
(2020) 07 J&K CK 0045
In the Jammu And Kashmir High Court
Case No : Writ Petition (C) No. 320 Of 2019

Manzoor Ahmad Itoo

APPELLANT

Vs

State Of J&K And Others

RESPONDENT

Date of Decision : 27-07-2020

Acts Referred:

Jammu And Kashmir Public Safety Act, 1978 — Section 8
Constitution Of India, 1950 — Article 21, 22(5)

Citation : (2020) 07 J&K CK 0045

Hon'ble Judges : Sindhu Sharma, J

Bench : Single Bench

Advocate : Shafqat Nazir, M. A. Chashoo

Judgement

Sindhu Sharma, J

1. District Magistrate, Shopian vide his order No. 40/DMS/PSA/2019 dated 10.08.2019 had detained Manzoor Ahmad Itoo S/o Ali Mohammad Itoo R/o Durpora Shopian, District Shopian under Clause (a) of Section 8 of the Jammu and Kashmir Public Safety Act, 1978 from acting in any manner which is prejudicial to the security of the State/Country. This detention order has been assailed by the detenu through his wife-Saleema Bano in the present petition.

2. The detenu is aggrieved of the aforesaid order of detention on the ground that the Detaining Authority has not followed the procedural safeguards as provided under Article 22(5) of the Constitution of India. The Detaining Authority has not furnished to the detenu all the material relied upon, while passing the order of detention, as such, the detenu could not make an effective and purposeful representation against the order of detention. The Detaining Authority has also not derived any subjective satisfaction, while passing the order of detention. The grounds of detention are vague, irrelevant and non-existence. The Detaining Authority has not assigned any compelling reason and further has not specified the authority to whom the representation was to be preferred by the detenu.

3. Learned counsel for the detenu submits that the detenu was earlier detained in terms of the provisions of the Public Safety Act, 1978 vide Order No. 01/DMS/PSA/2019 dated 14.03.2019. This detention order was challenged before this Court in Habeas Corpus Petition bearing WP(Cr1) No. 124/2019 and vide judgment dated 24.07.2019, the writ petition was allowed and the order of detention was quashed. However, the detenu was not released and the impugned order of detention was passed under the provisions of Public Safety Act.

4. It is submitted that the impugned order of detention is verbatim copy of the previous order of detention which forms the basis of passing the order dated 14.03.2019. The detenu, therefore, could not be re-detained on the basis of grounds of detention which have been considered and interfered by this Court vide judgment dated 24.07.2019. Thus, the impugned detention of the detenu is illegal and same is required to be quashed.

5. Mr. M. A. Chashoo, learned Additional Advocate General appearing on behalf of the respondents, has filed his counter affidavit as well as produced the detention record. It is submitted by him that the purpose of the preventive detention is not to punish a person for something, he has done but to prevent him from doing it. The basis of detention is the satisfaction of the Executive of a reasonable probability of likelihood of detenu acting in a manner similar to his past acts, thus, preventing him by detention from doing the same. He submits that if a detention order is passed for more than one ground, the detention order will survive, even if one of the grounds is found to be unfounded or legally unsustainable.

6. Heard learned counsel for the parties and perused the record also.

7. It is admitted that the detenu was earlier detained in terms of order No. 01/DMS/PSA/2019 dated 14.03.2019. Perusal of the grounds of first detention order reveals that the grounds of detention, on which the impugned order dated 10.08.2019 is passed, is a verbatim reproduction of earlier grounds. The first detention order was quashed by this Court vide judgment dated 24.07.2019 and the Detaining Authority has again passed another detention order on the very same grounds. The record supports submissions of learned counsel for the detenu on this ground and the allegation that the impugned second detention order is passed on the same grounds as the first detention order is made out.

8. The question whether the second detention order can be passed against the detenu after the first order of detention has been revoked/quashed, has been considered by the Apex Court in number of judgments.

9. In *Chotta Hembram v. State of West Bengal*, AIR 1974 SC 432, it was observed that a fresh order of detention can be passed against the same person after first detention order is revoked provided after the date of revocation or expiry of the first order, fresh facts constitute the grounds of detention making a subsequent order in the absence of fresh facts would be impermissible as the very premise of the order subsequent to the first detention order would be non-

existent.

10. In *Kshetra Gogoi vs State of Assam*, AIR 1970 SC 1664, it was observed that the main requirement for a fresh detention order to be passed is not merely that the order has to be passed on grounds, but grounds have to be on fresh facts and material which have arisen after the date of expiry of the first detention order.

11. In *Chhagan Bhagwan Kahar, V. N. L. Kalna & ors.*, AIR 1989 SC 1234, it was held 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 of 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 alongwith 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.

12. In *Jahangirkhan Fazalkhan Pathan V. Police Commissioner, Ahmedabad and another*, AIR 1989 SC 1812, Hon'ble 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"

13. Thus, the impugned detention order has been passed on the grounds of detention which are in verbatim to the grounds of the earlier detention order which was quashed by this Court. There is no fresh ground of detention in the present petition. The Detaining Authority, therefore, cannot make use of the grounds which were relied upon to pass the order of detention on the activities of the detenu. The impugned detention order is, thus, vitiated and the same cannot be sustained in the eye of law.

14. This apart, the detenu has not been supplied relevant material relied upon by the Detaining Authority while passing the impugned order of detention. It is settled proposition of law that, while passing the order of detention, the Detaining Authority has to communicate the same to the detenu. The grounds on which the impugned order of detention has been passed, the detaining authority should have supplied the same to the detenu providing him with an opportunity to make an effective representation against the order.

15. The impugned detention order makes mention of the material record such as

dossier and other connected documents relied upon by the Detaining Authority but there is nothing on record to show that the detenu was supplied with the material relied upon by the Detaining Authority while passing order of detention, thus, makes the order of detention vitiated.

16. In *Rekha vs. State of Tamil Nadu & anr.* 2011 (5) SCC 244, the Apex Court held as under :-

37. As observed in *Abdul Latif Abdul Wahab Sheikh Vs. B.K. Jha and another* (1987) 2 SCC 22, vide para 5,:

"...The procedural requirements are the only safeguards available to a detenu 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...."

39. Personal liberty protected under Article 21 is so sacrosanct and so high in the scale of constitutional values that it is the obligation of the detaining authority to show that the impugned detention meticulously accords with the procedure established by law. The stringency and concern of judicial vigilance that is needed was aptly described in the following words in *Thomas Pelham Dale* case: (QBD p. 461).

"Then comes the question upon the habeas corpus. It is a general rule, which has always been acted upon by the courts of England, that if any person procures the imprisonment of another he must take care to do so by steps, all of which are entirely regular, and that if he fails to follow every step in the process with extreme regularity the court will not allow the imprisonment to continue."

17. Similarly, in *Sophia Ghulam Mohd. Bham V. State of Maharashtra and others*, AIR 1999 SC 3051, the Apex Court observed as under:-

"... The right to be communicated the grounds of detention flows from Article 22(5) while the right to be supplied all the material on which the grounds are based flows from the right given to the detenu to make a representation against the order of detention. A representation can be made and the order of detention can be assailed only when all the grounds on which the order is based are communicated the detenu and the material on which those grounds are based are also disclosed and copies thereof are supplied to the person detained, in his own language....."

18. There is no sufficient compliance with the requirement of law for providing the detenu with the constitutional safeguards, thus, the impugned detention order is illegal and same is not sustainable.

19. In view of the aforesaid discussions, the impugned detention order of *Manzoor Ahmad Itoo S/o Ali Mohammad Itoo R/o Durpora Shopian, District Shopian*, is quashed. Accordingly, the respondents are directed to release the

detenu from the custody forthwith, if he is not required in any other case.

20. Detention record be handed over to learned counsel for the respondents.