

(2023) 10 J&K CK 0019

In the Jammu And Kashmir High Court

Case No : Habeas Corpus Petition No. 07 Of 2023

Mohd. Ashraf

APPELLANT

Vs

Union Territory Of Jammu & Kashmir And Others

RESPONDENT

Date of Decision : 09-10-2023

Acts Referred:

Constitution Of India, 1950 — Article 21, 22

Citation : (2023) 10 J&K CK 0019

Hon'ble Judges : MA Chowdhary, J

Bench : Single Bench

Advocate : Arshad Majid Malik, Bhanu Jasrotia

Final Decision : Allowed

Judgement

MA Chowdhary, J

1. In the instant Writ Petition, the petitioner has challenged the detention order No.DMR/INDEX/12 of 2023 dated 01.06.2023, issued by respondent No.2, District Magistrate, Rajouri (hereinafter to be referred as "the detaining authority"), whereby petitioner namely Mohd. Ashraf S/O Mohd Hussain, R/O Village Kakora, Tehsil Manjakote District Rajouri (for short 'the detenue') has been placed under preventive detention, in order to prevent him from acting in any manner prejudicial to the maintenance of public order.

2. It has been contended that the Detaining Authority has passed the impugned detention order mechanically without application of mind, inasmuch as the grounds of detention are mere reproduction of the dossier; that the statutory procedural safeguards have not been complied with in the instant case as except the detention order and grounds of detention, nothing has been provided to the petitioner or any of his other family member, let alone the translated version of the material forming basis of the grounds of detention, as such, there has been total non application of mind on the part of the Detaining Authority while passing the impugned detention order. It has further been contended that the detaining

authority has not mentioned a word with regard to satisfaction drawn by him in the detention order as to how it has come to the conclusion of passing of the detention order.

3. It is further contended that the petitioner has been shown involved in 7 FIRs by the respondents, however, the fact of the matter is in one of the FIRs i.e. FIR No.74/2014, he has earned acquittal on 13.02.2019 from the court of 3rd Additional Sessions Judge, Jammu and in all other FIRs mentioned in the grounds of detention by respondent no.2, challans stand already produced before the different competent courts of law and in all the FIRs the petitioner is on bail and has been facing trials; that aforementioned facts are conspicuous by their absence in the grounds of detention, which apparently shows that the detaining authority is oblivious of the whole facts of the case of the petitioner; that the preventive detention can never be a substitute for the substantial law; that the petitioner is only 8th pass and the material supplied i.e. detention order and grounds of detention documents recorded in English, therefore, he has been prevented from making effective representation to the Government. Lastly, it is prayed that the detention order dated 01.06.2023 be quashed as the same has been passed without giving any consideration to the representation filed by the petitioner on 03.06.2023 to the Financial Commissioner (ACS), Home, who while approving the detention order of the petitioner on 06.06.2023, confirmed the same on 20.06.2023 but has not whispered a word about the said representation.

4. The respondents, in their counter affidavit, have controverted the averments made in the petition and submitted that the criminal activities of the detenu have created terror and law and order problem in the area. The criminal acts of the detenu include habitual theft/burglary prejudicial to the maintenance of public order and safety/security of lives and properties of the citizens. The detenu is involved in seven cases registered at different Police Stations. It is pleaded that the detention order and grounds of detention were handed over to the detenu and the same were read over and explained to him in the language he understands. It has also been contended that the grounds raised by the petitioner are factually misconceived and legally untenable. The respondents have produced the detention records in order to support the contentions raised in the counter affidavit.

5. Heard learned counsel for the parties and perused the detention record.

6. Learned counsel for the petitioner, while seeking quashment of the impugned order, reiterated various grounds but his main thrust during the course of arguments was on the following two grounds:

(I) That the grounds of detention are verbatim copy of the dossier, which shows that the detaining authority has not applied its mind while formulating the grounds of detention which is a prerequisite for passing an order of detention.

(II) That except the detention order along with grounds of detention, nothing has been supplied to the detenu, thus, prevented the detenu from making an

effective representation against his detention.

7. Learned counsel for the respondents has argued that criminal activities of the detainee have disturbed the peace of the general public. The criminal/anti-social activities of the detainee have posed a serious threat to the public order is general and have hurt the sentiments of all communities and his habitual involvement in burglary/theft cases has put to peril the safety and security of people's lives and properties. It is further argued that the detainee has not changed his behavior in spite of a number of FIRs registered against him and he is bent upon to carry on criminal/anti-social activities. It was further contended that it was the need of hour to isolate the detainee from the society by way of detaining him under the J&K Public Safety Act, 1978, so that he might not repeatedly indulge in such activities. Keeping all these facts in view, the Detaining Authority, as per the learned counsel for the respondents, was justified in passing the impugned order of detention as there was every likelihood of the detainee indulging in similar activities. It has been contended that the grounds of detention and material on the basis of which the grounds of detention were formulated, were handed over to the petitioner and he was made to understand the contents thereof in the language he understands.

8. Personal liberty is one of the most cherished freedoms, perhaps more important than the other freedoms guaranteed under the Constitution. It was for this reason that the Founding Fathers enacted the safeguards in Article 22 in the Constitution so as to limit the power of the State to detain a person without trial, which may otherwise pass the test of Article 21, by humanizing the harsh authority over individual liberty. In a democracy governed by the rule of law, the drastic power to detain a person without trial for security of the State and/or maintenance of public order must be strictly construed. However, where individual liberty comes into conflict with an interest of the security of the State or public order, then the liberty of the individual must give way to the larger interest of the nation.

9. Before appreciating the rival contentions of the parties, it would be appropriate to note that the procedural requirements are the only safeguards available to the detainee since this Court cannot go behind the subjective satisfaction of the detaining authority as has been laid down by Hon'ble Apex Court in a case titled *Abdul Latif Wahab Sheikh v. B. K. Jha & Anr.* reported as (1987) 2 SCC 22. The procedural requirements are, therefore, to be strictly complied with, if any value is to be attached to the liberty of the subject and the constitutional rights guaranteed to him in that regard.

10. The detention record, as produced, reveals that the detainee was involved in following 07 cases registered at various Police Stations:-

1) FIR No.74/2017 U/S 376 RPC of PS Bus Stand, Jammu.

2) FIR No.85/2017 U/S 307/353/341/323/147/225-B RPC of PS Thanamandi.

- 3) FIR No.53/2018 U/S 379 RPC of PS Trikuta Nagar, Jammu.
- 4) FIR No.129/2019 U/S 380/201 RPC of PS Akhnoor, Jammu.
- 5) FIR No.94/2020 U/S 382/323/34/201 of PS Akhnoor, Jammu.
- 6) FIR No.57/2021 U/S 380 IPC of PS Gandhinagar, Jammu.
- 7) FIR No.286/2022 U/S 380 IPC of PS Gandhinaga, Jammu

Involvement of the detainee in the aforementioned cases appears to have heavily weighed with the detaining authority, while passing detention order.

11. The requirement of law is that whole of the record, on which the detention order is based, has to be made available to the detainee in the language that he understands. The detainee herein is said to be 8th pass and as per the execution report, he has been furnished copies of detention order and grounds of detention only comprising of five leaves. He has neither been provided with copies of FIRs nor statement of witnesses. The detainee cannot be said to be provided with whole of the record which has based his detention, so as to make an effective representation. The failure on the part of the detaining authority to supply material renders detention illegal and unsustainable.

12. Though, the detainee has made a representation to the Government on 03.06.2023 but perusal of the detention record would show that while passing confirmation of detention order in respect of the detainee on 20.06.2023, there is no mention of any consideration of representation filed by the petitioner.

13. On perusal of the record, it reveals that the detainee has not been furnished all the documents pursuant to the order impugned in terms of which he was taken into custody. If we have a look on the grounds of detention and the Police dossier available in the detention record, it is revealed that the grounds of detention are almost xerox copy of the dossier with interplay of words here and there. The dossier and the grounds of detention are in a similar language and the contents of both these documents appear to be more or less similar. Even the paragraphs of the two documents match with each other. This clearly exhibits non-application of mind on the part of Detaining Authority.

14. From what has been discussed above, it is clear that that the Detaining Authority has, in the instant case, proceeded in a mechanical manner, as a result of which the deriving of subjective satisfaction has become a causality. While formulating the grounds of detention, the Detaining Authority has to apply its own mind. It cannot simply reiterate whatever is written in the police dossier. In my aforesaid view, I am supported by the judgment of the Hon'ble Supreme Court in the case of Jai Singh & Ors vs. State of J&K, (AIR 1985 SC 764). In view of what has been discussed above, the impugned order of detention exhibits non application of mind on the part of the detaining authority rendering the order of detention unsustainable in law, having been passed in a routine and mechanical manner.

15. Next it has been contended that the detainee has been disabled in making effective representation against the order of detention as translated version of the material forming basis of grounds of detention has not been furnished to him.

16. A perusal of the detention order reveals that the petitioner is a driver by profession having middle class pass, which means that he is a semi-literate person. The receipt stated to have been executed by the petitioner, which form part of the detention record, reveals that the petitioner has only been provided with the warrants of detention and grounds of detention. The receipt further reveals that contents of warrant and grounds of detention have been read over to the petitioner in the English and explained to the petitioner in Urdu/Kashmiri language. There is no document on the detention record that would suggest that the petitioner has been provided translated version of the grounds of detention, which is in hyper technical language and a semi-illiterate person cannot be expected to understand the contents of the grounds of detention. Although, as per the receipt, contents of grounds of detention have been read over and explained to the petitioner in Urdu/Kashmiri language though the petitioner did not understand even Kashmiri language, yet the Executing Officer/Official has not sworn in any affidavit to confirm this fact. The detention record does not contain any such affidavit.

17. In view of the above, the contention of the petitioner that he was not made to understand contents of the grounds of detention in the language he understands, appears to be well founded. Obviously because the petitioner could not understand the contents of the grounds of detention, he was hampered from making an effective representation against the order of detention. Thus, a valuable statutory and constitutional right of the petitioner stands violated in the instant case, thereby rendering the impugned order of detention vitiated and unsustainable in law.

18. Viewed thus, the petition is allowed and the impugned order of detention No. DMR/INDEX/12 of 2023 dated 01.06.2023, passed by respondent No. 2, District Magistrate, Rajouri, is hereby quashed. The detainee is directed to be released from the preventive custody forthwith, if not involved in any other case.

19. The record of detention be returned to the learned counsel for the respondents.