

(2024) 05 J&K CK 0048

In the Jammu And Kashmir High Court

Case No : Writ Petition (Criminal) No. 598 Of 2022

Inayat Rashid Bhat

APPELLANT

Vs

Union Territory Of J&K & Anr

RESPONDENT

Date of Decision : 14-05-2024

Acts Referred:

Constitution Of India, 1950 — Article 19, 22(5), 22(S)

Citation : (2024) 05 J&K CK 0048

Hon'ble Judges : Puneet Gupta, J

Bench : Single Bench

Advocate : N. A. Ronga, Zahid Qyas Noor

Final Decision : Dismissed

Judgement

Puneet Gupta, J

1. The petitioner has challenged the detention order No.14-DMG-PSA-22 dated 25.06.2022 passed under Public Safety Act, 1978.

2. The District Magistrate, Ganderbal by Order No. 14-DMG-PSA-22 dated 25.06.2022 has placed Inayat Rashid Bhat S/o Abdul Rashid Bhat R/o Jumlanpora, Sindhbal, Ganderbal under the preventive detention with a view to prevent him from acting in any manner prejudicial to the security of the UT of J&K and has been lodged in Central Jail Kot Bhalwal, Jammu. It is this order which has been challenged by the petitioner through his father and seeks quashment of the same on the following grounds:

i) That the detaining authority has recorded its satisfaction only on the basis of police dossier and the documents relied by the detaining authority have not been provided to the petitioner.

ii) That the grounds of detention are verbatim reproduction of the police dossier.

iii) That the petitioner has filed the representation dated 15.07.2022 before the detaining authorities but the same has not been considered till date.

3. The counter affidavit has been filed by the respondents stating that the detinue came to be detained under the provisions of the Act of 1978 validly and legally by virtue of detention order bearing No.14-DMG PSA-2022 dated 25.06.2022 issued by District Magistrate, Ganderbal followed by corrigendum issued under No.DMG/PSA/2022/330-338 dated 28-6-2022. All statutory requirements and constitutional guarantees have been fulfilled and complied with by the Detaining Authority. The Detaining Authority has passed order of detention after deriving subjective satisfaction in the matter. Grounds of detention, order of detention, as well as entire material relied upon by the detaining authority came to be furnished to the detinue. In compliance to DM's detention order, the warrant was accordingly executed. The contents of the detention order/warrant and grounds of detention were read over and explained to the detinue in the Kashmiri/Urdu language which he fully understood and in lieu whereof the detinue/petitioner subscribed his signatures on the execution report. The detinue also got well informed about his right of making of representation to the detaining authority or to Government against his detention.

4. Photocopy of the record is provided by learned counsel for the respondents.

5. Learned counsel for the petitioner has raised argument that the petitioner was not provided all the documents which were required to be provided in pursuance to the detention order passed against him. The representation made before the authorities were not considered. There is no co-relation between the alleged activities of the petitioner and the detention order passed by the detaining authority.

6. Per contra, learned counsel for the respondents submits that there was sufficient material for the detaining authority to pass order of detention. The activities of the petitioner as reflected in the detention order more than clearly spell that the petitioner had connection with the terrorists and was actively involved in subversive activities.

7. Heard learned counsel for the parties and perused the record.

8. The first and foremost ground upon which the learned counsel for the petitioner has relied upon is that soon after the detention of the petitioner, the representation dated 15.07.2022 was filed with the respondents but remain undecided till date. Non consideration of the representation had violated the fundamental rights of the petitioner enshrined under Constitution of India.

9. The Hon'ble Apex Court has viewed the importance of the right of the representation and consideration of the same at the earliest by the concerned authorities so that the detinue does not remain un-condemned. The Court in Dr. Rahamatullah Vs. State of Bihar and Anr. 1981 SCC (4) 559 held:

5. The normal rule of law is that when a person commits an offence or a number of offences, he should be prosecuted and punished in accordance with the normal appropriate criminal law; but if he is sought to be detained under any of the

preventive detention laws as may often be necessary to prevent further commission of such offences, then the provisions of Article 22(5) must be complied with. Sub- Article (5) of Article 22 reads:

"When any person is detained in pursuance of an order made under any law providing for preventive detention, the authority making the order shall, as soon as may be, communicate to such person the grounds on which the order has been made and shall afford him the earliest opportunity of making a representation against the order."

This Sub-Article provides, inter alia, that the detaining authority shall as soon as may be communicate the grounds of detention and shall afford him the earliest opportunity of making a representation against the order. The opportunity of making a representation is not for nothing. The representation, if any, submitted by the detenu is meant for consideration by the Appropriate Authority without any unreasonable delay, as it involves the liberty of a citizen guaranteed by Article 19 of the Constitution. The non-consideration or an unreasonably belated consideration of the representation tantamount to non- compliance of Sub-Article (5) of Article 22 of the Constitution.

The law is well-settled that in case of preventive detention of a citizen, the obligation of the appropriate government is two-fold: (i) to afford the detenu the opportunity to make a representation and to consider the representation which may result in the release of the detenu, and (ii) to constitute a Board and to communicate the representation of the detenu along with other materials to the Board to enable it to form its opinion and to obtain such opinion. The former is distinct from the latter. As there is a two-fold obligation of the appropriate government, so there is a two-fold right in favour of the detenu to have his representation considered by the appropriate government and to have the representation once again considered by the Government in the light of the circumstances of the case considered by the Board for the purpose of giving its opinion

10. The petitioner had duly represented to the respondents against the detention order passed against him and the same was received by the authorities cannot be disputed. The reply filed by the respondents itself reveals that the representation made by the petitioner was presented before the District Magistrate, Ganderbal on 23.07.2022 and forwarded to the Home department. The respondents were obliged to consider the representation with all sincerity and had option to accept or the reject the same after taking into consideration all aspects of the matter. The consideration by the respondents is not a mere formality but required to be carried out without any exception. The representation was received but neither considered nor any effective order passed on the same by the respondents which indeed has violated fundamental right of the petitioner under the scheme of the Public Safety Act. It is unfortunate that in spite of the fact that the representation though received yet not considered by the respondents. This ground is itself sufficient to quash the

detention order impugned in the present petition.

11. The petitioner claims that the respondents failed to provide the necessary material while executing the warrants of detention on 23.06.2022 by Inayat Rashid Bhat at Central Jail, Kot Bhalwal, Jammu. The petitioner was provided six leaves as per the execution report and contains the signatures of the petitioner. The petitioner was provided six leaves at the time of execution of warrants cannot be disputed. Thus, the contention of the petitioner fails on the aforesaid plea raised by him.

12. In view of the aforesaid finding of the Court that the representations received by the authorities were not considered by them which was obligatory to do so, the Court is convinced that the detention order suffers from illegality and does not stand the test of law. The purpose of preventive detention is not to punish the person but to prevent the future excepted illegality activity of the detainee on the basis of passed conduct but it does not mean that the detainee can be deprived of the rights to which he is entitled to and are sacrosanct which can be overlooked by the authorities.

13. The detention order impugned deserves to be quashed and is accordingly quashed. The petitioner is directed to be released from the custody provided if he is not required in any other case.

14. The photo copy of the record, if required by the respondents can be taken back by the counsel for the respondents.