
(2020) 03 J&K CK 0007
In the Jammu And Kashmir High Court
Case No : WP(Crl) No. 417/2019

Mohammad Amin Rather

APPELLANT

Vs

State Of J&K And Others

RESPONDENT

Date of Decision : 06-03-2020

Acts Referred:

Jammu And Kashmir State Ranbir Penal Code, 1989 — Section 121, 148, 149, 186, 336, 353(A), 505
Code Of Criminal Procedure, 1973 — Section 161
Jammu And Kashmir Public Safety Act, 1978 — Section 13
Constitution Of India, 1950 — Article 22(5)

Citation : (2020) 03 J&K CK 0007

Hon'ble Judges : Tashi Rabstan, J

Bench : Single Bench

Advocate : M.A. Makroo, Asif Maqbool, Mir Suhail

Final Decision : Disposed Off

Judgement

1. Petitioner through the medium of the present petition seeks quashment of the Detention Order No.56/DMP/PSA/19 Dated 08.08.2019, passed by

the District Magistrate, Pulwama. Respondent no. 2 herein, whereby Mohammad Amin Rather son of Ab. Rehman Rather resident of Litter, Tehsil

Litter District Pulwama, has been placed under preventive detention.

2. It is submitted that vague and general allegations have been levelled against detenu and even dates of the incidents have not been mentioned in grounds of detention.

3. The grounds of detention, prepared by respondent no.2, indicate involvement of detenu in cases FIR no.02/2019 under Section 505, 121 RPC, FIR

no.321/2016 under Section 353-ARPC and FIR no.64/2018 under Section 148, 149, 336, 186RPC, whereas it is a specific case of the petitioner that

detenu has already been released on bail in all these FIRs. However, in the grounds of detention, the detaining authority has not mentioned these vital facts, which clearly imply non-application of mind on the part of detaining authority in issuance of impugned detention order.

4. It is also submitted by the petitioner that it is admitted case of the respondents that detenu was supplied only copy of grounds of detention and a copy of communication and thus, it is contended that the detenu has not been supplied the material relied upon by respondents to pass the detention order.

5. Mr. Asif Maqbool, learned Dy. AG appearing vice Mr. Mir Suhail, AAG, has argued vehemently that there is no requirement of mentioning each and every event, though one accident is sufficient to pass the detention order. He, however, submits that all the material has been supplied to detenu.

6. Learned appearing counsel for the respondents has produced the detention record.

7. I have gone through the detention record. Perusal of impugned detention order reveals that Senior Superintendent of Police, Pulwama, vide his letter

no.Pro/PSA/DPO/19/803 dated 07.08.2019, produced material record, such as dossier and other connected documents in respect of detenu and it

was only after perusal thereof that impugned detention order has been issued by detaining authority. Grounds of detention make reference of as many

as four FIRs, to have been registered against detenu. Involvement of detenu in aforesaid cases appears to have weighed with detaining authority,

while making detention order. The record, as noted above, does not indicate that the copies of aforesaid First Information Reports, statements

recorded under Section 161 Cr.P.C. and other material collected in connection with investigation of aforesaid cases, was ever supplied to detenu. The

abovementioned material, thus, assumes significance in the facts and circumstances of the case. It needs no emphasis, that the detenu cannot be

expected to make a meaningful exercise of his Constitutional and Statutory rights guaranteed under Article 22(5) of the Constitution of India and

Section 13 of the J&K Public Safety Act, 1978, unless and until the material on which the detention order is based, is supplied to the detenu. It is only

after the detenu has all the said material available that he can make an effort to convince the detaining authority and thereafter the Government that

their apprehensions concerning the activities of the detenu are baseless and misplaced. If the detenu is not supplied the material, on which the

detention order is based, he will not be in a position to make an effective representation against his detention order. The failure on the part of the

detaining authority to supply the material relied at the time of making the detention order to the detenu, renders the detention order illegal and

unsustainable. While saying so, I draw the support from the law laid down in Thahira Haris Etc. Etc. v. Government of Karnataka, AIR 2009 SC

2184; Union of India v. Ranu Bhandari, 2008, Cr. L. J. 4567; Dhannajoy Dass v. District Magistrate, AIR, 1982 SC 1315; Sofia Gulam Mohd Bham v.

State of Maharashtra and others AIR 1999 SC 3051; and Syed Aasiya Indrabi v. State of J&K & ors, 2009 (I) S.L.J 219.

8. The Supreme Court in Abdul Latief Abdul Wahab Sheikh v. B.K. Jha, 1987 (2) SCC 22, has made it clear that it is only the procedural

requirements, which are the only safeguards available to detenu, that is to be followed and complied with as the Court is not expected to go behind the

subjective satisfaction of detaining authority. In the present case, the procedural requirements, as discoursed and noted above, have not been followed

and complied with by respondents in letter and spirit and as a corollary thereof, petition requires to be allowed.

9. For the foregoing reasons, this petition is disposed of and detention Order No.56/DMP/PSA/19 Dated 08.08.2019, passed by District Magistrate,

Pulwama, is quashed. Respondents, including Jail Superintendent concerned, are directed to release the detenu forthwith, provided he is not required in

any other case. Disposed of.

10. Detention record, so produced, is returned back to the learned counsel for the respondents.