

(2020) 07 J&K CK 0051
In the Jammu And Kashmir High Court
Case No : Writ Petition (C) No. 471 Of 2019

Mohammad Yousuf Ganie

APPELLANT

Vs

State Of J&K And Others

RESPONDENT

Date of Decision : 22-07-2020

Acts Referred:

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) 07 J&K CK 0051

Hon'ble Judges : Tashi Rabstan, J

Bench : Single Bench

Advocate : B.A.Tak, Asifa Padroo, Afroza Hassan

Final Decision : Disposed Off

Judgement

Tashi Rabstan, J

1. District Magistrate, Ganderbal - respondent no.2 herein, has, by Order no.75-DMG-PSA-2019 dated 09.08.2019, placed Mohammad Yousuf Ganie son of Ghulam Mohammad Ganie resident of Kurhama Ganderbal (for brevity "detenu") under preventive detention to prevent him from acting in any manner prejudicial to the maintenance of public order. It is this order of which petitioner is aggrieved and implores quashment thereof.

2. Reply Affidavit has been filed by respondents, vehemently resisting the petition. Detention record has also been produced by counsel for the respondents to substantiate the statements made in reply affidavit.

3. I have heard learned counsel for parties and considered the matter.

4. Given the case set up and submissions made by counsel for parties, it would be apt to go through the detention record, produced by counsel for respondents, so as to ascertain as to whether the material, relied upon by detaining authority while issuing impugned detention order, has been furnished to detenu or not.

Perusal of detention record reveals that all that has been relied upon by detaining authority while issuing impugned order of detention has not been furnished to detenu.

5. Perusal of impugned detention order reveals that Superintendent of Police, Ganderbal, vide his letter no. Legal/Dossier/19/27412-14 dated 09.08.2019, produced material record, such as dossier and other connected documents in respect of detenu and it was only after its perusal that impugned detention order has been issued by detaining authority. Grounds of detention make reference of registration of an FIR against detenu. Though detenu is said to have been motivating the youth to resort to stone pelting at various places in District, yet no definite particulars of youths, who are alleged to have been motivated by detenu have been given nor the particulars of places where detenu along with youth are alleged to have resorted to stone pelting. Involvement of detenu in aforesaid case appears to have weighed with detaining authority, while making detention order. The record, as noted above, does not indicate that copies of aforesaid First Information Report, 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 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 detention order is based, is supplied to detenu. It is only after detenu has all the said material available that he can make an effort to convince detaining authority and thereafter the Government that their apprehensions concerning activities of detenu are baseless and misplaced. If detenu is not supplied the material, on which detention order is based, he will not be in a position to make an effective representation against his detention order. Failure on part of detaining authority to supply material, relied at the time of making detention order to detenu, renders 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.

6. The Supreme Court in *Abdul Latief Abdul Wahab Sheikh v. B.K. Jha*, 1987 (2) SCC 22 has said 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.

7. For the foregoing reasons, this petition is disposed of and detention Order

no.75-DMG-PSA-2019 dated 09.08.2019, passed by District Magistrate, Ganderbal, quashed. Respondents, including Jail Superintendent concerned, are directed to release the detenu forthwith, provided he is not required in any other case. Disposed of.

8. Registry to return detention record to learned counsel for respondents.