
(2023) 08 J&K CK 0062

In the Jammu And Kashmir High Court

Case No : Writ Petition (Criminal) No. 262 Of 2022

Irfan Hassan Rather

APPELLANT

Vs

UT Of J&K And Others

RESPONDENT

Date of Decision : 23-08-2023

Acts Referred:

Citation : (2023) 08 J&K CK 0062

Hon'ble Judges : Puneet Gupta, J

Bench : Single Bench

Advocate : Musavir Mir, Rais-Ud-Din Ganai

Final Decision : Dismissed

Judgement

Puneet Gupta, J

1. The petitioner-Irfan Hassan Rather has challenged the detention order No. 20/ DMP/PSA/2022 dated 08.04.2022 passed by District Magistrate, Pulwama-respondent No.2 herein, whereby he has been placed under preventive custody and lodged in Central Jail, Jammu (Kot Bhalwal). The order was passed on the ground that the acts of the detainee-Irfan Hassan Rather are prejudicial to the security of the State.

2. The contentions raised in the petition are that the respondents have taken into consideration the FIR bearing No. 44/2021 for offences under ULA(P) Act & 7/25 Arms Act registered with Police Station, Pampore which was registered in remote point of time having no proximity between the grounds of detention and the alleged acts and further that the said order has been passed without application of mind.

3. The respondents appeared through their counsel and filed the reply affidavit to the petition wherein the respondents have denied the contentions raised by the detainee. The respondents have fulfilled all the criteria in the matter is also stated in the objections. The detainee has been given the material and made to

understand the contents of the detention order in the language he understood. The acts of the detainee are prejudicial for national security, hence the order impugned came to be passed by the concerned authority.

4. Learned Deputy Advocate General has also produced the photo copy of the detention record.

5. Learned counsels for both the sides have argued the matter in tune with their respective pleadings.

6. A perusal of the detention record reveals that the detention order has been passed by the District Magistrate on the basis of dossier provided by the SSP, Awantipora. The detention order specifically refers to the registration of FIR No. 44/2021 registered under various sections of UL A(P) Act and Arms Act registered with Police Station, Pampore. The detainee has been stated to be an Over Ground Worker (OGW) of Lashker-e-Toiba (LeT)/Resistance Front (TRF) and has been found actively involved in providing a logistic support to the shooters of the TRF. The detainee may get bail in the FIR registered against him which may pose severe threat to the security of the State is also mentioned in the detention order.

7. It cannot be said that the FIR registered and the other activities mentioned in the detention order are not having proximity with the alleged acts of the detainee. The FIR has been lodged on 15.04.2021 and the detention order has been passed on 08.04.2022. It is not just the FIR but the other activities of the detainee which made the respondents to pass the impugned order. The order also reveals that there is apprehension that the petitioner-detainee may get bail in the FIR registered against him which shows that the detaining authority was alive to the situation while passing the detention order.

8. The court has no hesitation in holding that the circumstances as mentioned in the detention order do amply make out that the acts of the petitioner-detainee posed security threat and, therefore, the detention order passed by the detaining authority cannot be faulted with. It is argued on behalf of the petitioner-detainee that the satisfaction recorded by the detaining authority is without any material. The satisfaction of respondent No.2 in passing the detention order cannot be normally assessed and tampered with by the court sitting as an appeal over the same. At the same time, it is not that the court cannot look into the detention order in any eventuality whatsoever. The Hon'ble Supreme Court in case titled "Union of India vs Dimple Happy Dhakad" decided on 18.07.2019 in Cr. Appeal No. 1064/2019 held that the subjective satisfaction based upon materials of the detaining authority is not to be normally interfered with by the court. The satisfaction recorded by the detaining authority in the case in hand is not in the air but based upon the sufficient material available with it.

9. It needs no reiteration that the order passed under the Public Safety Act is a preventive measure and not with a purpose to punish the person as envisaged under the criminal law. The action taken under criminal proceedings is a punitive

action whereas the order passed under the PSA Act is a preventive Act. This is what has been held by the Apex Court in the celebrated case of "Hardhan Saha v. State of West Bengal" (1975) 3 SCC 198.

10. A perusal of the record reveals that the detenue has been given documents while executing the detention order on 12.04.2022 and also explained the grounds of detention. It is not the case of the detenue (petitioner) that he has not been provided enough material which deprived the detenue from filing the due representation before the Advisory Board. The warrant of execution demonstrates that the petitioner-detenue has been supplied the documents while carrying out the detention order. The contention raised in the petition is that he was not provided the material by the detaining authority and, therefore, the detention order requires to be quashed is without force. The detenue has been given certain documents as reflected in the execution of the detention order. It cannot be said that the rights of the detenue have been seriously impinged by the respondents while passing the detention order.

11. The Court finds no reason to come to the rescue of the petitioner-detenue by quashing the detention order which is passed in accordance with the provisions of the Public Safety Act.

12. The present petition preferred by the detenue stands dismissed.