

**(2022) 06 J&K CK 0021**

**In the Jammu And Kashmir High Court**

**Case No : Writ Petition (Criminal) No. 128 Of 2021**

Mehraj Ud Din Dar

APPELLANT

Vs

UT Of J&K And Anr

RESPONDENT

**Date of Decision : 27-06-2022**

**Acts Referred:**

Constitution Of India, 1950 — Article 22(5)  
Code Of Criminal Procedure, 1973 — Section 161, 164

**Citation : (2022) 06 J&K CK 0021**

**Hon'ble Judges : Sanjay Dhar, J**

**Bench : Single Bench**

**Advocate : Mohammad Hussain, Ilyas Laway**

**Final Decision : Allowed**

## Judgement

Sanjay Dhar, J

1) Challenge in this petition is to the order No.DMS/PSA/29/2021 dated 02.07.2021, issued by District Magistrate, Srinagar- respondent No.2 herein, in terms whereof, Mehraj-ud-Din Dar @ Sula S/o Ghulam Mohammad Dar R/o Manz Mohalla, Anchar, Soura, Srinagar (hereinafter referred to as the detainee), has been placed under preventive custody 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. It has been further contended that the Constitutional procedural safeguards have not been complied with in the instant case. It has also been urged that the allegations made against the detainee in the grounds of detention are vague and that the material forming the basis of the impugned order of detention and translated version thereof has not been provided to the detainee who is an illiterate person. The petitioner has further contended that the detaining authority has not spelt out the compelling reasons while passing the impugned order.

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

in the petition and have stated that they have followed the provisions of J&K Public Safety Act. It is contended that the detainee has been detained only after following due procedure; that the grounds of detention were read over to the detainee; that there has been proper application of mind on the part of the Detaining Authority while passing the impugned order and that the detainee has been provided all the material. The learned counsel for the respondents also produced the detention records to lend support to the stand taken in the counter affidavit.

4) Considered the rival submissions and also perused the material available on the file as also the detention records as produced by the learned counsel for the respondents.

5) Learned counsel for the petitioner highlighted various grounds while seeking quashment of impugned order but the main ground that has been argued during the course of arguments are that the detainee was not furnished whole of the material to enable him to make an effective representation against his detention.

6) So far as the aforesaid ground of challenge is concerned, a perusal of the detention record produced by learned counsel for the respondents reveals that the material is stated to have been received by the petitioner on 28.08.2021. Report of the Executing Officer in this regard forms part of the detention record, a perusal thereof reveals that it bears the signature of the petitioner and according to it, copies of warrant (one leaf), notice (one leaf), grounds of detention (two leaves) and FIRs (two leaves), in total six leaves, have been supplied to him.

7) It is clear from the execution report, which forms part of the detention record, that copies of detention order and the dossier have not at all been supplied to the detainee. Apart from this, if we have a look at the grounds of detention, it bears reference to two FIRs Viz. FIR No.17/2019 and FIR No.54/2021 of P/S Soura. It was incumbent upon respondents to furnish not only the copies of these FIRs but also the statements of witnesses recorded under Section 161/164 of Cr. P. C during investigation of these FIRs as well as the other material on the basis of which petitioner's involvement in these FIRs is shown, particularly when the petitioner is not nominated in these FIRs. 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. Obviously, the petitioner has been hampered by non-supply of these vital documents in making a representation before the Advisory Board, as a result whereof his case has been considered by the Advisory Board in the absence of his representation, as is clear from the detention record. 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.

8) It needs no emphasis that the detainee cannot be expected to make an

effective and purposeful representation which is his constitutional and statutory right guaranteed under Article 22(5) of the Constitution of India, unless and until the material, on which detention is based, is supplied to the detainee. The failure on the part of detaining authority to supply the material renders detention order illegal and unsustainable. While holding so, I am fortified by the judgments rendered in *Dhananjay Dass v. District Magistrate*, AIR 1982 SC 1315, *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.

9) For the afore-stated reasons, the petition is allowed and the impugned order of isquashed. 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.