

(2024) 05 J&K CK 0065

In the Jammu And Kashmir High Court

Case No : Writ Petition (Criminal) No. 789 Of 2022

Imran Rashid Rather

APPELLANT

Vs

Union Territory Of Jammu And Kashmir And Others

RESPONDENT

Date of Decision : 21-05-2024

Acts Referred:

Citation : (2024) 05 J&K CK 0065

Hon'ble Judges : Puneet Gupta, J

Bench : Single Bench

Advocate : R. A. Khan, Faheem Nisar Shah

Final Decision : Dismissed

Judgement

Puneet Gupta, J

1. The petitioner is seeking quashment of detention order bearing No. DMB/PSA/55 of 2022 dated 22.11.2022 passed by respondent No. 2-District Magistrate, Budgam on the following grounds:

- i) That the grounds of detention are vague and ambiguous;
- ii) That detention order mention of the maximum period which could not be done;
- iii) That the petitioner has not been given relevant material;
- iv) That the representation of the petitioner has not been considered by the respondents;
- v) That the bail though granted in the FIR mentioned in the detention order has not been stated in the detention order.

2. Counter affidavit stands filed by the respondents wherein it is stated that all the formalities stand complied with by the respondents while passing the detention order against the petitioner. The petitioner was duly informed of his right to make representation before concerned authorities is also stated. The

activities of the petitioner led the respondents to pass the detention order. The petition is required to be dismissed.

3. The first ground agitated by learned counsel for the petitioner is that the time has been mentioned in the detention order itself which should not find place in the same. Perusal of the detention order reveals that no such time period has been mentioned in the detention order dated 22.11.2022 of which the petitioner has grievance. Thus the contention fails.

4. The dossier prepared by the SSP Budgam is main reason for passing of the impugned detention order. In the grounds of detention mention has been made of earlier FIR No. 101/2020 having been registered against the petitioner. Further it is mentioned that the petitioner is facilitating movement of terrorist and harboring them. The field report also suggests that the petitioner has established ranks with the terrorist and that in case the petitioner is allowed to roam free, the same shall fraught with extreme risk. Lastly it is mentioned that the petitioner is a supporter of terrorist and there is high chance that he is imminent threat to the peace. The detention order is passed under the provisions of Jammu and Kashmir Public Safety Act, 1978.

5. The argument of learned counsel for the petitioner is that the petitioner having been granted bail in FIR No. 101/2020 registered with Police Station, Magam. Non mention of this aspect of case is fatal for the respondents, is a plea of learned counsel for the petitioner. As otherwise argued, the FIR is not the basic reason for issuance of detention order but the activities in which the petitioner is presently found involved. No doubt the petitioner has been bailed out in the FIR in question is not mentioned in the detention order. However perusal of the grounds of detention will reveal that it is the recent activities of the petitioner that have prompted the respondent No. 2 to pass the detention order. The subjective satisfaction of the detaining authority is not to be scrutinized by this Court as the court of appeal. The court is at the same time not debarred from considering this aspect as to whether there is subjective satisfaction which is applied by the detaining authority while passing the detention order. The court is not convinced with the argument of learned counsel for the petitioner that mere omission to mention of petitioner being on bail prior to passing of the detention order is bad in law. The learned counsel for the petitioner has argued that the representation made by the petitioner has not been decided by the respondents. Perusal of the record submitted by the respondents reveals that the representation made by the petitioner through his father has been considered by the Advisory Board. The petitioner has appeared before the Advisory Board through virtually and this fact gets reflected in the order passed by the Advisory Board on 20.12.2022. The record of the case speaks itself that the representation of the petitioner has been duly considered by the Advisory Board after hearing the petitioner on 19.12.2022. The aforesaid argument of the petitioner therefore miserably fails. The Judgment passed by Hon'ble Supreme Court in case titled Sarabjeet Singh Mokha Vs. District Magistrate Jabalpur and

Others reported in (2021) 20 SCC 98 has been cited by learned counsel for the petitioner to buttress his contention. In the aforesaid judgment, the Hon'ble Supreme court reiterated that the authorities concerned are under obligation to consider the representation as and when made by the detainee within reasonable time, does not come to the rescue of the petitioner in view of the fact that the petitioner was given personal hearing by the Advisory Board before passing the impugned detention order dated 22.11.2022.

6. The petitioner has not approached this Court with clean hands as the averments contained in the petition that his representation has not been decided by the respondents is mis-representation as not only he was given personal hearing through virtual mode by the Advisory Board to consider representation but his representation also stands decided by the Advisory Board.

7. The plea of the petitioner that he has not been supplied relevant material while executing the warrants of detention violates his right to file effective representation before the authorities gets negated by the execution report dated 24.11.2022. As per the same, the petitioner has been provided 16 leaves including detention order, dossier, grounds of detention, and other relevant material. The petitioner is signatory to the detention order. Thus the claim of the petitioner on the aforesaid ground fails in light of the execution report.

8. The petition is required to be dismissed for the aforesaid reason and is, accordingly, dismissed.