

(2023) 12 J&K CK 0001

In the Jammu And Kashmir High Court

Case No : Writ Petition (Criminal) No. 443 Of 2022

Musadiq Gaffar Lone S/O Abdul Gaffar Lone R/O Niloora
Tehsil Litter District Pulwama

APPELLANT

Vs

Union Territory Of Jammu & Kashmir And Others

RESPONDENT

Date of Decision : 06-12-2023

Acts Referred:

Constitution Of India, 1950 — Article 21, 22(5)

Unlawful Activities (Prevention) Act, 1967 — Section 13, 18, 20, 39

Jammu And Kashmir State Ranbir Penal Code, 1989 — Section 148, 149, 336, 427, 436

Citation : (2023) 12 J&K CK 0001

Hon'ble Judges : M. A. Chowdhary, J

Bench : Single Bench

Advocate : Wajid Mohammad Haseeb, Zahid Qais

Final Decision : Disposed Of

Judgement

M. A. Chowdhary, J

1. Through the medium of the instant petition, the petitioner has challenged the order of detention bearing No. 60/DMP/PSA/22 dated 25.06.2022 (for short 'impugned order') passed by District Magistrate Pulwama- respondent No. 2 (for short 'Detaining authority') by virtue of which the petitioner (for short 'the detenu') has been ordered to be detained under the Jammu & Kashmir Public Safety Act, 1978 (for short 'the Act').

2. It is stated in the petition that the detenu was initially arrested by the police and was implicated in FIR No.35/2020 registered at Police Station Litter for the commission of offences punishable under Sections 13, 18, 20, 39 UAP Act, and was admitted to default bail on 02.11.2020, however, he was not released and instead was detained under the provisions of Public Safety Act in terms of Detention Order No. 37/DMP/PSA/2020 dated 09.11.2020. The said order of detention was challenged by the detenu through the medium of writ petition bearing WP(CrI) No. 184/2020 and the said detention order was quashed by this

Court by virtue of the judgment dated 16.11.2021. It is further stated that the detainee was again arrested in June 2022 and thereafter was detained under the provisions of Public Safety Act in terms of the impugned order, which is challenged through the medium of the instant petition.

3. The detainee has questioned the impugned order of detention, inter alia on the grounds that the constitutional as well as procedural safeguards as envisaged under the Constitution of India as well as under the Act, have not been complied with by the Detaining Authority while passing the order of detention; that the order of detention was neither referred to the Advisory Board nor was approved within the stipulated time; that no material, which has been relied upon by the Detaining Authority, has been furnished to the detainee thereby depriving him of his valuable right of making effective representation against preventive detention; and the order of detention has been passed on stale grounds as the last alleged activity attributed to the detainee, as per the grounds of detention, has taken place in the year 2020 and thereafter no fresh activity has been attributed to him.

4. Pursuant to notice, Counter Affidavit has been filed, perusal of which reveals that the detainee has been detained pursuant to the impugned order of detention passed by the Detaining authority and while doing so, all the procedural safeguards enshrined under Article 22(5) of the Constitution of India and Section 13 of the Act, have been fully complied with by the respondents; that all the requisite documents have been supplied to the detainee so as to enable him to make an effective representation to the Detaining Authority and to the Government; that the order of detention was executed and the detainee was taken into preventive custody after the contents of the detention order/warrant and the grounds of detention were read over and explained to him in the language which he fully understood and the detainee was also informed of his right to make representation to the Detaining Authority. The Detaining Authority found it necessary to detain the detainee under the Act.

5. Learned counsel for the detainee, besides agitating all the grounds, has vehemently argued that as the subsequent order of detention has been passed substantially on the same grounds on the basis of which the earlier detention order was passed, as such, the order of detention is bad in law.

6. On the contrary, learned GA appearing for the respondents, contended that all the documents have been supplied to the detainee. He has also contended that the detention order is legal and all procedural and statutory safeguards have been complied with while passing the order of detention, as such, the order of detention is sustainable in the eyes of law.

7. Heard learned counsel for the parties, perused the detention record as has been made available by learned counsel for the respondents and considered the material on file.

8. On the perusal of grounds of detention, it transpires that the order impugned

has been passed on the similar grounds as narrated in the earlier grounds of detention, on the basis of which the earlier order of detention was passed. During the investigation in FIR No. 35/2020 registered at Police Station Litter, the detainee was found an over ground worker (OGW) of banned terrorist organizations, who was actively supporting the terrorists in raising terrorists support structure and motivating the young generation of the area for anti-national and anti-social activities and provoke the innocent populace of the area for indulging in activities which are prejudicial to the security of the State. The detainee was arrested and on questioning, he was found involved in helping the militant by providing them shelter, food and facilitating their movement from one place to another through safe passages. The detainee was also found involved in case FIR No. 278/2016 under Sections 148, 149, 436, 427 and 336 RPC registered at P/S Pulwama. It is worth to mention here that the last alleged incident occurs in the year 2020, whereas the detention order was passed on 25.06.2022, meaning thereby that on the basis of said FIR, the detainee was not ordered to be detained earlier. The grounds of detention of the earlier detention order have been taken into consideration while passing the present impugned order of detention by the Detaining Authority. The same grounds could not have been relied upon by the respondents for issuance of fresh detention order.

9. With no specific allegations, involvement of the detainee has been shown in the commission of offences in a case registered vide FIR No. 35/2020 registered at Police Station Litter under Sections 13, 18, 20, 39 ULA(P) Act, with no details as to his trial or its outcome. This too is a stale ground to base the detention in the month of June 2022, of an incident in the year 2020, after a period of more than two years. The afore-stated grounds of detention, as such, are general allegations against the detainee, with no specific instances/incidents. The detention order based on such vague and stale grounds is not sustainable, for the reason that the detaining authority before passing the order has not applied its mind to draw subjective satisfaction to order detention of the detainee by curtailing his liberty which is a valuable and cherishable right guaranteed under Article 21 of the Constitution of India. In this regard reliance can be placed on the judgments of Supreme Court in the cases (i) Jahangirkhan Fazal Khan Pathan Vs. Police Commissioner Ahmadabad (1989) 3 SCC 590 and, (ii) Abdul Razak Nanekhan Pathan Vs. Police Commissioner Ahmadabad AIR 1989 SC 2265.

10. The law is well settled that if the order of detention comes to an end either by revocation or by the expiry of the period of order of detention, there must be fresh facts for passing a subsequent order of detention. When the detention order has been quashed by the Court, the grounds of said detention order are not to be taken into consideration either as a whole or in part even along with the fresh grounds of detention in order to pass a fresh detention order and, if such previous grounds of detention are taken into consideration while passing a fresh detention order, the order of detention will be vitiated.

11. In the judgment rendered in case 'Chhagan Bagwan Kahar v. N.L. Kalna,

reported as (1989) 2 SCC 318', the Hon'ble Apex Court has discussed the above issue meticulously, relevant Para of which is reproduced as under :-

"12. It emerges from the above authoritative judicial pronouncements that even if the order of detention comes to an end either by revocation or by expiry of the period of detention there must be fresh facts for passing a subsequent order. A fortiori when a detention order is quashed by the court issuing a high prerogative writ like habeas corpus or certiorari the grounds of the said order should not be taken into consideration either as a whole or in part even along with the fresh grounds of detention for drawing the requisite subjective satisfaction to pass a fresh order because once the court strikes down an earlier order by issuing rule it nullifies the entire order."

12. Again in the case 'Jahangir Khan Fazal Khan Pathan Vs. The Police Commissioner, Ahmadabad and another, (1989) 3 SCC 590', the Supreme Court has held as under:

".....It is, therefore, clear that an order of detention cannot be made after considering the previous grounds of detention when the same had been quashed by the Court, and if such previous grounds of detention are taken into consideration while forming the subjective satisfaction by the detaining authority in making a detention order, the order of detention will be vitiated. It is of no consequence if the further fresh facts disclosed in the grounds of the impugned detention order have been considered."

13. Another argument raised by the learned counsel for the petitioner is that the grounds of impugned detention order is a verbatim copy of the dossier and no other material has been considered by the detaining authority which speaks volumes about the non-application of mind on the part of the detaining authority which does not justify the preventive detention and the detention order requires quashment.

14. In a case titled 'Jai Singh & Ors. v. State of Jammu & Kashmir' reported as AIR 1985 SC 764, it has been observed that if the detention order is verbatim copy of the dossier, it speaks about non-application of mind by the detaining authority. Para-13 of the judgment is reproduced as under:-

"13. Applying the settled legal position to the facts of the present case, I find that the order impugned cannot stand as it is based on grounds of detention, which is only verbatim copy of police dossier. The order of detention, for the reasons, exhibit total non- application of mind on the part of detaining authority and therefore, the petition is allowed and the detention order No. PSA/104 dated 16.10.2020 passed by the District Magistrate, Kathua-respondent No. 2 directing the detention of Balbir Chand S/o Rana R/o Chack Drab Khan, Tehsil and District Kathua is quashed. Respondents are directed to release the detenue forthwith, provided he is not required in connection with any other case".

15. In view of the above settled proposition of law, this petition is allowed.

Detention Order No. 60/DMP/PSA/22 dated 25.06.2022, being vitiated for the afore-stated reasons is, hereby, quashed. Detenue namely Musadiq Gaffar Lone S/O Abdul Gaffar Lone R/O Niloora Tehsil Litter District Pulwama, be released from the preventive custody, as a sequel to the aforesaid order, provided he is not required in any other case(s).

16. Detention record, as produced, be returned back to the learned counsel for the respondents.

17. Petition is disposed of accordingly.