Act’] with a view to prevent him from acting in any manner prejudicial to the security, sovereignty and integrity of the State. Immediately on passing of the order of detention, the grounds of detention were served upon the appellant.

3 From a reading of the grounds of detention, it transpires that the activities, which the Detaining Authority found prejudicial to the security, sovereignty and integrity of the State, are such, in respect of which, two FIRs have been registered in Police Station Qaimoh in the year 2018 and 2021. Both the FIRs have been registered for commission of offences under Sections 147, 148, 149, 336 RPC and under Section 13 UA (P) Act. On the basis of allegations in the FIRs aforesaid, the Detaining Authority has come to the conclusion that the appellant is a great threat for security, sovereignty and integrity of the State of Jammu and Kashmir being a hardcore over ground worker of banned HM and TRF militant outfit, in that, he had been found providing food, shelter and other logistics to the active terrorists. The appellant has been found to be in touch with Pakistan based terrorist leaders and has been found taking instructions through a variety of recently available communication technologies that are encrypted and very difficult to decipher. Be that as it is, the Detaining Authority recorded its satisfaction that, with a view to prevent the appellant from indulging in activities prejudicial for the security, sovereignty and integrity of the State, it was necessary to place the appellant under preventive detention.

4 Feeling aggrieved by his detention, the appellant filed WP(Crl) No. 246/2021 before the Writ Court which was contested by the respondents by filing counter affidavit. The Writ Court, after considering the rival contentions and having gone through the detention record, came to the conclusion that there was no 'non-application of mind' on the part of Detaining Authority and that the activities, the petitioner had been indulging in, had the potential of great threat for security, sovereignty and integrity of the State. The Writ Court, therefore, upheld the order of detention passed by the Detaining Authority and dismissed the writ petition vide its judgment dated 12-08-2022. It is this judgment of the Writ Court which is impugned before us in this appeal.

5 The impugned judgment is assailed by the appellant on the ground that the detention order impugned before the Writ Court was an outcome of total non-application of mind and, therefore, not sustainable in law. The procedural formalities laid down under the Act, which are mandatory in nature, have not been complied with. The Writ Court, however, did not consider this aspect of the matter and dismissed the petition without assigning legally sustainable reasons.

6 Mr. S. T. Hussain, learned Senior Counsel appearing for the appellant submits that the basis of the detention order is registration of 02 different FIRs against the appellant, out of which, one is old and, therefore, could not have formed the basis of satisfaction arrived at by the Detaining Authority to place the appellant under preventive detention. Learned Senior Counsel would further submit that the appellant in both the above stated FIRs had already been bailed out by the competent Courts at the time of passing of the impugned order of detention. It is, therefore, submitted that the impugned order of detention passed by the Detaining Authority was completely without application of mind.

7. Per contra, learned counsel appearing for the respondents would submit that

the order of detention impugned in the writ petition was passed by the Detaining Authority after arriving at its subjective satisfaction, which subjective satisfaction of the Detaining Authority cannot be made subject matter of judicial review. He would further argue that all legal and procedural formalities before and after detention of the appellant under Public Safety Act have been duly complied with. He further submits that the Writ Court has taken into consideration all aspects of the matter and the grounds which learned counsel for the appellant urged before this Court and rightly came to the conclusion that there was no procedural or other illegality in the matter of detention of the appellant and that all procedural safeguards laid down in Jammu & Kashmir Public Safety Act were complied with. He, therefore, urges us to maintain the judgment of the Writ Court and uphold the order of detention so that the appellant is prevented from repeating his activities found prejudicial to the security of the State by the Detaining Authority.

8. Having heard learned counsel for the parties and perused the material on record, we are of the considered opinion that the judgment impugned is not sustainable in law and, therefore, deserves to be interfered with. Amongst the various grounds of challenge urged by the learned senior counsel appearing for the appellant, we find substance in the argument that the detention of the appellant suffers from total non-application of mind.

9. Indisputably, the basis of satisfaction arrived at by the Detaining Authority to detain the appellant under the J&K Public Safety Act, 1978 is two FIRs registered against the appellant in Police Station, Qaimoh i.e. FIR No.67/2018 and 18/2021. It was specifically pleaded by the appellant in ground (iv) of the writ petition that the appellant was never arrested or subsequently bailed out in FIR No.67/2018. This specific pleading of the appellant has not been rebutted. Similarly, the appellant is shown to be involved in FIR No.18/2021, in which, as mentioned in the grounds of detention, he was bailed out. The Detaining Authority was, though, aware that the appellant was involved in FIR No.18/2021 registered under Section 13 of UA(P) Act and was subsequently released on bail by the competent court of law, yet it failed to indicate anything to demonstrate that there was likelihood of the appellant indulging in or repeating activities for which he stood booked in FIR No.18/2021.

10. From a reading of the grounds of detention, it would clearly come out that the Detaining Authority has relied heavily upon the activities of the appellant calculated to endanger the security of the State as are narrated in FIR Nos.67/2018 and 18/2021. As we have found that the appellant was not involved in FIR No.67/2018 and therefore, allegations contained in FIR No.67/2018 could not have been attributed to the appellant. In these circumstances, it is difficult for this Court to come to any definite conclusion as to whether absent FIR No.67/2018 registered against the appellant, the Detaining Authority could have still arrived at the subjective satisfaction only on the basis of allegations in FIR No.18/2021 to come to a conclusion that preventive detention of the appellant was imperative to restrain him from acting in any manner prejudicial to the

security of the State. The appellant, as is discernible from the grounds of detention, is being investigated for commission of offence under Section 13 UA(P) Act in FIR No.18/2021 registered in Police Station, Qaimoh. The Detaining Authority has not indicated whether or not the investigation has been completed and the challan presented in the competent Court of law.

11. Be that as it may, the law of the land would take care of the appellant, if he is found involved in FIR No.18/2021 and is held guilty by the competent court of law on the basis of evidence led by the prosecution. Unless, the Detaining Authority is of the view that there is likelihood of the appellant, who is since on bail, indulging in similar activities in future and that it is necessary to prevent him from so doing by placing under preventive detention, the detention order cannot be passed.

12. We have gone through the grounds of detention carefully, which apart from suffering from total non-application of mind, do not indicate the satisfaction recorded by the Detaining Authority as to the likelihood of the appellant indulging in similar activities after having been released on bail.

13. Since the detention order, for the reasons stated above, is completely vitiated, as such, we do not deem it appropriate to deal with other grounds of challenge urged by the learned counsel for the appellant.

14. The Writ Court has, though, dealt with the ground of challenge based on non-application of mind by the Detaining Authority in passing the detention order, yet we find that the Writ Court relying upon the judgment of Union of India v. Dimple Happy Dhakad, AIR 2019 SC 3428 has held that the satisfaction of the Detaining Authority is subjective in nature and, therefore, not a subject matter of judicial review. While we do not dispute the legal position enunciated by the Writ Court, but we, on facts, find that the Detaining Authority had not only taken into consideration the allegations contained in FIR No.67/2018, which was not an FIR registered against the appellant but the Detaining Authority had also failed to record its satisfaction with regard to possible likelihood of the appellant indulging in similar activities after being bailed out by the competent court of law in the FIR registered against him i.e. FIR No.18/2021 in Police Station, Qaimoh.

15. We also agree with the learned counsel for the appellant that the FIR No.18/2021 was registered against the appellant on 28.04.2021 and there is no allegation by the respondents that after having been released in the said FIR, the appellant indulged in any activity which could be viewed as activity prejudicial to the interests of security of the State.. This aspect of the matter, which was highlighted by the learned senior counsel appearing for the petitioner, before us has not been considered by the Writ Court.

16. For the foregoing reasons, we find merit in this appeal and, accordingly, allow the same. The judgment passed by the Writ Court is set aside and the order of detention bearing No.10/DMK/PSA/2021 dated 18.10.2021 issued against the appellant is quashed. The respondents are directed to release the appellant/

detenue from the preventive custody forthwith, provided he is not required in any other case.