

(2024) 02 J&K CK 0005

In the Jammu And Kashmir High Court

Case No : Habeas Corpus Petition No. 103 Of 2023

Mohammad Younis Ganie

APPELLANT

Vs

UT Of J&K And Another

RESPONDENT

Date of Decision : 05-02-2024

Acts Referred:

Constitution Of India, 1950 — Article 22(1), 22(5)
Jammu And Kashmir Public Safety Act, 1978 — Section 8, 8(a)

Citation : (2024) 02 J&K CK 0005

Hon'ble Judges : Sindhu Sharma, J

Bench : Single Bench

Advocate : S.T. Hussain, Nida Nazir, Mubeen Wani

Final Decision : Allowed

Judgement

Sindhu Sharma, J

1. This petition has been preferred for quashing the detention order No. 04/DMK/PSA/2023 dated 28.08.2023 passed by the District Magistrate, Kulgam pursuant to which he has ordered detaining Mohammad Younis Ganie, S/o Mohammad Ahsan Ganie, R/o Ponipora Kulgam, District Kulgam in exercise of the powers vested in him under clause (a) of Section 8 of the J&K Public Safety Act, 1978, to prevent him from acting in any manner prejudicial to the interest of public order. The detenu has assailed the order of detention dated 28.08.2023 through his son Waqar Younis Ganie.

2. The impugned order of detention has been assailed by the detenu on the ground that the allegations mentioned in the grounds of detention has no nexus with the detenu and has been fabricated by the Police in order to justify the illegal detention. The allegations are vague, non-existent and no prudent man can make a representation against the order. The allegations mentioned in the detention order do not fall under within the purview of public order but are simply relating to law and order arena and do not fall within the meaning of

Section 8 of the Jammu and Kashmir Public Safety Act, 1978.

3. It is contended that the detainee has already been admitted to bail in above mentioned cases and this fact has not been noticed by the detaining authority. The detaining authority has not furnished all the material to the detainee so as to make an effective representation against the same. The last alleged activity alleged against the detainee in the grounds of detention has taken place in the year 2020 and, thereafter, no fresh activity has been attributed to the detainee. The delay of three years from the last alleged activity has snapped its proximity of the alleged activity with the order of detention. The delay between the activity and order of detention is unjustified.

4. The Detaining Authority in his counter affidavit have submitted that the impugned order of detention has been passed against the detenu only after being fully satisfied that activities of the detenu are disturbing the public order. The impugned order it is submitted has been issued in compliance with the provisions of the Act.

5. The detainee it is submitted is actively involved in theft/gambling and plays a key role in distribution of liquor within the area, thereby, causing disruption to the peaceful atmosphere of the district. The activities of the detainee are prejudicial to public order and, as such, the District Magistrate, Kulgam, ordered his preventive detention under Jammu and Kashmir Public Safety Act, 1978. The provision of the Act and all the constitutional statutory safeguards have been followed and complied with.

6. Heard learned counsel for the parties and perused the record.

7. Though the detenu has raised numerous grounds for quashing the impugned order of detention but after perusing the record, I am satisfied that the detention order is liable to be quashed.

8. The detainee in the very first instance has raised a ground that all the material relied upon by the detaining authority while passing the order of detention has not been provided to him. Perusal of the receipt of the grounds of detention and other record reveals that the detainee has not been provided with the dossier which has resulted in fraction of important right and has vitiated the detention as held in *Sophia Gulam Mohd. Bham V. State of Maharashtra and others*, AIR 1999 SC 3051:

"... The right to be communicated the grounds of detention flows from Article 22(5) while the right to be supplied all the material on which the grounds are based flows from the right given to the detenu to make a representation against the order of detention. A presentation can be made and the order of detention can be assailed only when all the grounds on which the order is based are communicated to the detenu and the material on which those grounds are based are also disclosed and copies thereof are supplied to the person detained, in his own language....."

9. The failure on the part of the Detaining Authority to supply all the material relied upon while passing the order of detention which has deprived the detenu from making an effective and purposeful representation. This has resulted in infraction of the Constitutional Rights guaranteed to him under Article 22(1) of the Constitution of India and rendered the detention unsustainable.

10. It is next argued that the detenu has been detained for his activities by influencing the local youth in consumption of alcohol, resulting in their dependence and subsequent involvement in criminal activities as theft and gambling within the community. The involvement of the detenu in these activities is stated have become a great threat to law and order situation, necessitating his detention for maintaining public order. The issue, thus, is that whether these allegations as contained in the grounds and FIR, even if taken to be correct, would constitute an offence which has the potentiality of disturbing the public order.

11. In "Khursheed Ahmad Bhat vs. UT of J&K and others", passed in WP(Crl) No. 324/2022, decided on 20.09.2022 this Court has held as under:

The term "law and order" and "Public order" look deceptively similar but both have different connotations. While former is a continual ongoing term, the latter is more temporal in nature. In the case of public order, the community or the public at large is affected by a particular action whereas the act or acts that affect only few individuals may be a case of law and order. Mere contravention of law such as indulging in cheating or criminal breach of trust certainly affects law and order? but before it can be said to affect public order, it must affect the community or public at large. The nature of criminal act, the manner in which it is committed and its impact are some of the factors that determine whether a particular act would fall within the realm of "public order" or "law and order". What is alleged in the FIR, which is sole basis of putting the detenu under preventive detention, clearly falls within the ambit of term "Law and Order". Unless the criminal act attributed to the detenu has the effect of disturbing the even tempo of life of community or public at large, it would remain in the realm of "Law and order" and thus cannot be made the basis of preventive detention."

12. Perusal of these grounds of detention reveal that they cannot be a material on which the Detaining Authority can arrive at the subjective satisfaction that activities of detenu were prejudicial to maintenance of the public order.

13. If the activities are prejudicial to maintenance of law and order, the person indulging in such activities should be dealt under ordinary criminal law. When the activities of the detenu are such which may have the tendency to disturb the tempo of the life of the community and public at large. It is degree and extent of its reach in severity. It is the potentiality to disturb the even tempo of life which makes it prejudice to the maintenance of public order. The activities of the detenu were confined against the individual and not against public at large.

14. The activities alleged against the detenu are those which ordinarily should

be dealt under criminal law and he should not be detained under the preventive detention law if the ordinary criminal law is sufficient to deal with such activities. If on the other hand, the activities are prejudicial to maintenance of public order, the preventive detention is justified. What is required for detaining a person under the public order is the potential effect it would have at public at large. The allegations that the criminal cases are registered against the detainee, it can be safely said that whatever was done by the detainee was those which could have been dealt under the ordinary criminal law and was not against the public at large or large section of public.

15. In view the law laid down in the aforementioned cases and applying the same to the facts of this case, it is clear that the order of detention is unsustainable.

16. Keeping in view the aforesaid discussion and without adverting to other grounds raised by the detainee in this petition. This petition is allowed and impugned detention order No. 04/DMK/PSA/2023 dated 28.08.2023 passed by the District Magistrate, Kulgam, in terms whereof, the detenu-Mohammad Younis Ganie, S/o Mohammad Ahsan Ganie, R/o Ponipora Kulgam, District Kulgam, was detained, is quashed. Accordingly, the respondents are directed to release the detainee from the custody forthwith, if he is not required in any other case.

17. Detention record be returned to learned counsel for the respondents by the Registry forthwith.