
(2021) 02 J&K CK 0076
In the Jammu And Kashmir High Court
Case No : Writ Petition (Crl) No. 588 Of 2019

Mudasir Ahmad Dar

APPELLANT

Vs

State Of J&K And Anr

RESPONDENT

Date of Decision : 12-02-2021

Acts Referred:

Code Of Criminal Procedure, 1973 — Section 161, 164A
Jammu And Kashmir Public Safety Act, 1978 — Section 8
Jammu And Kashmir State Ranbir Penal Code, 1989 — Section 147, 148, 188, 307, 332, 336, 341, 427
Unlawful Activities (Prevention) Act, 1967 — Section 13, 16, 18, 19, 20, 39

Citation : (2021) 02 J&K CK 0076

Hon'ble Judges : Sanjeev Kumar, J

Bench : Single Bench

Advocate : N. A. Ronga, Asifa Padroo, M. A. Chashoo

Final Decision : Allowed

Judgement

1) Impugned in this petition is order of detention passed by District Magistrate, Shopian (the detaining authority) vide order No.62/DMS/ PSA/2019

dated 11th of October, 2019, whereby one Mudasir Ahmad Dar S/o Abdul Rasheed Dar R/o Pinjora Shopian (the detenue) has been detained with a

view to prevent him from acting, in any manner, prejudicial to the security of the State. It is claimed that the detenue was arrested by police on 30th of

August, 2019, and was taken to Police Station, Shopian, and was implicated in case FIR No.91/2019. While the detenue was in custody of the police in

the aforesaid FIR, he was shifted to Central Jail, Srinagar, where he was detained in the preventive custody in terms of the impugned order. The

detenue, by the medium of this petition filed through his father, has assailed the impugned order of detention, inter alia, on the following grounds:

(I) That the criminal cases mentioned in the grounds of detention have no nexus with the detainee and have been fabricated by the police to justify

illegal detention;

(II) That the allegations made in the grounds of detention are vague and non-existent on the basis of thereof no prudent person can make a

representation against his detention;

(III) That the detainee was already in custody in FIR No.91/2019 when he was detained pursuant to impugned order of detention. He had neither

applied for bail nor was same otherwise due to him given the fact that the case registered against him involved commission of offences under Chapter

IV and V of Unlawful Activities (Prevention) Act. The detaining authority has not shown any awareness about the aforesaid fact nor has it indicated

any compelling reasons to pass the detention order when the detainee was already with the police in connection with supra FIR;

(IV) That the detaining authority has not applied its mind and itself prepared the grounds of detention. The grounds of detention are nothing but a

replica of dossier prepared by the police;

(V) That the detainee was not furnished the relevant material like copy of dossier, statement of witnesses recorded under Section 161 and 164-A Cr.

P. C, seizure memo, recovery memo etc. etc. to enable the detainee to make an effective representation;

2) The detaining authority has filed the reply affidavit, wherein it is submitted that the petitioner was detained on 11th of October, 2019, under Section

8 of the J&K Public Safety Act, 1978, and was directed to be lodged in Central Jail, Srinagar. The detention was necessitated because of involvement

of the detainee in very serious offences against the State as mentioned in the FIR registered against him. The detention order was executed on 12th of

October, 2019, and on the same day, the detainee was informed that he can make a representation to the government as well as the detaining authority

against his detention. It is further stated by the detaining authority in its affidavit that the preventive detention of the detainee was necessitated because

the detainee was involved in instigating the vulnerable youth of his area to join militant ranks and act as stone pelters to intensify subversive activities in

the district.

3) It is further claimed in the reply affidavit that the detainee is a skilled

motivator and has played a key role in mobilizing the youth for causing widespread and extensive disturbance to public order and has remained at the forefront of causing prejudice to the peace and security of the State. It is submitted by the detaining authority that immediately on execution of the detention order, the detinue was provided with the grounds of detention, the dossier and FIR to enable him to make an effective representation against his detention. He, however, chose not to file any representation.

4) Having heard learned counsel for the petitioner and perused the record, it is seen that the detention of the detinue and the allegations, on the basis of which the detention order has been passed, owe its genesis to FIR No.30/2018 registered in P/S, Shopian, for commission of offences under Section 147, 148, 336, 332, 307, 341, 188, 427 RPC and 13 ULA(P) Act and FIR No.91/2019 fir offences under Section 147, 148, 149, 336, 332, 353, 427, 307 RPC, 7/27 Arms Act and Sections 16, 18, 19, 20 and 39 ULA(P) Act, registered in the same Police Station. The petitioner has specifically claimed that he was arrested by the police 30.08.2019 for his involvement in FIR No.91/2019 and was in the custody when order of detention was passed.

This fact has not been denied by the detaining authority in his reply affidavit. However, from the reading of grounds of detention it clearly transpires

that the detaining authority was not aware when it passed the order of detention that the detinue was already in custody in connection with FIR

No.91/2019, which is commission for various offences including offences under Section 16, 18, 19, 20 and 39 ULA(P) Act, for which bail is not readily granted by the court of law.

5) The grounds of detention also do not indicate any compelling reasons as to why the preventive detention of the detinue was necessitated

particularly when he was already in the custody of the State for commission of very serious offences under ULA(P) Act. This clearly speaks about

non-application of mind on the part of detaining authority.

It is true that as held by the Supreme Court in *Hardhan Saha v. State of W.B* (1975) 3 SCC 198, that there is no parallel between prosecution in a

Court of law and a detention order passed under detention law. One is a punitive action whereas the other is preventive. In one case, a person is

punished for his guilt and the standard of proof is beyond reasonable doubt whereas in preventive detention, a man is prevented from acting in a

manner which is prejudicial to the maintenance of public order or security of the State, as the case may be. It may also be true that a detention order

is required to be passed by the detaining authority on his subjective satisfaction but when the non-application of mind by the detaining authority is writ

large, it vitiates such satisfaction and renders the order of detention bad in the eyes of law.

6) There is no dispute with regard to the proposition of law that a person in custody in connection with commission of substantive offence can also be

detained under preventive law but in doing so, the detaining authority is under an obligation to indicate, in clear terms, the compelling reasons for taking

such action. In the instant case, admittedly, the detainee was in custody of the police in connection with FIR No.91/2019 registered in Police Station,

Shopian, for commission of very serious offences, some falling under Chapter IV and V of ULA(P) Act. The petitioner had not even applied for bail.

In such circumstances, what made the detaining authority to pass the detention order is not forthcoming from the grounds of detention nor the same

has been explained or clarified by the detaining authority in the reply affidavit filed in opposition of this petition. The impugned order is thus vitiated for

total non-application of mind on the part of detaining authority and, therefore, cannot sustain in law.

7) For the foregoing reasons, this petition is allowed. The impugned order of detention is set aside and the detainee is directed to be released from the

preventive detention forthwith, unless, of course, not involved in any other case.