
(2021) 02 J&K CK 0080
In the Jammu And Kashmir High Court
Case No : Writ Petition (Crl) No. 651 Of 2019

Javaid Ahmad Munshi

APPELLANT

Vs

Ut Of J&K And Another

RESPONDENT

Date of Decision : 15-02-2021

Acts Referred:

Jammu And Kashmir Public Safety Act, 1978 — Section 8
Constitution Of India, 1950 — Article 22(5)

Citation : (2021) 02 J&K CK 0080

Hon'ble Judges : Sanjay Dhar, J

Bench : Single Bench

Advocate : N. A. Ronga, B. A. Dar, Saba Gulzar

Final Decision : Allowed

Judgement

1) Javaid Ahmad Munshi (the detainee), has filed this petition through his brother, namely, Parvaiz Ahmad Munshi, seeking a Writ of Habeas Corpus

for quashing the detention order bearing No. DMS/PSA/136/2019 dated 22.11.2019, passed by District Magistrate, Srinagar (the detaining authority)

with a view to prevent him from acting in any manner prejudicial to the security of the State. The order is, purportedly, passed by the detaining

authority in exercise of powers conferred under Section 8 of the J&K Public Safety Act, 1978 (the Act of 1978),

2) The impugned order has been assailed by the petitioner, inter alia, on the following grounds:

(I) That previously the detainee was placed under preventive detention in the year 2018 and his detention was quashed by this Court vide judgment

dated 28.12.2018 passed. Without there being any fresh material or grounds, the impugned detention order has been passed by the detaining authority

on the same grounds which were subject matter of earlier petition;

(II) That the detainee was not furnished the grounds of detention and the material in support thereof;

3) The respondents, despite availing number of opportunities, have neither filed counter affidavit nor have chosen to produce the detention record.

4) I have heard learned counsel for the parties and perused the material available on record.

5) So far as the first ground urged by the learned counsel for the petitioner is concerned, the petitioner has placed on record a copy of the judgment

dated 28.12.2018 passed by this Court in HCP No.234/2018, along with a copy of the grounds of detention which were subject matter of said petition.

A perusal of the grounds of detention which are subject matter of instant petition and the grounds of detention which were subject matter of earlier

detention reveals that they are identical and, in fact, Xerox copies of each other. The grounds of detention which have formed the basis of the

impugned detention order reveals that not a single fresh act or omission on the part of the detainee has been cited in the said document.

6) The Supreme Court in the case of Chhagan Bhagwan Kahar Vs. N. L. Kalna and others, (1989) 2 SCC 318, while dealing with similar question,

has observed as under:

“12. It emerges from the above authoritative judicial pronouncements that even if the order of detention comes to an end either by

revocation or by expiry of the period of detention, there must be fresh facts for passing a subsequent order. A fortiori when a detention

order is quashed by the Court issuing a high prerogative writ like habeas corpus or certiorari, the grounds of the said order should not be

taken into consideration either as a whole or in part even along with the fresh grounds of detention for drawing the requisite subjective

satisfaction to pass a fresh order because once the Court strikes down an earlier order by issuing rule, it nullifies the entire order.

7) Again in the case of Jahangir Khan Fazal Khan Pathan Vs. The Police Commissioner, Ahmadabad and another, (1989) 3 SCC 590, the Supreme

Court has held as under:

“It is, therefore, clear that an order of detention cannot be made after considering the previous grounds of detention when the

same had been quashed by the Court, and if such previous grounds of detention are taken into consideration while forming the subjective

satisfaction by the detaining authority in making a detention order, the order of detention will be vitiated. It is of no consequence if the

further fresh facts disclosed in the grounds of the impugned detention order have been considered.â??

8) From the aforesaid enunciation of law on the subject, it is clear that unless there are fresh grounds of detention, a person cannot be put under

preventive detention on the basis of the grounds of detention which have formed basis of an earlier detention order that has been quashed by a Court.

The ratio laid down by the Supreme Court in the afore cited two cases squarely applies to the facts of the instant case and, therefore, the impugned

order of detention cannot be sustained in the eyes of law.

9) The second ground urged by the petitioner is that he has not been supplied with the material forming basis of the grounds of detention. Since there

is no rebuttal to this allegation of the petitioner as the respondents have failed to file any counter affidavit or produce the detention record, as such, the

same is deemed to have been admitted.

10) It needs no emphasis that the detinue cannot be expected to make an effective and purposeful representation which is his constitutional and

statutory right guaranteed under Article 22(5) of the Constitution of India, unless and until the material, on which detention is based, is supplied to the

detinue. 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 *Dhananjay Dass v. District Magistrate*, (AIR 1982 SC 1315), *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).

11) In view of aforesaid discussion, it is clear that the respondents have failed to observe the mandatory constitutional and statutory safeguards in the

case of the petitioner and, as such, the impugned order of detention cannot be sustained in law.

12) For the foregoing reason, this petition is allowed. The impugned order of detention is quashed. Direction is issued to the respondents to release the

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

connection with any other case.