
(2019) 06 J&K CK 0006

In the Jammu And Kashmir High Court

Case No : Habeas Corpus Petition (HCP) No. 483 Of 2018

Ishfaq Ahmad Malla

APPELLANT

Vs

State Of Jammu & Kashmir And Ors

RESPONDENT

Date of Decision : 03-06-2019

Acts Referred:

Jammu And Kashmir Public Safety Act, 1978 — Section 15
Constitution Of India, 1950 — Article 22(3)

Citation : (2019) 06 J&K CK 0006

Hon'ble Judges : Rashid Ali Dar, J

Bench : Single Bench

Advocate : Arshid Andrari, Asif Maqbool

Final Decision : Dismissed

Judgement

1. Through the medium of this Habeas Corpus petition, petitioner-detenu seeks quashment of detention order no. 97/DMB/PSA/2018 dated 17.11.2018, purporting to have been passed by District Magistrate Baramulla, whereunder detenu namely Ishfaq Ahmad Malla s/o Manzoor Ahmad Malla R/o Chinkipora, Sopore, District Baramulla, is under detention, with consequent prayer for the release of detenu forthwith.

2. Initially the petition was captioned as Ishfaq Ahmad Ganie, as the detention order was passed in the name of Ishfaq Ahmad "Ganie" instead of Ishfaq Ahmad "Malla". During pendency of the petition it was brought to the notice of the Court that the detenu's caste is "Malla" not "Ganie". Mr. Asif Maqbool learned GA in terms of order dated 30th April, 2019 was directed to seek instructions from District Magistrate, Baramulla about the full particulars of the detenu. On 1st of May 2019, Mr. Asif Maqbool produced a photocopy of the wireless message, perusal whereof revealed that full particulars of the detenu being the subject of detention is Ishfaq Ahmad "Malla" instead of Ishfaq Ahmad "Ganie", therefore, the petition was considered for decision on behalf of Ishfaq Ahmad Malla.

3. The detenu, through his brother, challenges the aforesaid detention order through the medium of aforesaid petition, inter alia, on the grounds that the order of detention suffers from non-application of mind;

"a) that no compelling reason or circumstance was disclosed in the order or grounds of detention to take the detenu in preventive detention, moreso in view of the fact that as on the date of passing of the aforesaid order of detention, the detenu was already in custody;

b) that the detenu has not been provided the material forming basis of the detention order, to make an effective representation against his detention order;

c) that the detaining authority has not prepared the grounds itself, which is a pre-requisite for him before passing any detention order."

d) that while passing the order of detention against the detenu, the respondent no.2 has violated all the procedural safeguards enshrined in Art. 22 (5) of the Constitution of India."

4. Notice was issued to respondents. They appeared through their learned counsel and filed counter affidavit wherein they submitted that the detention order is well founded in fact and seeks dismissal of the Habeas Corpus petition.

5. Heard learned counsel for the parties. Perused the record and considered the matter. Photo copy of detention record has been produced by the learned counsel for respondents.

6. Mr. Arshad Andrabi, learned appearing counsel for petitioner (detenu) while strengthening his argument with reference to the grounds taken in the petition submits that the ground taken in the detention order and the material referred to and relied upon has no relevance because the detenu was already in custody, therefore, there was no possibility that the detenu would indulge in activities prejudicial to the security of the State. It is submitted that in absence of material the detention order is passed without subjective and objective satisfaction of detaining authority, therefore, the detention order is bad in law.

7. Learned counsel for the petitioner-detenu further submits that the detaining authority has not applied its mind while issuing the impugned order, for, it refers to the activities of the detenu being prejudicial to the maintenance of the security of the State merely by referring to the dossier and no independent mind has been applied and material discussed, therefore, the detention order is bad in law.

8. The learned counsel for petitioner (detenu) further submits that the detenu has not been provided the material referred to in the grounds of detention resultantly the right of making effective representation against the impugned order of detention, as enshrined under Article 22 (3) of the Constitution, has been violated.

9. Mr. Asif Maqbool, GA on the other hand, submits that the impugned order of

detention is well founded and there is nothing bad about it. He submits that the detenu has been provided the material relied upon by the detaining authority while detaining him. He further submits that the detenu has also been informed about his right of making representation against his detention. He submitted that the detaining authority has fully applied its mind while issuing the detention order and there is nothing on record to controvert it. Learned State Counsel referred to and relied upon the law laid down in 2011 (2) JKJ 213; 2012 (1) JKJ, 332 and 20123 (I) SLJ 303.

10. Perusal of the records would reveal that the detenu has been furnished the grounds of detention along with the requisite material. He has also been informed about his right of making representation against his detention, but the detenu has chosen not to make the representation, therefore, the fault, if any, is attributable to the detenu and not to the detaining authority. Thus, the ground raised vis-à-vis non-furnishing of material to the detenu is rejected.

11. The perusal of the record would further reveal that the grounds of detention have been explained to the detenu in the language he understands and the copy has been handed over to him along with the records and the detenu has been informed about his right of making representation against his detention. This would mean that the requirement of Section 15 of the Public Safety Act has been fulfilled.

12. The next contention of the learned counsel for petitioner-detenu that the impugned order is an outcome of non-application of mind is also belied by the records produced by the learned State Counsel. The records would show as to how the detenu has been involved in OWG of militants of LeT Outfit including the unlawful activities. The detailed grounds of detention and the records referred to by the detaining authority were sufficient to derive satisfaction as regards the detention of detenu under the provisions of the Act. Thus the order does not appear to be suffering from non-application of mind.

13. As per the settled position of law if a detention order is issued on more than one ground independent of each other, the detention order will survive even if one of the grounds is found to be unfound or legally unsustainable. In the present case the detention order is issued on more than one ground independent of each other, therefore, the detention order does not get vitiated even if one of the grounds taken in support of the petition turns in affirmative. My this view is fortified by law laid down by the Supreme Court in case titled "Gautam Jain v. Union of India and anr.", reported as 2017 (1) Jammu Kashmir Law Times, Vol. 1 (SC) p. 1.

14. The next ground taken by the detenu that the detaining authority did not record as to under which compelling reasons the detenu is required to be kept in custody under preventive laws when he was already in jail facing trial of FIR no. 90/2018 u/s 7/25 A. Act 8 ULA (P) Ac registered in Police Station Bomai.

15. Since the court has already held that the detention survives even if one of

the grounds taken in support of the petition remains unexplained or proves to be bad in law, therefore, the detention order can be maintained in absence of any explanation on this count.

16. In view of the above fact situation and having regard to the law laid down by the Hon'ble Supreme Court, this petition fails and is dismissed as such. The impugned detention order challenged in this petition, accordingly, sustains and is maintained. Photo copy of record is returned to the learned State Counsel in the open court.