

(2020) 02 J&K CK 0038

In the Jammu And Kashmir High Court

Case No : Writ Petition (C) No. 329 Of 2020, Cm No. 688 Of 2020

Harvinder Pal Singh

APPELLANT

Vs

Union Territory Of J&K And Others

RESPONDENT

Date of Decision : 10-02-2020

Acts Referred:

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

Citation : (2020) 02 J&K CK 0038

Hon'ble Judges : Sanjeev Kumar, J

Bench : Single Bench

Advocate : A.K Sawhney

Final Decision : Dismissed

Judgement

1. In this petition, the petitioner seeks a writ in the nature of writ of certiorari to quash the detention order issued by the District Magistrate, Jammu

vide its order No. 17 of 2019 dated 23.10.2019, whereby the petitioner has been detained under Section 8 (1) (a) of the J&K Public Safety Act, 1978

with a view to prevent him from acting in any manner prejudicial to the maintenance of public order. The order of detention is yet to be executed. The

detention order at pre-execution stage has been challenged by the petitioner, inter-alia, on the ground that the same suffers from total non-application

of mind of the detaining authority, which has been misled by the respondent Nos. 1 and 2.

2. The order impugned is also assailed on the ground that on the basis of some F.I.Rs and material, the detention order was issued against the

petitioner in the year, 2010 vide order No. 36/PSA of 2010 dated 17.07.2010. The aforesaid order of detention was executed and the petitioner was

put under detention but later on, this Court vide its judgment dated 16.12.2010,

quashed the detention order and set the petitioner free. The detaining authority, i.e. District Magistrate, Jammu has once again issued the detention order on the selfsame grounds and, therefore, not sustainable in law. It is contended that the order impugned is nothing but reproduction of the dossier submitted by respondent No. 4 and, therefore, there is no independent application of mind by the detaining authority.

3. Heard learned counsel for the petitioner and perused the record.

4. It is now well settled that judicial review against the order of detention, before it is actually executed, is available, however, the same is required to

be exercised sparingly. In the cases of *Deepak Bajaj Vs. State of Maharashtra and another*; 2008 (1) SCC 14 and *Additional Secretary to the*

Government of India Vs. Smt. Alka Subash Gadia; 1992 Supp. (1) SCC 49,6 the Honâ??ble Supreme Court has laid down following parameters for

exercise of powers of judicial review at pre-execution stage:-

(i) That the order is not passed under the Act under which it is purported to have been passed.

(ii) That it is said to be executed against a wrong person.

(iii) That it is passed for a wrong purpose.

(iv) That it is passed on vague, extraneous and irrelevant grounds; or

(v) That the authority which has passed it has no authority to do so.

5. In the backdrop of the aforesaid legal position, when the case set up by the petitioner is examined, it is clearly found that none of the aforesaid

conditions exist for exercise of powers of judicial review against the order of detention at pre-execution stage. It is not the case of the petitioner that

the order of detention has not been passed under the J&K Public Safety Act, 1978 or is alien to the provisions of the Act. The detention under Section

8 (1) (a) of J&K Public Safety Act, 1978 can be passed by the District Magistrate, if it is satisfied that it is necessary to prevent the detainee from

acting in any manner prejudicial to the maintenance of public order. The activities in which the detainee has been found consistently involved, makes

out a case for placing the petitioner under detention. The detention order has been passed by the District Magistrate and the same is intended to be

executed against the petitioner and, therefore, it cannot be said that the order of detention is being executed against a wrong person.

6. There is nothing on record to indicate that the detention order has been passed for a wrong purpose. The order of detention clearly delineates the purpose for which it has been issued, i.e. to prevent the petitioner from indulging in activities prejudicial to the maintenance of public order. It is also not the case of the petitioner that the District Magistrate, Jammu is not a competent authority to pass the detention order under J&K Public Safety Act, 1978.

7. I have carefully gone through the grounds of detention. It is true that most of the grounds of detention pertain to the F.I.Rs registered prior to the year, 2010 and which were also part of the grounds of detention served upon the petitioner, when he was earlier detained, but the earlier detention of the petitioner which was, however, later on quashed by this Court, does not appear to have deterred the petitioner to pursue his activities.

8. F.I.R No. 177/2016 and F.I.R No. 159/2019 are additional material which has been considered by the detaining authority to arrive at the satisfaction that it is necessary to prevent the petitioner from acting in any manner prejudicial to the maintenance of public order and, therefore, he is required to be detained under the provisions of Public Safety Act, 1978.

9. For the foregoing reasons, it would not be possible for this Court to agree with the learned counsel for the petitioner that the order of detention has been passed on vague, extraneous and irrelevant grounds. The petitioner may have good grounds to assail the order of detention once, it is executed but the grounds for interfering with the order of detention at pre-execution stage surely do not exist.

10. The Supreme Court in the cases of Alka Subash Gadia (supra) and Deepak Bajaj (supra) has laid down five different parameters where the judicial review against the detention order at pre-execution stage is permissible in law. These parameters laid down by the Supreme Court are not enumerative but exhaustive in nature. The case of the petitioner, admittedly, does not fall within the aforesaid parameters and, therefore, cannot be accepted. Reliance placed on Ghulam Qadir Ganai Vs. State of J&K; 2011 (2) JKJ 87 1 is totally misconceived. In the aforementioned case the order of detention had remained unexecuted for two years. That apart, the judgment of Honâ??ble Supreme Court in the case of Alka Subash Gadia (supra) had also not been brought to the notice of learned Single Judge.

11. For all these reasons, no case is made out for interference with the impugned order of detention at this stage and as a result, the writ petition is dismissed along with connected CM.

12. The petitioner, however, shall be at liberty to work out his remedy against the detention order as and when the same is executed and when the petitioner is taken into preventive detention. In that event, nothing stated hereinabove shall be construed as an expression of any opinion on the merits of the detention order.