
(2022) 07 J&K CK 0022

In the Jammu And Kashmir High Court

Case No : Writ Petition (Criminal) No. 223 Of 2021

Masood Ahmad Shah

APPELLANT

Vs

Union Territory Of J&K & Anr

RESPONDENT

Date of Decision : 15-07-2022

Acts Referred:

Constitution Of India, 1950 — Article 22(5)

Citation : (2022) 07 J&K CK 0022

Hon'ble Judges : Sanjay Dhar, J

Bench : Single Bench

Advocate : G. N. Shaheen, Asif Nabi, Sajad Ashraf

Final Decision : Allowed

Judgement

Sanjay Dhar, J

1) By the instant petition, veracity and legality of the detention order No.DMS/PSA/59/2021 dated 18.10.2021, issued by District Magistrate, Srinagar (for brevity "detaining authority") has been challenged. In terms of the aforesaid order, Shri Masood Ahmad Shah (for short "detenue") has been placed under preventive detention and lodged in Central Jail, Srinagar.

2) The petitioner has contended that the Detaining Authority has passed the impugned detention order mechanically without application of mind, inasmuch as the allegations mentioned in the grounds of detention have no nexus with the detenue and that the same have been fabricated by the police in order to justify its illegal action of detaining the detenue. It has been contended that the grounds of detention are vague and cryptic, on the basis of which no prudent man can make a representation against such allegations. It has been further contended that the procedural safeguards have not been complied with in the instant case, inasmuch as whole of the material which formed basis of the impugned detention order has not been supplied to the petitioner.

3) The respondents, in their counter affidavit, have disputed the averments made

in the petition and have insisted that the activities of detainee 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 detainee and the same were read over and explained to him. That the grounds urged by the petitioner are legally misconceived, factually untenable and without any merit. To substantiate their stand taken in the counter affidavit, the respondents have produced the detention record.

4) I have heard learned counsel for parties and perused the 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 detainee was not furnished with the material to enable him to make an effective representation against his detention.

(II) That the grounds of detention are vague and cryptic.

6) So far as the first ground of challenge is concerned, the same appears to be well-founded as the respondents have not brought anything on record to show that the material relied upon by the detaining authority, while framing the grounds of detention has been supplied to the petitioner.

The record of detention produced by the respondents does not contain any document evidencing the receipt of material by the petitioner. Obviously, he has been hampered by non-supply of relevant material in making an effective representation before the Advisory Board, as a result whereof his case appears to have been considered by the Advisory Board in the absence of his representation. Thus, 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.

7) It needs no emphasis that the detainee cannot be expected to make an effective and purposeful representation which is his constitutional right guaranteed under Article 22(5) of the Constitution of India, unless and until the material, on which the detention is based, is supplied to the detainee. The failure on the part of detaining authority to supply the material renders the detention order illegal and unsustainable. While holding so, I am fortified by the judgments rendered in *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).

8) So far as the ground regarding vagueness of the grounds of detention is concerned, the same appears to be well-founded. The statements/assertions made in the grounds of detention clearly show that the same are vague and lacking in material particulars pertaining to the place(s), timing and names of the shooters of the TRF to whom the petitioner is alleged to have provided the

logistic support and shelter.

9) It is averred in the grounds of detention that the petitioner has formed a gang with anti-national elements but the names or particulars of the members of the alleged gang have not been mentioned in the grounds of detention. On the basis of these vague allegations, the detenue could not have made an effective representation against his detention. Thus, there has been violation of safeguards provided under Article 22(5) of the Constitution of India. Therefore, the detention order is rendered illegal and unsustainable in law. In my aforesaid view, I am fortified by the judgments of the Supreme Court in the case of *Jahangirkhan FazalKhan Pathan vs. Police Commissioner, Ahmadabad*, (1989) 3 SCC 590, *Abdul Razak Nanekhan Pathan v. Police Commissioner, Ahmadabad*, AIR 1989 SC 2265, *Mohd. Yousuf Rather vs. State of J&K & Ors*, 1979 4 SCC 370 and *Piyush Kantilal Mehta vs. Commissioner of Police, Ahmedabad City and Ors*. 1989 (1) Crimes 176 (SC).

10) Viewed thus, the petition is allowed and the impugned order of detention is quashed. The detenue is directed to be released from the preventive custody forthwith provided he is not required in connection with any other case.

11) The detention record be returned to the learned counsel for the respondents.