

(2022) 07 J&K CK 0033

In the Jammu And Kashmir High Court

Case No : Writ Petition (Criminal) No. 150 Of 2021

Imtiyaz Ahmad Chikla

APPELLANT

Vs

Ut Of J&K & Anr

RESPONDENT

Date of Decision : 18-07-2022

Acts Referred:

Constitution Of India, 1950 — Article 22(5)
Indian Penal Code, 1860 — Section 307
Explosive Substances Act, 1908 — Section 3, 4
Code Of Criminal Procedure, 1973 — Section 161, 164

Citation : (2022) 07 J&K CK 0033

Hon'ble Judges : Sanjay Dhar, J

Bench : Single Bench

Advocate : Mohammad Hussain, Ilyas Nazir Laway

Final Decision : Allowed

Judgement

Sanjay Dhar, J

1) By the medium of instant petition, the petitioner has thrown challenge to order No.DMS/PSA/13/2021 dated 22.02.2021, issued by District Magistrate, Srinagar-respondent No.2 herein, in terms whereof, Shri Imtiyaz Ahmad Chikla (hereinafter referred to as the detainee), has been placed under preventive custody and lodged in Central Jail, Srinagar.

2) The petitioner has contended that the Detaining Authority has passed the impugned detention order mechanically without application of mind, inasmuch as the allegations mentioned in the grounds of detention have no nexus with the detainee and that the same have been fabricated by the police in order to justify its illegal action of detaining the detainee. It has been contended that the grounds of detention are vague and non-existent on which no prudent man can make a representation against such allegations. It has been further contended that the procedural safeguards have not been complied with in the instant case, inasmuch as whole of the material which formed basis of the impugned detention

order has not been supplied to the petitioner.

3) Upon being put to notice, the respondents appeared through their counsel and filed their reply affidavit, wherein they have disputed the averments made in the petition and insisted that the activities of the detainee are highly prejudicial to the security of the State. It is pleaded that the detention order and grounds of detention along with the material relied upon by the detaining authority were handed over to the detainee and the same were read over and explained to him. It is contended that the grounds urged by the petitioner are legally misconceived, factually untenable and without any merit. The detainee was informed that he can make a representation to the government as well as to the detaining authority against his detention. It is further claimed in the reply affidavit that all the statutory requirements and constitutional requirements have been fulfilled and complied with by the detaining authority and that the order has been issued validly and legally. In support of their contentions raised in the counter affidavit, the respondents have also produced the detention record.

4) Considered the rival submissions and also perused the detention record.

5) Learned counsel for the petitioner, while impugning the aforesaid order of detention, projected various grounds but his main thrust, during the course of arguments, was on the ground that the detainee was not furnished with whole of the material so as to enable him to make an effective representation against his detention.

6) A perusal of the detention record reveals that the petitioner has received five leaves comprising grounds of detention (one leaf), notice (one leaf), grounds of detention (one leaf) and copy of FIR (two leaves), in token whereof, his signatures have been obtained. This document forms part of detention record. Nothing has been brought on record to indicate that the copy of the police dossier and copies of the statements of witnesses recorded in the two FIRs have been furnished to the detainee. Rather the record produced by the respondents corroborates the fact that whole of the material relied upon by the detaining authority and transmitted to him by the concerned sponsoring agency has not been furnished to the detainee.

7) The grounds of detention bears reference to two FIRs viz. FIR No.109/2019 and FIR No.02/2020 for offences under Section 307 IPC and ¾ Exp. Substances Act of P/S Nigeen. It was incumbent upon respondents to furnish not only the copies of these FIRs but also the statements of witnesses recorded under Section 161/164 of the Cr. P. C during investigation of aforesaid FIRs as well as the other material on the basis of which petitioner's involvement in the said FIR is shown, particularly because the petitioner is not nominated in these FIRs.. Thus, contention of the petitioner that whole of the material relied upon by the detaining authority, while framing the grounds of detention has not been supplied to him, appears to be well-founded. Obviously, the petitioner has been hampered by non-supply of these vital documents in making a representation before the

Advisory Board, as a result whereof his case has been considered by the Advisory Board in the absence of his representation, as is clear from the detention record.

8) It needs no emphasis that the detenu cannot be expected to make an effective and purposeful representation which is his constitutional right guaranteed under Article 22(5) of the Constitution of India, unless and until the material, on which detention order is based, is supplied to him. The failure on the part of detaining authority to supply the material renders the detention order illegal and unsustainable in law. While holding so, I am fortified by the judgments rendered in *Sophia Ghulam Mohd. Bham V. State of Maharashtra and others* (AIR 1999 SC 3051) and, *Thahira Haris Etc. Etc. V. Government of Karnataka & Ors*, (AIR 2009 SC 2184).

9) In *Sophia Ghulam Mohd. Bham V. State of Maharashtra and others* (AIR 1999 SC 3051), the Supreme Court has observed as under:

".....The right to be communicated the grounds of detention flows from Article 22(5) while the right to be supplied all the material on which the grounds are based flows from the right given to the detenu to make a representation against the order of detention. A representation can be made and the order of detention can be assailed only when all the grounds on which the order is based are communicated to the detenu and the material on which those grounds are based are also disclosed and copies thereof are supplied to the person detained, in his own language."

10) In *Ibrahim Ahmad Batti v. State of Gujarat*, (1982) S SCC 440, the Supreme Court has, while relying on its earlier judgment *Khudiram Das v. State of W.B.*, (1975) 2 SCR 81; *Ichhu Devi Choraria v. Union of India*, (1980) 4 SCC 531; *Shalini Soni v. Union of India*, (1980) 4 SCC 544; *Lulluabhai Jogibhai Patel v. Union of India*, (1981) 2 SCC 427; *Kamla Kanyalal Khushalaniv. State of Maharashtra*, (1981) 1 SCC 748 and *Sunil Dutt v. Union of India*, (1982) 3 SCC, held as under:

"Two propositions having a bearing on the points at issue in the case before us, clearly merge from the aforesaid resume of decided cases : (a) all documents, statements and other materials incorporated in the grounds by reference and which have influenced the mind of the detaining authority in arriving at the requisite subjective satisfaction must be furnished to the detenu along with the grounds or in any event not later than five days ordinarily and in the exceptional circumstances and for reasons to be recorded in writing not later than 15 days from the date of his detention and (b) all such material must be furnished to him in a script or language which he understands and failure to do either of the two things would amount to a breach of the two duties cast on the detaining authority under Art. 22 (5) of the Constitution."

11) From the foregoing discussion of law on the subject, it is clear that an order of preventive detention becomes unsustainable in law if the detenu has not

been provided with all the material that has formed basis of his detention. As already noted, in the instant case, the copies of the police dossier, the statements of the witnesses recorded during investigation of the FIRs have not been furnished to the detainee. Hence, the impugned order of detention is been rendered unsustainable in law.

12) For the afore-stated reasons, the petition is allowed and the impugned detention order is quashed. A direction is issued to the respondents to release the petitioner from the preventive detention forthwith, unless, of course, he is not required in connection with any other case.

13) The detention record be returned to the learned counsel for the respondents.