

(2023) 02 J&K CK 0040

In the Jammu And Kashmir High Court

Case No : Writ Petition (Criminal) No. 90 Of 2022

Manzoor Ahmad Wani

APPELLANT

Vs

Union Territory Of J&K & Ors

RESPONDENT

Date of Decision : 16-02-2023

Acts Referred:

Constitution Of India, 1950 — Article 22(5)

Citation : (2023) 02 J&K CK 0040

Hon'ble Judges : Sanjay Dhar, J

Bench : Single Bench

Advocate : Arshie Mushtaq, Sajad Ashraf

Final Decision : Disposed Of

Judgement

Sanjay Dhar, J

1) The petitioner, through the medium of instant petition, has sought quashment of the order No.DMS/PSA/130/2021 dated 28.02.2021, issued by District Magistrate, Srinagar (for brevity "Detaining Authority") whereby. In terms of the aforesaid order, Shri Manzoor Ahmad Wani @ Man Gassi son of Ghulam Mohammad Wani resident of Gasoo Zakura, Srinagar (for short "the detenu") has been placed under preventive detention in order to prevent him from acting in any manner prejudicial to the security of the State.

2) The petitioner has contended that the Detaining Authority has passed the impugned detention order mechanically without application of mind. It has been further contended that the Statutory safeguards have not been complied with in the instant case. It has been further urged that the allegations made against the detenu in the grounds of detention are vague and that the material which formed basis of the order of detention has not been provided to the detenu. It has also been contended that the petitioner has not been informed as to before which authority he had to make a representation.

3) Upon being put to notice, the respondents appeared through their counsel and

filed their reply affidavit, wherein they have disputed the averments made in the petition and insisted that the activities of the detenue are highly prejudicial to the security of the State. It is pleaded that the detention order and grounds of detention along with the material relied upon by the detaining authority were handed over to the detenue and the same were read over and explained to him. It is contended that the grounds urged by the petitioner are legally misconceived, factually untenable and without any merit. That the detenue was informed that he can make a representation to the government as well as to the detaining authority against his detention. It is further claimed in the reply affidavit that all the statutory requirements and constitutional requirements have been fulfilled and complied with by the detaining authority and that the order has been issued validly and legally. The respondents have placed reliance on the judgments of the Supreme Court in *Hardhan Saha v. State of W.B* (1975) 3 SCC 198, *Borjahan Gorey vs. State of WB*, (1972) 2 SCC 550, *Abdul Aziz vs. District Magistrate, Burdwan*, (1973) 1 SCC 301, *Debu Mahato vs. State of WB*, AIR 1974 SC 816 and *Ashok Kumar vs. Delhi Administration and others*, AIR 1982 SC 1143. In order to buttress the contentions raised in the counter affidavit, the respondents have produced the detention record.

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

5) Learned counsel for the petitioner, while throwing challenge to the impugned order, projected various grounds but the main ground that has prevailed during the course of arguments is that the detenue has been disabled from making an effective representation against his detention as whole of the material which has been relied upon by the detaining authority while making the impugned detention order has not been supplied to him

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

7) While going through the detention records, the ground projected by the learned counsel for the petitioner gets fortified from the material on record. The detention record, as produced by learned counsel for the respondents, contains a copy of the Execution Report dated 01.03.2022, perusal whereof reveals that seven leaves comprising copy of PSA warrant (01 leaf), Notice (01 leaf), grounds of detention (03 leaves) and copies of FIR (02 leaves) have been provided to the detenue and in token of receipt thereof, his signatures have been obtained on the said Execution Report. The receipt does not show anything to suggest that

any other document/material including the police dossier has been furnished to the detainee. If we have a look at the grounds of detention, it bears reference to two FIRs Viz. FIR Nos.02/2020 and 85/2021. It was incumbent upon respondents to furnish not only the copies of these FIRs but also the statements of witnesses recorded during investigation of these FIRs and other material on the basis of which petitioner's involvement in these FIRs is shown. All this material would run in dozens of pages and it is impossible that all this material would be covered in only two leaves. Besides this the grounds of detention also bear reference to entries in surveillance register and proceedings under 109 of Cr. P.C. The relevant material in this regard also seems to have not been supplied to the detainee. Thus, contention of the petitioner that whole of the material relied upon by the detaining authority, while framing the grounds of detention has not been supplied to him, appears to be well-founded. Therefore, vital safeguards against arbitrary use of law of preventive detention have been observed in breach by the respondents in this case rendering the impugned order of detention unsustainable in law.

8) It is a settled law that non-supply of the requisite/relevant material would amount to violation of right of detainee under Article 22 (5) of the Constitution of India and its deprivation renders the detention order unsustainable in law. In my aforesaid view, I am fortified by the judgments of the Supreme Court rendered in the cases of Sophia Gulam Mohd. Bham v. State of Maharashtra &ors (AIR 1999 SC 3051), Thahira Haris etc. etc. Vs. Government of Karnataka &Ors (AIR 2009 SC 2184), Ibrahim Ahmad Bhatti alias Mohd. Akhtar Hussain alias Kandar Ahmad Wagher alias Iqbal alias Gulam Vs. State of Gujarat and others, (1982) 3 SCC 440, Khudiram Das vs. State of W.B, (1975) 2 SCR 81 and Smt. Icchu Devi Choraria vs. Union of India, (1980) 4 SCC 531.

9) The cumulative effect of the aforesaid discussion leads to the only conclusion that in the instant case, the respondents have not adhered to the legal and Constitutional safeguards while passing the impugned detention order against the petitioner. The impugned order of detention is, therefore, unsustainable in law. Accordingly, the same 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 detention record, as produced, be returned to the learned counsel for the respondents.