

(2021) 04 J&K CK 0052
In the Jammu And Kashmir High Court
Case No : Writ Petition (Crl) No. 161 Of 2020

Ishfaq Amin Bhat

APPELLANT

Vs

Ut Of J&K And Others

RESPONDENT

Date of Decision : 27-04-2021

Acts Referred:

Jammu And Kashmir Public Safety Act, 1978 — Section 8
Unlawful Activities (Prevention) Act, 1967 — Section 3(1), 3(3)
Narcotic Drugs And Psychotropic Substances Act, 1985 — Section 8, 18, 20
Jammu And Kashmir State Ranbir Penal Code, 1989 — Section 147, 148, 149, 336, 341
Code Of Criminal Procedure, 1973 — Section 107, 151

Citation : (2021) 04 J&K CK 0052

Hon'ble Judges : Sanjeev Kumar, J

Bench : Single Bench

Advocate : Mohammad Ayoub Bhat, Mir Suhail

Final Decision : Allowed

Judgement

1) Petitioner, through his wife, has assailed his detention ordered by District Magistrate, Pulwama (the detaining authority) vide his order

No.30/DMP/PSA/20 dated 30.09.2020 (the impugned order). In terms of the impugned order aforesaid, the petitioner has been placed under

preventive detention with a view to preventing him from acting in any manner prejudicial to the maintenance of public order on the grounds detailed in

the grounds of detention served upon the petitioner.

2) Before advertng to the grounds of challenge taken by the petitioner to assail the impugned order, it would be appropriate to briefly state few

background facts.

3) On the basis of communication of Senior Superintendent of Police, Awantipora, issued vide his No.Con/PSA/2020/120-123 dated 25.09.2020,

whereby some material including dossier and other connected documents in respect of the petitioner were submitted to the detaining authority, the detaining authority arrived at satisfaction that with a view to prevent the petitioner from acting in any manner prejudicial to the maintenance of public order, it was necessary to detain him under Section 8 of the J&K Public Safety act (hereinafter referred to as the Act for short) and, accordingly, the impugned order of detention was passed. The grounds of detention, claimed to have been served upon the petitioner, indicate activities of the petitioners in some detail. As per the grounds of detention, it is alleged that the petitioner is affiliated with Jamat-i-Islami Jammu & Kashmir, an organization declared unlawful by the Ministry of Home Affairs, Government of India, under sub-section (1) and (3) of Section 3 of the Unlawful Activities (Prevention) Act, by virtue of notification No.S.O.1069 (E) dated 28.02.2019.

4) It is also claimed that the petitioner is involved in illicit trafficking of drugs and psychotropic substances and, in this regard, FIR No.183/2010 under Section 18 NDPS Act and FIR No.51/2020 under Section 8/20 of NDPS Act stand registered against him in Police Station, Awantipora. Challan in both the cases, after allegations having been proved, has been presented before the competent court of law. There is reference of another FIR i.e. FIR No.131/2016 under Section 147, 148, 149, 341 and 336 RPC, which also stands registered against the petitioner in Police Station, Awantipora, and upon investigation has been challaned before the competent court of jurisdiction for trial.

5) It is on the basis of aforesaid activities of the petitioner and his involvement in three FIRs as also his association with banned organization Jamat-i-Islami, the detaining authority has arrived at subjective satisfaction that keeping at large of the petitioner is detrimental to the maintenance of public order and, therefore, his detention under the Act necessitated.

6) The petitioner has challenged the impugned order of detention on several grounds. The grounds of challenged which were pressed during the course of arguments by learned counsel appearing for the petitioner are as under:

(I) That the subjective satisfaction derived by the detaining authority is vitiated for the reason that the detaining authority has clubbed two different types of activities allegedly attributable to the petitioner and it is not clear as to

whether the impugned order has been issued to prevent the petitioner from indulging in illicit trafficking of drugs and psychotropic substances or it is for maintenance of public order;

(II) That the requisite material relied upon by the detaining authority to derive his satisfaction has not been served upon the petitioner. There is no reference to any of the activities of the petitioner which could demonstrate that even after 28th of February, 2019, when Jamat-i-Islami was declared as unlawful organization, the petitioner has continued with his affiliation with the aforesaid organization nor the petitioner has been provided with any material which would indicate that the petitioner was ever associated with the aforesaid organization or was its member at any point of time. Even the copies of FIRs relied, referred to in the grounds of detention, have not been supplied to the petitioner;

(III) That the impugned order suffers from total non-application of mind, in that, the detaining authority, while relying upon FIR No.67/2020 in the grounds of detention, has not shown any awareness of the fact that the petitioner stood enlarged on bail in the aforesaid FIR;

(IV) That the grounds of detention are totally vague, indefinite, uncertain and ambiguous and, therefore, vitiate the impugned order of detention.

7) On being put on notice, the detaining authority has filed a detailed reply affidavit to justify the impugned order of detention. It is submitted that the order of detention is based upon subjective satisfaction of the detaining authority and the reasons that prevailed with it cannot be gone into by the Court. Placing strong reliance on the judgment of the Supreme Court in the case of Hardhan Saha vs. State of W.B, (1975) 3 SCC 198, it is submitted that an order of preventive detention may be made with or without prosecution and in anticipation or after discharge or even acquittal and that the pendency of the prosecution is no bar to pass an order of preventive detention. It is also contended that where individual liberty comes into conflict with an interest of security of the State or public order, then the liberty of the individual must give way to the larger interest of the nation. Reliance is placed on the judgment of the Supreme Court in the case of Secretary to Government, Public (Law and Order) and another vs. Nabila and another, (2015) 12 SCC 127.

8) The respondents have also countered the plea of the petitioner that he was

not served material relied upon in the grounds of detention. It is submitted that the grounds of detention as well as entire material relied upon by the detaining authority was furnished to the petitioner within the statutory period when the warrant was executed by one Farooq Ahmad, ASI of Police Station, Awantipora, and the detainee was handed over to Superintendent Central Jail, Kot Bhalwal for lodgment. Lastly it is urged that in view of the settled legal position that if an order of detention 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 unfounded or legally unsustainable. Reliance is placed on the judgment of the Supreme Court in the case of *Gautam Jain vs. Union of India and anr.* 2017 (1) Jammu Kashmir Law Times, Vol. 1(SC) 1.

9) Having heard learned counsel for the parties and perused the record, I am of the considered view that the order of detention does not survive the judicial scrutiny for more than one reason. From the grounds of detention it transpires that the opinion of the detaining authority clearly oscillates between the activities of the detainee relating to illicit trafficking of drugs and those having potential of disturbing public order. Two FIRs, one registered in the year 2010 and another in the year 2020, pertain to the offences under NDPS Act and, therefore, if the petitioner was to be detained with a view to preventing him from indulging in illicit trafficking of drugs, there is a separate legislation in place i.e. the Jammu and Kashmir Prevention of Illicit Traffic in Narcotic Drugs and Psychotropic Substances Act, 1988, which provides for preventive detention in such matters. Admittedly, the detaining authority has not decided to proceed under the aforesaid Act and may be it did not find sufficient material to derive subjective satisfaction that the activities of the petitioner are such that unless he is placed under preventive detention, it would not be possible to deter him from indulging in the activities of illicit drug trafficking.

10) With regard to the satisfaction of the detaining authority that the allegations contained in FIR No.131/2016 under Section 147, 148, 149, 341 and 336 RPC do make out a case where it becomes imperative to place the petitioner under preventive detention to prevent him from acting in any manner prejudicial to public order, it is sufficient to notice that the incident for which FIR has been registered pertains to the year 2016 whereas the impugned

order of detention has been passed on 30th of September, 2020. There is, thus, no proximate link between both prejudicial activities of the petitioner

and the object of detention. Absent the live and proximate link between the two, it cannot be said that the detaining authority has derived its subjective

satisfaction on the basis of any relevant material placed before it.

11) That apart, in the grounds of detention there is a specific mention that preventive measures taken against the petitioner in terms of Section 107

read with section 151 of Cr. P.C could not succeed to deter the petitioner from acting in any manner prejudicial to the maintenance of public order. As

is rightly contended by learned counsel for the petitioner, neither any detail of any proceedings under Section 107 read with section 151 of Cr. P.C has

been given in the grounds of detention nor copy thereof has been provided to the petitioner. As a matter of fact, no date of occurrence for which

proceedings under Section 107 read with section 151 of Cr. P.C were initiated, has been indicated. This makes the grounds of detention vague,

uncertain and indefinite. In the absence of requisite and definite material having been supplied to the petitioner, it cannot be said that the petitioner has

been given an opportunity to make an effective representation against his detention, which is a constitutional right of the person detained under

preventive detention.

12) Both sides have relied upon several judgments to make good their points. Suffice it to say that the legal position is well settled. The detention order

is vitiated if the requisite material relied upon is not supplied to the detainee, in that, it affects the vital constitutional right of the detainee to make an

effective representation. Simply because a communication has been issued to the detainee informing him about his right to make a representation is not

sufficient. It is equally well settled that the order of detention must have proximate and live link with the activities of the detainee. The detention based

on stale incidents is vitiated in law. We do not require many judgments to hammer this settled legal position.

13) For the foregoing reason and without specifically dealing with the judgments cited by the learned counsel for the petitioner, I find substance in this

petition and the same is, accordingly, allowed. The impugned order of detention is quashed. Direction is issued to the respondents to release the

detainee from the preventive custody forthwith, provided he is not required in

connection with any other case.