

(2023) 09 J&K CK 0052
In the Jammu And Kashmir High Court
Case No : Habeas Corpus Petition No. 20 Of 2023

?Mohd Kabir

APPELLANT

Vs

Union Territory Of J&K & Ors

RESPONDENT

Date of Decision : 29-09-2023

Acts Referred:

Constitution Of India, 1950 — Article 22(5)

Citation : (2023) 09 J&K CK 0052

Hon'ble Judges : Sanjay Dhar, J

Bench : Single Bench

Advocate : C. S. Azad, Banu Jasrotia

Final Decision : Allowed

Judgement

Sanjay Dhar, J

1) By the instant petition, quashment of order No. DMR/INDEX/13 of 2023 dated 15.06.2023, issued by District Magistrate, Rajouri-respondent No.3 (for brevity "detaining authority") is sought. In terms of the aforesaid order, Mohd Kabir son of Feroz Din resident of Nerojal Tehsil Thanamandi District Rajouri , (for short "detenu") has been placed under preventive detention and lodged in District Jail, Dhangri, in order to prevent him from acting in any manner prejudicial and detrimental to the maintenance of public order.

2) The petitioner has contended that he has been detained in an illegal and arbitrary manner without following the principles of natural justice. It is submitted that the detention of the petitioner is based on ill will and act of vengeance. It is further contended that the offences as alleged in the FIRs, even if taken on their face value, do not in any manner constitute sufficient material for issuance of a preventive detention order and there is non-application of mind on the part of the detaining authority while issuing the impugned detention order and that whole of the material that formed basis of the grounds of detention has not been furnished to the petitioner which prevented him from making an

effective representation against his detention.

3) The respondents, in their counter affidavit, have disputed the averments made in the petition and insisted that the activities of detainee have posed a serious threat to the maintenance of public order in whole of the district in general and Reasi Town in particular that the petitioner is involved in various criminal cases; that whole of the material was handed over to the detainee and the same has been read over and explained to him; that the petitioner was informed about his right to make a representation against the detention and that the impugned detention order has been passed strictly in accordance with law occupying the field. In support of their stand taken in the counter affidavit, the respondents have also produced the detention record.

4) I have heard learned counsel for parties and perused the material on record.

5) The petitioner has urged a number of grounds to challenge the impugned order. However, during the course of arguments, he has laid emphasis on the ground that whole of the material which formed the basis of the grounds of detention has not been furnished to the detainee.

6) The ground urged by the learned counsel for the petitioner that the procedural safeguards have not been complied with in the case of the petitioner, inasmuch as whole of the material forming basis of the grounds of detention has not been furnished to him, upon perusal of the detention record, appears to be forceful. A perusal of the detention record reveals that the material is stated to have been received by the petitioner on 01.06.2023. Report of the Executing Officer in this regard forms part of the detention record, a perusal whereof reveals that it bears the signature of the petitioner and according to it, the petitioner has been provided six leaves comprised of detention warrant (01 leaf) and grounds of detention (05 leaves), meaning thereby that copies of notice of detention and order of detention have not been provided to him. If we have a look at the grounds of detention, it bears reference to ten FIRs Viz. FIR Nos.75/2011 320/2016, 332/2012 of P/S Rajouri, 12/2012 of P/S Thannamandi, 155/2021, 162/2021 of P/S Manjakote, 85/2023, 20/2023 of P/S Nowshera, 36/2010 of P/S Rajouri and 85/2017 of P/S Thannamandi. It was incumbent upon respondents to furnish not only the copies of these FIRs but also the statements of witnesses recorded during the investigation of the said FIRs and other material on the basis of which petitioner's involvement therein is shown. Even the dossier of detention has not been furnished to the petitioner.

7) Thus, the contention of the petitioner that whole of the material relied upon by the detaining authority, while framing the grounds of detention, has not been supplied to him, appears to be well-founded. Obviously, the petitioner has been hampered by non-supply of these vital documents in making an effective representation before the Advisory Board, as a result whereof his case has been considered by the Advisory Board in the absence of his representation, as is clear from the detention record. Thus, vital safeguards against arbitrary use of the law

of preventive detention have been observed in breach by the respondents in this case rendering the impugned order of detention unsustainable in law.

8) It needs no emphasis that the detenue cannot be expected to make an effective and purposeful representation which is his constitutional right guaranteed under Article 22(5) of the Constitution of India, unless and until the material, on which the detention is based, is supplied to the detenue. The failure on the part of detaining authority to supply the material renders the detention order illegal and unsustainable in law. While holding so, I am fortified by the judgments rendered in *Sophia Ghulam Mohd. Bham V. State of Maharashtra and others* (AIR 1999 SC 3051) and, *Thahira Haris Etc. Etc. V. Government of Karnataka & Ors.* (AIR 2009 SC 2184).

9) Viewed thus, the petition is allowed and the impugned order of detention is quashed. The detenue is directed to be released from the preventive custody forthwith provided he is not required in connection with any other case.

10) The detention record be returned to learned counsel for the respondents