
(2019) 03 J&K CK 0108

In the Jammu And Kashmir High Court

Case No : Habeas Corpus Petition (HCP) No. 324 Of 2018

Mohammad Iqbal Rather

APPELLANT

Vs

State Of Jammu & Kashmir And Anr

RESPONDENT

Date of Decision : 15-03-2019

Acts Referred:

Jammu And Kashmir Public Safety Act, 1978 — Section 8
Unlawful Activities (Prevention) Act, 1967 — Section 13
Code Of Criminal Procedure, 1973 — Section 161
Jammu And Kashmir High Court Rules, 1999 — Rule 138(3)
Constitution Of India, 1950 — Article 22(5)

Citation : (2019) 03 J&K CK 0108

Hon'ble Judges : Rashid Ali Dar, J; Sanjay Kumar Gupta, J

Bench : Division Bench

Advocate : Wajid Haseeb, Mir Shafaqat Hussain, Mir Suhail

Final Decision : Allowed

Judgement

1) Challenge in this petition is to order No.52/DMA/PSA/DET/2018 dated 24.09.2018, passed by District Magistrate, Anantnag-respondent No.2 herein, whereby Mohammad Iqbal Rather son of Late Sonaullah Rather resident of Durpora Khiram Tehsil Srigufwara District Anantnag (hereinafter referred as the detainee), in exercise of powers conferred under Section 8 of the J&K Public Safety act, has been ordered to be taken into preventive custody.

2) The petitioner's case, as set out in the petition, is that the detainee, without any cause and justification, on 06.09.2018, was called to Police Station, Srigufwara and was kept in illegal custody and later on was implicated in FIR No.63/2018 and while in custody, impugned order of detention was issued. The respondents are stated to have violated the procedural safeguards as provided under Article 22(5) of the Constitution of India and have ignored to provide material relied upon by the detaining authority while passing the impugned order of detention and thus deprived the detainee of his Constitutional and Statutory rights. Grounds of detention are stated to be vague, non-existent and unfounded.

3) The respondents, in their counter affidavit, have disputed the averments made in the petition and 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 were handed over to the detainee and same were read over and explained to him.

4) Heard, perused the records and considered. The detention order is liable to be quashed for the reasons to follow.

5) The detention order makes mention of material record, such as "dossier and other connected documents" relied upon by the detaining authority while passing the detention order. The detention order also makes reference to a communication received from Senior Superintendent of Police, Anantnag, vide No.Pros/Det/2018/ 9015-17 dated 20.09.2018. However, nothing has been brought on record by the respondents which would reveal that the documents referred to in the detention order were ever supplied to the detainee. The grounds of detention make reference to case in FIR No.63/2018 registered at Police Station, Srigufwara, for commission of offences punishable under Section 13 ULA (P) Act to have been registered against the detainee. Involvement of the detainee in aforementioned case appear to have heavily weighed with the detaining authority while passing detention order. The respondents have not brought anything on record to indicate that the copy of aforementioned FIR, statements recorded under Section 161 Cr. P. C and other material collected in connection with investigation of aforesaid case were ever supplied to the detainee. It needs no emphasis that the detainee cannot be expected to make a meaningful exercise of his constitutional and statutory rights 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. If the detainee is not supplied the material on which detention order is based, the detainee cannot be in a position to make an effective representation against his detention. The failure on the part of detaining authority to supply material renders detention order illegal and unsustainable. While holding so, I draw support from *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).

6) In view of the facts of the present case and the law laid down by the Hon'ble Apex Court as quoted hereinabove, the order of detention impugned does not sustain on the aforesaid ground alone, therefore, other grounds projected in the petition are not required to be dealt with.

7) Taking conspectus of the aforesaid discussion, petition is allowed, order No. 52/DMA/PSA/DET/2018 dated 24.09.2018, is quashed. The detainee is directed to be released from the preventive custody forthwith, if not required in connection with any other case.

8) The Registry shall return the detention record to the learned counsel for the

respondents.

Pronounced today in terms of Rule 138(3) of J&K High Court Rules, 1999.