

(2023) 11 J&K CK 0034

In the Jammu And Kashmir High Court

Case No : Writ Petition (Criminal) No. 126 Of 2022

Mohammad Younus Makroo

APPELLANT

Vs

Union Territory Of J&K Thr And Others

RESPONDENT

Date of Decision : 18-11-2023

Acts Referred:

Constitution Of India, 1950 — Article 22
Unlawful Activities (Prevention) Act, 1967 — Section 13

Citation : (2023) 11 J&K CK 0034

Hon'ble Judges : Puneet Gupta, J

Bench : Single Bench

Advocate : Mukhtar Ahmad Makroo, Alla-Ud-Din Ganai

Final Decision : Disposed Of

Judgement

Puneet Gupta, J

1. District Magistrate, Anantnag-respondent no. 2 herein, by order No. 58 DMA/PSA/DET/2021 dated 17.03.2022, has placed Mohammad Younus Makroo S/o Ghulam Nabi Makroo R/o Arwani Bijbehara, District, Anantnag (for short "detenue") under preventive detention to prevent him from acting in any manner prejudicial to the security of the State and directed his lodgment in Central Jail Jammu (Kotbhalwal).

2. It is stated in the petition that detenue has been falsely implicated in case FIR No. 75/2020 of P/S Bijbehara, though the detenue was taken in custody from his home on 22.04.2020 and has been shown to be involved in the offence under section 13 of Unlawful Activities (Prevention) Act. Thereafter the detenue has been admitted to interim bail by the competent court on 02.03.2022 with certain conditions but the detenue stands again arrested on 24.03.2022. The family members of the detenue approached the police concerned as to why the detenue has been arrested but no reasonable justification has been given by the police concerned with regard to the arrest of the detenue. The detenue after receipt of

the detention order, dossier and grounds of detention made a representation dated 11.04.2022 to the respondent No. 1 and on 12.04.2022 to the respondent No. 2 (Detaining Authority) seeking revocation/recalling of his detention order.

3. The detainee has raised several other grounds to challenge the detention order. The counsel for the detainee, however only presses aforesaid grounds of challenge.

4. Respondents have filed their counter affidavit stating therein that having regard to the nature of activities the detainee had been indulging in over a period of time, the detaining authority was of the opinion that remaining of the detainee at large was detrimental to the Security of the state. It is submitted that because of his illegal and criminal activities, the detainee was booked under the provisions of J&K Public Safety Act, 1978. There is, however, no averment in the counter affidavit as to whether the representations made by the nephew of the detainee on 11.04.2022 and 12.04.2022, to the Principal Secretary to Government, Home Department Civil Secretariat, J&K Srinagar/Jammu and the District Magistrate, Anantnag (Detaining Authority) have been considered or not.

5. Having heard learned counsel for the detainee and perused the material on record, I am of the considered view that the impugned order of detention does not sustain in the eye of law, as the representations made on behalf of the detainee have not been considered by the Government. Right of the detainee to make a representation and to have the same considered by the competent authority is a fundamental right guaranteed to a person under detention under Article 22 of the Constitution and the infraction of such a right renders the detention illegal and unconstitutional.

6. The detainee has not only specifically averred but has also placed on record copy of the representations submitted by the detainee through his nephew to the Principal Secretary to the Government, Department of Home and District Magistrate, Anantnag. There is no denial or rebuttal of the same by the respondents in their counter affidavit. In these circumstances, this Court has no option but to presume that the representations made by the detainee through his nephew to the competent authority have not been considered at all. That being the admitted position, it is foregone conclusion that the order of detention, impugned in this petition cannot survive on the touchstone of settled legal position and the express right guaranteed to the detainee under Article 22 of the Constitution of India. [See Pankaj Kumar Chakrabarty & others Vs. State of West Bengal, AIR 1970 SC 97, a Constitution Bench Judgment].³

7. For the foregoing reasons, this petition is allowed and detention Order No. 58 DMA/PSA/DET/2021 dated 17.03.2022, passed by District Magistrate, Anantnag, is quashed. Respondents are directed to release the detainee, provided he is not required in any other case. Disposed of.

8. Detention record be returned to Mr. Alla-ud-din Ganai, learned counsel for respondents forthwith.