

(2023) 02 J&K CK 0057

In the Jammu And Kashmir High Court

Case No : Writ Petition (Criminal) No. 175 Of 2022

Irfan Aziz Bhat

APPELLANT

Vs

Union Territory Of J&K And Anr

RESPONDENT

Date of Decision : 17-02-2023

Acts Referred:

Constitution Of India, 1950 — Article 22(5)
Code Of Criminal Procedure, 1973 — Section 161
Jammu And Kashmir. Public Safety Act, 1978 — Section 13
Unlawful Activities (Prevention) Act, 1967 — Section 13, 18, 23
Indian Penal Code, 1860 — Section 467, 468, 506
Explosive Substances Act, 1908 — Section 4, 5

Citation : (2023) 02 J&K CK 0057

Hon'ble Judges : Vinod Chatterji Koul, J

Bench : Single Bench

Advocate : Wajid Haseeb, Illyas Nazir Laway

Final Decision : Disposed Of

Judgement

Vinod Chatterji Koul, J

1. Through the medium of this writ petition, Order No. 05/DMB/PSA/2022 dated 07.04.2022, passed by District Magistrate, Bandipora whereby detenu, namely, IrfanAziz Bhat S/o Abdul Aziz Bhat R/o Syed Mohalla Hajin Tehsil Hajin District Bandipora has been placed under preventive detention with a view to prevent him from acting in any manner prejudicial to the security of the State, is sought to be quashed and the detenu set at liberty on the grounds made mention of therein.

2. I have heard learned counsel for the parties and considered the matter. I have gone through the detention record produced by counsel for respondents.

3. The main grounds on which the detention is sought to be quashed are that the grounds of detention are vague, indefinite, cryptic , inasmuch as the detaining authority has not attributed any specific allegation against the detenu; that the

detaining authority has not furnished the material including dossier, relied upon by it, to detenu to enable him to make an effective representation by giving his version of facts attributed to him and make an attempt to dispel the apprehensions nurtured by detaining authority concerning involvement of detenu in alleged activities; that grounds of detention do not give details or particulars of terrorists to whom detenu is alleged to have met or of those who are alleged to have been given assistance by the detenu.

4. Respondents have filed reply affidavit, insisting therein that the activities indulged in by detenu are highly prejudicial to the security of the State and, therefore, his remaining at large is a threat to the security of the State. The activities narrated in the grounds of detention have been reiterated in the reply affidavit filed by respondents. The factual averments that detenu was not supplied with relevant material relied upon in the grounds of detention, have been refuted. It is insisted that all the relevant material, which has been relied upon by the detaining authority, was provided to the detenu at the time of execution of warrant.

5. Taking into account the rival contentions of parties and submissions made by learned counsel for parties, it would be relevant to go through the detention record produced by counsel for respondents. The detention record, inter alia, contains "Execution Report" and "Receipt of detention Papers". It would be advantageous to reproduce relevant portion of "Execution Report" hereunder:

"The detention order (01 leaf), Notice of detention (01 leaf) grounds of detention (02 leaves), Dossier of detention (Nil) Copies of FIR, Statements of witnesses and other related relevant documents (Nil), (Total 04 Leaves) have been handed over to the above said detenu....."

6. It would also be appropriate to reproduce relevant portion of "Receipt of Grounds of Detention" herein:

"Received copies of detention order (01 leaf), Notice of detention (01 leaf) grounds of detention (02 leaves) Dossier of detention (Nil) Copies of FIR, Statements of witnesses and other related relevant documents (Nil) Total 04 leaves through executing officer"

Thus, it is unambiguously clear and evident from perusal of Execution Report and Receipt of grounds of detention that only four leaves have been given to detenu.

7. Perusal of impugned detention order reveals that on the basis of dossier placed before detaining authority by Senior Superintendent of Police, Bandipora vide no. Lgl/PSA-23/2022/10426-31 dated 07.04.2022, detaining authority was satisfied that there are sufficient grounds to prevent detenu from acting in any manner prejudicial to the security of the State, it was necessary to detain him under necessary provisions of law. So, it is on the basis of dossier and other connected material/documents that impugned detention order has been passed by detaining authority. The grounds of detention, when looked into, gives

reference to cases FIRs No. 06/2020 U/S 13 UAP Act, 506, 467, 468 IPC and No. 23/2022 U/S 13, 18, 23, 38 UAP Act, 4/5 Exp Act to have been registered against detenu at Police Station Hajin. Involvement of detenu in the aforesaid cases appears to have weighed with detaining authority, while making detention order. The detention record, as noted above, does not indicate that copies of aforesaid First Information Reports, Statements recorded under Section 161 Cr. PC and other material collected in connection with investigation of aforesaid cases was ever supplied to the detenu, on the basis whereof impugned detention order has been passed. The aforesaid material, thus, assumes importance in the facts and circumstances of the case.

8. It needs no emphasis, that detenu cannot be expected to make a meaningful exercise of his Constitutional and Statutory rights guaranteed under Article 22(5) of the Constitution of India and Section 13 of the J&K Public Safety Act, 1978, unless and until the material on which detention order is based, is supplied to him. It is only after detenu has all the said material available that he can make an effort to convince detaining authority and thereafter the Government that their apprehensions vis-à-vis his activities are baseless and misplaced. If detenu is not supplied the material, on which the detention order is based, he will not be in a position to make an effective representation against his detention order. The failure on the part of the detaining authority to supply the material, relied at the time of making the detention order to the detenu, renders the detention order illegal and unsustainable. In this regard I may draw support from the law laid down in the cases of Thahira Haris Etc. Etc. v. Government of Karnataka, AIR 2009 SC 2184; Union of India v. Ranu Bhandari, 2008, Cr. L. J. 4567; Dhannajoy Dass v. District Magistrate, AIR, 1982 SC 1315; Sofia Gulam Mohd Bham v. State of Maharashtra and others AIR 1999 SC 3051; and Syed Aasiya Indrabi v. State of J&K & ors, 2009 (I) S.L.J 219.

9. The Supreme Court in Abdul Latief Abdul Wahab Sheikh v. B.K. Jha, 1987 (2) SCC 22 has held that it is only the procedural requirements, which are the only safeguards available to the detenu, that is to be followed and complied with as the Court is not expected to go behind the subjective satisfaction of the detaining authority. In the present case, the procedural requirements, as discussed above, have not been followed and complied by the respondents in letter and spirit and resultantly, the impugned detention needs to be quashed.

10. Based on the above discussion, the petition is disposed of and Detention Order no. 05/DMB/PSA/2022 dated 07.04.2022, issued against the detenu is quashed. As a corollary, respondents are directed to set the detenu at liberty forthwith provided he is not required in any other case.

Disposed of.