

(2022) 06 J&K CK 0020

In the Jammu And Kashmir High Court

Case No : Writ Petition (Criminal) No. 92 Of 2021

Irshad Ahmad Reshi

APPELLANT

Vs

Government Of J&K And Ors

RESPONDENT

Date of Decision : 27-06-2022

Acts Referred:

Constitution Of India, 1950 — Article 22(5)
Unlawful Activities (Prevention) Act, 1967 — Section 18, 20, 38, 39
Narcotic Drugs And Psychotropic Substances Act, 1985 — Section 8, 20
Code Of Criminal Procedure, 1973 — Section 161, 164

Citation : (2022) 06 J&K CK 0020

Hon'ble Judges : Sanjay Dhar, J

Bench : Single Bench

Advocate : Shafqat Nazi, Shabir Bhat, Asif Maqbool

Final Decision : Allowed

Judgement

Sanjay Dhar, J

1) Challenge in this petition is to the order No.05/DMP/PSA/21 dated 27.01.2021, issued by District Magistrate, Pulwama-respondent No.2 herein, in terms whereof, Shri Irshad Ahmad Reshi S/o Ghulam Rasool Reshi R/o Taj Mohalla Tral-i-Payeen District Pulwama (hereinafter referred to as the detainee), has been placed under preventive custody and lodged in Central Jail, Jammu (Kotbhalwal).

2) The petitioner has contended that the Detaining Authority has passed the impugned detention order without application of mind, inasmuch as the Constitutional procedural safeguards have not been complied with in the instant case. It has also been urged that the allegations made against the detainee in the grounds of detention are vague and that the material forming the basis of the impugned order of detention and translated version thereof has not been provided to the detainee who is a semi-literate person. The petitioner has further contended that the detaining authority has not spelt out the compelling reasons

while passing the impugned order.

3) The respondents, in their counter affidavit, have disputed the averments made in the petition and stated that they have followed the provisions of J&K Public Safety Act. It is contended that the detenue has been detained only after following due procedure; that the grounds of detention were read over to the detenue; that there has been proper application of mind on the part of the Detaining Authority while passing the impugned order and that the detenue has been provided all the material. The learned counsel for the respondents also produced the detention records to lend support to the stand taken in the counter affidavit.

4) Considered the rival submissions and perused the material available on the file as also the detention record as produced by the learned counsel for the respondents.

5) Learned counsel for the petitioner highlighted various grounds while seeking quashment of impugned order but the main ground that has been argued during the course of arguments is that the detenue was not furnished whole of the material which formed basis of the impugned order of detention thereby depriving him from making an effective representation against his detention.

6) So far as the aforesaid ground of challenge is concerned, a perusal of the detention record produced by learned counsel for the respondents reveals that the material is stated to have been received by the petitioner on 11.06.2021. Report of the Executing Officer in this regard forms part of the detention record, a perusal thereof reveals that it bears the signature of the petitioner and according to it, 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, have been supplied to him.

7) It is clear from the execution report, which forms part of the detention record, that copies of the FIR and police dossier have not at all been supplied to the detenue. If we have a look at the grounds of detention, it bears reference to FIR No.101/2020 for offences under Section 18, 20, 38, 39 ULA(P) Act and 8/20 NDPS Act of P/S Tral. It was incumbent upon respondents to furnish not only the copy of the FIR but also the statements of witnesses recorded under Section 161/164 of the Cr. P. C during investigation of aforesaid FIR as well as the other material on the basis of which petitioner's involvement in the said FIR is shown. 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. Thus, vital safeguards against arbitrary use of law of

preventive detention have been observed in breach by the respondents in this case rendering the impugned order of detention unsustainable in law.

8) It needs no emphasis that the detainee 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 the detainee. The failure on the part of detaining authority to supply the material renders detention order illegal and unsustainable. 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) For the afore-stated reasons, the petition is allowed and the impugned order of is quashed. The detainee is directed to be released from the preventive custody forthwith provided he is not required in connection with any other case.

10) The record, as produced, be returned to the learned counsel for the respondents.