

(2022) 05 J&K CK 0027

In the Jammu And Kashmir High Court

Case No : Writ Petition (Criminal) No. 209 Of 2021

Khursheed Ahmad Parray

APPELLANT

Vs

Union Territory Of J&K & Anr

RESPONDENT

Date of Decision : 11-05-2022

Acts Referred:

Constitution Of India, 1950 — Article 22(5)

Citation : (2022) 05 J&K CK 0027

Hon'ble Judges : Sanjay Dhar, J

Bench : Single Bench

Advocate : I. Sofi, Sajjad Ashraf

Final Decision : Allowed

Judgement

Sanjay Dhar, J

1) By the instant petition, legality and veracity of the detention order No.14-DMK/PSA of 2021 dated 19.10.2021, issued by District Magistrate, Kupwara (for brevity "Detaining Authority") is challenged. In terms of the aforesaid order, Khursheed Ahmad Parray son of Gh. Ahmad Parray resident of Mandigam Tehsil Kralgund District Kupwara (for short "detenu") has been placed under preventive detention and lodged in Central Jail, Kotbhalwal.

2) Petitioner has contended that the Detaining Authority has passed the impugned detention order mechanically without application of mind, inasmuch as the grounds of detention are mere reproduction of the dossier. It has been further contended that the Constitutional and Statutory procedural safeguards have not been complied with in the instant case. It has been further urged that the material which formed basis of the grounds of detention and the consequent order of detention has not been provided to the detenu.

3) The respondents, in their counter affidavit, have disputed the averments made in the petition and insisted that the activities of detenu are highly prejudicial to the security of the State. It is pleaded that the impugned detention order has

been passed validly and after following all norms and procedural safeguards. It has also been contended that the detention order and grounds of detention were handed over to the detainee and same were read over and explained to him and the whole material relied upon by the detaining authority has been furnished to the detainee. It is averred that the grounds urged by the petitioner are legally misconceived, factually untenable and without any merit. The respondents have produced the detention records in order to buttress the contentions raised in the counter affidavit.

4) I have heard learned counsel for parties and perused the detention record.

5) Learned counsel for the petitioner, while seeking quashment of the impugned order, projected various grounds but his main thrust during the course of arguments was on the following grounds:

(I) That the grounds of detention are verbatim copy of the dossier, which shows that the detaining authority has not applied its mind while formulating the grounds of detention which is a pre-requisite for passing an order of detention;

(II) That the grounds of detention are vague and cryptic, inasmuch as the material particulars of the terrorists of banned organization LeT, as mentioned in the grounds of detention, have not been disclosed, which prevented the petitioner from making an effective representation against his detention.

6) Per contra, the learned counsel for the respondents has made an attempt to justify the passing of the order impugned by contending that the detainee is a habitual criminal, inasmuch as there were various FIRs pending against him and on this basis, the Detaining Authority was well within its jurisdiction to pass the impugned order of detention as there was every likelihood of the detainee indulging in similar activities. It has been further contended that all the documents relied upon by the Detaining Authority were, provided to the detainee and in token of having received the same, the detainee has signed the receipt. It is also urged that the contents of the documents were read over and explained to the detainee in the language understood by him.

7) While going through the detention records, as produced, the first ground projected by the learned counsel for the petitioner gets support from the material on record. The grounds of detention are replica of dossier with interplay of some words here and there, which exhibits non-application of mind on the part of detaining authority. In the process, the deriving of subjective satisfaction has become a causality. While formulating the grounds of detention, the Detaining Authority has to apply its own mind. It cannot simply reiterate whatever is written in the police dossier. In my aforesaid view, I am supported by the judgment of the Supreme Court in the case of Jai Singh and ors vs. State of J&K (AIR 1985 SC 764).

8) The other ground regarding vagueness of the grounds of detention, appears to be forceful. Upon a perusal of the grounds of detention, it appears there is no

mention of the particulars of the place and the identity of the persons/terrorists alleged to have received support of the detainee. The particulars of the period when the detainee is alleged to have offered support to the terrorists are also not mentioned in the grounds of detention. The grounds, being vague and lacking in material particulars, the detainee could not have made an effective representation against his detention. Therefore, there has been violation of constitutional guarantees envisaged under Article 22(5) of the Constitution. The detention order, as such, is illegal and unsustainable. In my aforesaid view, I am fortified by the judgments of the Supreme Court in the case of Jahangir Khan Fazal Khan Pathan vs. Police Commissioner, Ahmadabad, (1989) 3 SCC 590, Abdul Razak Nane Khan Pathan v. Police Commissioner, Ahmadabad, AIR 1989 SC 2265.

9) Viewed thus, the petition is allowed and the impugned order of detention 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.