

(2022) 08 J&K CK 0063

In the Jammu And Kashmir High Court

Case No : Writ Petition (Criminal) No. 280 Of 2021

Mohsin Hassan Bhat

APPELLANT

Vs

Ut Of J&K And Ors

RESPONDENT

Date of Decision : 29-08-2022

Acts Referred:

Constitution Of India, 1950 — Article 22(5)

Citation : (2022) 08 J&K CK 0063

Hon'ble Judges : Sanjay Dhar, J

Bench : Single Bench

Advocate : Mukhtar Ahmad Makroo, Sajad Ashraf

Final Decision : Allowed

Judgement

Sanjay Dhar, J

1) Challenge in this petition is to the order No.13-DMK/PSA of 2021 dated 19.10.2021, issued by District Magistrate, Kupwara-respondent No.2 herein, in terms whereof, Mohsin Hassan Bhat (hereinafter referred to as the detainee), has been placed under preventive custody and lodged in Central Jail, Jammu (Kotbhalwal).

2) The petitioner has contended that the Detaining Authority has passed the impugned detention order mechanically without application of mind. It has been further contended that procedural safeguards have not been complied with in the instant case. It has also been urged that the allegations made against the detainee in the grounds of detention are vague; that there has been non-application of mind on the part of detaining authority; that the material forming the basis of the impugned order of detention and translated version thereof has not been provided to the detainee who is a semi-literate person. The petitioner has further contended that the detaining authority has not spelt out the compelling reasons while passing the impugned order.

3) The respondents, in their counter affidavit, have disputed the averments made

in the petition and stated that they have followed the provisions of J&K Public Safety Act. It is contended that the detainee has been detained only after following due procedure; that the grounds of detention were read over to the detainee; that there has been proper application of mind on the part of the Detaining Authority while passing the impugned order and that the detainee has been provided all the material. The learned counsel for the respondents also produced the detention records to lend support to the stand taken in the counter affidavit.

4) Considered the rival submissions and also perused the material available on the file as also the detention records produced by learned counsel for the respondents.

5) Learned counsel for the petitioner, while seeking quashment of the impugned order, projected various grounds but his main thrust during the course of arguments was on the following grounds:

(I) That the grounds of detention are vague and cryptic, inasmuch as the material particulars of the terrorists of banned organization Lashkar-e-Toiba (LeT) and TRF, as mentioned in the grounds of detention, have not been disclosed, which prevented him from making an effective representation against his detention.

(II) That the impugned order of detention is based upon stale incidents having no proximate link to the activities alleged to be prejudicial to the maintenance security of the state.

6) So far as the first ground regarding vagueness of the averments made in the grounds of detention, is concerned, the same, on perusal of the record, appears to be forceful. There is no mention of the particulars of the place, the identity of the persons alleged to have received support of the detainee and the particulars of the period in the grounds of detention. These grounds, being vague and lacking in material particulars, as such, the detainee could not have made an effective representation against his detention, on the basis of these vague allegations. Thus, there has been violation of constitutional guarantees envisaged under Article 22(5) of the Constitution. The detention order, as such, is illegal and unsustainable. In my aforesaid view, I am fortified by the judgments of the Supreme Court in the case of Jahangir Khan Fazal Khan Pathan vs. Police Commissioner, Ahmadabad, (1989) 3 SCC 590, Abdul Razak Nanekhan Pathan v. Police Commissioner, Ahmadabad, AIR 1989 SC 2265.

7) Next it has been contended by learned counsel for the petitioner that the impugned order of detention has been passed on the basis of stale incidents having no proximate link with the activities alleged to be prejudicial to the security of the State.

8) A perusal of the grounds of detention reveals that the incident referred therein pertain to the year 2013, that is more than eight years prior to the passing of

impugned order of detention. There is no reference to any recent incident involving the petitioner with its specific particulars in the grounds of detention. Thus, it is clear that the order of detention has been based on past and stale incidents.

9) The Supreme Court in the case of Sama Aruna v. State of Telengana and & anr, (2018) 12 SCC 150, while holding that the incidents which are said to have taken place long back, cannot form basis for being satisfied that the detenue is going to engage in similar activities, observed as under:

"17. We are, therefore, satisfied that the aforesaid detention order was passed on grounds which are stale and which could not have been considered as relevant for arriving at the subjective satisfaction that the detenu must be detained. The detention order must be based on a reasonable prognosis of the future behavior of a person based on his past conduct in light of the surrounding circumstances. The live and proximate link that must exist between the past conduct of a person and the imperative need to detain him must be taken to have been snapped in this case. A detention order which is founded on stale incidents, must be regarded as an order of punishment for a crime, passed without a trial, though purporting to be an order of preventive detention. The essential concept of preventive detention is that the detention of a person is not to punish him for something he has done but to prevent him from doing it."

From the aforesaid enunciation of the law on the subject, it is clear that there has to be a live and proximate link between the past conduct of the detenue and the activities alleged to be prejudicial to the security of the state. In the instant case, the said link is completely missing as the time between the order of detention and the incidents referred to in the grounds of detention is far too large to presume such a link. The impugned order of detention, therefore, cannot be sustained.

10) For the afore-stated reasons, the petition is allowed and the impugned order of isquashed. The detenue is directed to be released from the preventive custody forthwith provided he is not required in connection with any other case.

11) The record, as produced, be returned to the learned counsel for the respondents.