
(2021) 03 J&K CK 0106
In the Jammu And Kashmir High Court
Case No : Writ Petition (Crl) No. 73 Of 2020

Javid Ahmad Wani

APPELLANT

Vs

Government Of Jk &Anr

RESPONDENT

Date of Decision : 10-03-2021

Acts Referred:

Jammu And Kashmir State Ranbir Penal Code, 1989 — Section 147, 148, 149, 326, 336, 341
Constitution Of India, 1950 — Article 22(5)

Citation : (2021) 03 J&K CK 0106

Hon'ble Judges : Rajnesh Oswal, J

Bench : Single Bench

Advocate : Lone Altaf, Raisud Din Ganai

Final Decision : Disposed Of

Judgement

1. The present petition has been filed by the petitioner through his father seeking quashing of order dated 11th June 2020 bearing No. 01-DMG-PSA-

2020 (hereinafter referred to as "order impugned") issued by respondent No. 2 by virtue of which the petitioner has been detained under the

provisions of J&K Public Safety Act.

2. It is submitted that the petitioner was arrested on 17th May 2020 by Police Station Ganderbal and after keeping him in custody for more than three

weeks, the petitioner was detained by virtue of the order impugned.

3. The order impugned has been challenged on the grounds that the grounds of detention are vague and on the basis of such vague grounds, no

prudent man can make an effective representation; that the petitioner has not been provided with the documents relied upon by respondent No. 2

while issuing order impugned; that the petitioner has read up to 8th standard

only and thus can understand Urdu and Kashmiri and he was not supplied with the translated version of the grounds of detention; that the petitioner has not been informed as to the time frame within which he can make representation against the order impugned.

4. Counter stands filed in which it is stated that all the constitutional as well as procedural safeguards as envisaged by Article 22 (5) of the Constitution of India and J&K Public Safety Act have been followed by the respondents while issuing the order impugned. It is further stated in the counter affidavit that the detaining authority has passed the order of detention after deriving a subjective satisfaction and the grounds of detention, the order of detention as well as entire material relied upon by the detaining authority have been furnished to the petitioner. The said detention order was executed by Shri Illiyas Ahmad, Inspector on 14th June 2020 and petitioner was handed over to Central Jail Kotbalwal for lodgment. The contents of the detention order and the grounds of detention were read over and explained to the detenu in Kashmiri Language which he fully understands and in lieu of which his signatures had been obtained in the execution report. Further the case of the petitioner was referred to the Advisory Board for its opinion and after considering the material, the Advisory Board opined that the detention of the petitioner is necessary, and thereafter, the said order was confirmed by the Government. The respondents have placed on record the photocopy of the record of detention.

5. Learned counsel for the petitioner has reiterated the grounds taken in the petition and has laid much stress that no documents have been furnished to the detenu so as to enable him to make an effective representation.

6. Per contra Learned GA, Mr. Raisud din Ganai, appearing for the respondents has argued that all the statutory as well as constitutional requirements have been fulfilled by the respondents while passing the order of detention and as such, the detention order is legal and was passed while taking into consideration the past activities of the petitioner.

7. Heard and perused the detention record meticulously.

8. Before appreciating the rival contentions of the parties, it would be appropriate to note that the procedural requirements are the only safeguards available to the detenu since the Court cannot go behind the subjective satisfaction of the detaining authority. In Abdul Latif Abdul Wahab Sheikh v.

B. K. Jha reported in (1987) 2 SCC 22, it has been held by the Apex Court that the procedural requirements are the only safeguards available to a

detenue since the Court is not expected to go behind the subjective satisfaction of the detaining authority. The procedural requirements are, therefore,

to be strictly complied with, if any, value is to be attached to the liberty of the subject and the constitutional rights guaranteed to him in that regard.

9. One of the contention raised by the petitioner is that he was not supplied with the record relied upon by the Respondent no:2 while issuing the order

impugned. The perusal of the grounds of detention reveal that the detaining authority has relied upon three FIRs i.e., FIR No. 157/2019, under Section

147, 148, 326 RPC of P/S Ganderbal, FIR No. 160/2019 under Section 147, 148, 149, 336 RPC of P/S Ganderbal and FIR No. 161/2019 under Section

147, 148, 149, 336, 341 of P/S Ganderbal, while issuing the order impugned. The perusal of the execution report reveals that the detenu at the time of

execution of the detention order on 14th June 2020 was handed over detention order comprising of one leaf, notice of detention comprising of one leaf

and grounds of detention comprising of three leaves, thus total five leaves only were handed over to the petitioner. As already mentioned above, the

detaining authority has relied upon three FIRs but all these three FIRs have not been supplied to the detenue, so as to enable the petitioner to make an

effective representation against his preventive detention to the detaining authority as also to the Government. It is only after the petitioner is supplied

all the material that he can make an effective representation to the Detaining Authority and also to the Government and if the same is not done, he is

deprived of his valuable constitutional right. Failure on the part of the respondent No. 2 to supply material relied upon by him, while passing the

detention order renders it illegal. Reliance is placed upon the decision of Apex Court in Thahira Haris v. Govt. of Karnataka, reported in(2009) 11

SCC 438 and the relevant para is reproduced as under:

â??30. Our Constitution provides adequate safeguards under clauses (5) and (6) of Article 22 to the detenue who has been detained in pursuance of

the order made under any law providing for preventive detention. He has the right to be supplied with copies of all documents, statements and other

materials relied upon in the grounds of detention without any delay. The predominant object of communicating the grounds of detention is to enable the

detenu at the earliest opportunity to make effective and meaningful representation against his detention.â??

10. Otherwise also, a bare perusal of the grounds of detention on basis of which detention order has been issued reveal that they are the exact replica

of the dossier submitted by the Senior Superintendent of Police, Ganderbal. The detaining authority was required to apply its mind independently with

regard to the material placed before it so as to derive satisfaction that it has become necessary to detain the petitioner. But the same has not been

done in the instant case. This too renders the detention order illegal. Reliance is placed upon the decision of Apex Court in case titled Jai Singh v.

State of J & K, reported in (1985) 1 SCC 561 and the relevant portion is reproduced s under:

â??-----First taking up the case of Jai Singh, the first of the petitioners before us, a perusal of the grounds of detention shows that it is a verbatim

reproduction of the dossier submitted by the senior Superintendent of Police, Udhampur to the District Magistrate requesting that a detention order

may kindly be issued. At the top of the dossier, the name is mentioned as Sardar Jai Singh, father's name is mentioned as Sardar Ram Singh and the

address is given as Village Bharakh, Tehsil Reasi. Thereafter it is recited â??The subject is an important member ofâ?|.â? Thereafter follow various

allegations against Jai Singh, paragraph by paragraph. In the grounds of detention, all that the District Magistrate has done is to change the first three

words â??the subject isâ? into â??you Jai Singh, s/o Ram Singh, resident of Village Bharakh, Tehsil Reasiâ?. Thereafter word for word the police

dossier is repeated and the word â??heâ? wherever it occurs referring to Jai Singh in the dossier is changed into â??youâ? in the grounds of

detention. We are afraid it is difficult to find greater proof of non-application of mind. The liberty of a subject is a serious matter and it is not to be

trifled with in this casual, indifferent and routine manner.â??

(Emphasis Supplied)

11. In view of what has been discussed above, on these counts only, the detention order dated 11th June 2020 bearing No. 01-DMG-PSA-2020 is

required to be quashed, and, as such, the same is quashed. The detenu is ordered to be released forthwith provided he is not required in any other

case.

12. Photo-copy of detention record be returned.