

(2024) 01 J&K CK 0019

In the Jammu And Kashmir High Court

Case No : Habeas Corpus Petition No. 29 Of 2023

Mohd. Ayaz Alias Shantoo

APPELLANT

Vs

Union Territory Of Jammu And Others

RESPONDENT

Date of Decision : 31-01-2024

Acts Referred:

Constitution Of India, 1950 — Article 22(5)

Jammu And Kashmir Public Safety Act, 1978 — Section 8(1), 8(1)(a)

Citation : (2024) 01 J&K CK 0019

Hon'ble Judges : Rajnesh Oswal, J

Bench : Single Bench

Advocate : S. S. Ahmed, Zulkernain Choudhary, Supriya Chouhan, Raul Raina, Pawan Dev Singh

Final Decision : Dismissed

Judgement

Rajnesh Oswal, J

1. The present petition has been filed by the petitioner through his father seeking quashing of the order of detention bearing No. 06 of 2023 dated 10.05.2023 issued by respondent No. 2 under Section 8(1)(a) of the Public Safety Act, 1978 (for short "the Act") on the following grounds:

(a) That the order of detention was passed on 10.05.2023 but the same was implemented on 07.06.2023 when the petitioner surrendered before the SHO Police Station, Peer Mitha, Jammu in presence of the respectable persons of the area including the Municipal Corporator, Gujjar Nagar, Jammu and Advocate Varun.

(b) That earlier in the year, 2017 also, the petitioner was recommended for detention under the Act but later, the District Administration decided not to detain the petitioner and the petitioner was allowed to face the trials in the criminal cases, in which he had been booked for substantive offences.

(c) That the order of detention of the petitioner is illegal as most of the

documents forming part of the dossier/grounds of detention provided to the petitioner were not legible.

(d) That the petitioner had submitted the representation against the order of detention but the same was not decided by the respondents.

(e) That the petitioner was acquitted in FIR No. 63/2017 of Police Station, Nowabad and FIR No. 38/2022 of Police Station, Peer Mitha, Jammu but the respondent No. 3 did not provide the requisite information to the Detaining Authority i.e. respondent No. 2 and as such, it has resulted into miscarriage of justice.

2. Counter affidavit has been filed by the respondent No. 2, stating therein that the order of detention has been issued on the basis of activities of the petitioner, which were found to be prejudicial to the maintenance of public order, so as to prevent the petitioner from indulging again in such activities. It is further stated that all the statutory safeguards enshrined in Article 22(5) of the Constitution of India as well as provisions contained in the Act were meticulously followed, while issuing as well as executing the order of detention. It is further averred that the petitioner is a history-sheeter of Police Station, Peer Mitha, Jammu and a dreaded criminal, desperate character, who habitually indulges in acts of violence such as attempt to murder, assault, carrying illegal arm/ammunition, extortion etc. It is further stated that the petitioner was found to be involved in 12 different cases and the ordinary criminal law when failed to mend him and his tendency to disturb the public order, the Detaining Authority was compelled to detain him under the Act. The acquittal, discharge or bail in one or more of the cases, has no effect on the subjective satisfaction of the Detaining Authority.

3. Mr. S. S. Ahmed, learned counsel for the petitioner has laid much stress that the judgments of acquittal recorded in favour of the petitioner in FIR No. 63/2017 of Police Station, Nowabad and case FIR No. 38/2022 of Police Station, Peer Mitha, were not brought to the notice of the Detaining Authority by the respondent No. 3 and as such, it prevented the Detaining Authority from deriving the subjective satisfaction while issuing the order of detention. He further argued that despite the fact that the representation was made to the respondents, the same was not decided by them resulting into violation of the constitutional rights of the petitioner guaranteed under Article 22(5) of the Constitution of India as well as provisions contained in the Act.

4. Per contra, Mr. Pawan Dev Singh, learned Dy.AG, appearing for the respondents, has vehemently argued that if the legible copies of the material relied upon by the Detaining Authority while issuing the order of detention were not provided to the petitioner, he was expected to approach the respondents for providing the legible copies. He laid much stress that the ground raised by the petitioner in respect of illegible copies is, in fact, an afterthought as there is no such whisper made in the representation made by the petitioner prior to the filing of the present petition. He further submitted that all the constitutional as

well as statutory safeguards provided under Article 22(5) of the Constitution of India and the Act respectively have been followed while issuing and executing the order of detention.

5. Heard and perused the record submitted by the respondents.

6. The first contention raised by the petitioner is that the legible copies of the documents relied upon by the detaining authority while issuing the order of detention were not provided to him. The perusal of representation filed by the father of the petitioner reveals that no such ground was raised by the petitioner in his representation and rather, the mode and manner in which the representation has been made, thereby mentioning the details of the FIR including the allegations, establishes that all the documents which were relied upon by the detaining authority and provided to the petitioner, were legible. As such, there is no force in the contention raised by the petitioner and the same is rejected.

7. The second contention raised by the petitioner is that the representation made against the order of detention to the respondents has not been considered by them. The perusal of Record produced by the respondents would reveal that the representation submitted by the father of the petitioner was forwarded to Special DG Police, CID J&K by the respondent No.1 vide communication dated 22.06.2023 but the same was not decided either by the respondent No. 1 or respondent No.2. The respondent No.1 has confirmed the order of detention vide order dated 24.07.2023, after obtaining the opinion from the Advisory Board when representation was already forwarded by the respondent No.1 to Special DG Police, CID J&K vide communication dated by 22.06.2023. Non consideration of representation is violative of the constitutional as well as the statutory rights of the petitioner. In *Sarabjeet Singh Mokha v. District Magistrate, Jabalpur*, 2021 SCC OnLine SC 1019, the Hon'ble Apex Court of India has held as under:

"50. By delaying its decision on the representation, the State Government deprived the detenu of the valuable right which emanates from the provisions of Section 8(1) of having the representation being considered expeditiously. As we have noted earlier, the communication of the grounds of detention to the detenu "as soon as may be" and the affording to the detenu of the earliest opportunity of making a representation against the order of detention to the appropriate government are intended to ensure that the representation of the detenu is considered by the appropriate government with a sense of immediacy. The State Government failed to do so. The making of a reference to the Advisory Board could not have furnished any justification for the State Government to not deal with the representation independently at the earliest. The delay by the State Government in disposing of the representation and by the Central and State Government in communicating such rejection, strikes at the heart of the procedural rights and guarantees granted to the detenu. It is necessary to understand that the law provides for such procedural safeguards to balance the wide powers granted to the executive under the NSA. The State Government

cannot expect this Court to uphold its powers of subjective satisfaction to detain a person, while violating the procedural guarantees of the detenu that are fundamental to the laws of preventive detention enshrined in the Constitution.”

(emphasis added)

The order of detention, as such, is not sustainable on this ground only.

8. Further, this Court finds that the grounds of detention prepared by the respondent No. 2 are the verbatim reproduction of the contents of the dossier submitted by the respondent No.3 to the respondent No.2. The detaining authority is required to apply its mind independently in respect of the material placed before it so as to derive subjective satisfaction that it has become necessary to detain the petitioner. Reliance is placed upon the decision of Apex Court in case titled 'Jai Singh v. State of J & K, reported in (1985) 1 SCC 561' and the relevant portion is reproduced as under:

“-----First taking up the case of Jai Singh, the first of the petitioners before us, a perusal of the grounds of detention shows that it is a verbatim reproduction of the dossier submitted by the Senior Superintendent of Police, Udhampur to the District Magistrate requesting that a detention order may kindly be issued. At the top of the dossier, the name is mentioned as Sardar Jai Singh, father's name is mentioned as Sardar Ram Singh and the address is given as Village Bharakh, Tehsil Reasi. Thereafter it is recited “The subject is an important member of...” Thereafter follow various allegations against Jai Singh, paragraph by paragraph. In the grounds of detention, all that the District Magistrate has done is to change the first three words “the subject is” into “you Jai Singh, s/o Ram Singh, resident of Village Bharakh, Tehsil Reasi”. Thereafter word for word the police dossier is repeated and the word “he” wherever it occurs referring to Jai Singh in the dossier is changed into “you” in the grounds of detention. We are afraid it is difficult to find greater proof of non-application of mind. The liberty of a subject is a serious matter and it is not to be trifled with in this casual, indifferent and routine manner.”

9. Further, in 'Rajesh Vashdev Adnani v. State of Maharashtra, (2005) 8SCC 390', the Hon'ble Apex Court quashed the order of detention, as the detention order was the verbatim reproduction of the proposal of the sponsoring authority. On this ground also, the order of detention is not sustainable and the same is required to be quashed.

10. In view of above, the order of detention bearing No. 06 of 2023 dated 10.05.2023 issued by respondent No. 2 under section 8(1)(a) of the Public Safety Act, 1978 is quashed. The petitioner be released forthwith, if not required in any other case.

11. The record be returned to the learned Counsel for the respondents.