

(2022) 11 J&K CK 0034

In the Jammu And Kashmir High Court

Case No : Writ Petition (Criminal) No. 215 Of 2022

Mushtaq Ahmad Mir

APPELLANT

Vs

Union Territory Of J&K And Another

RESPONDENT

Date of Decision : 17-11-2022

Acts Referred:

Constitution Of India, 1950 — Article 22(5)
Jammu And Kashmir Public Safety Act, 1978 — Section 8

Citation : (2022) 11 J&K CK 0034

Hon'ble Judges : Vinod Chatterji Koul, J

Bench : Single Bench

Advocate : Mohammad Saleem Mir, Sajad Ashraf

Final Decision : Dismissed

Judgement

Vinod Chatterji Koul, J

1. Through the medium of this writ petition, the order no.15-DMK/PSA OF 2021 dated 19.10.2021, passed by District Magistrate, Kupwara (for

brevity "detaining authority") whereby one, Mushtaq Ahmad Mir S/o Abdul Khaliq Mir R/o Chak Nutnussa, Kupwara (for short "detenu"), has been placed under preventive detention so as to prevent him from acting in any manner prejudicial to the security of the State and directed his lodgement in Central Jail Jammu Kot-Bhalwal, has been challenged precisely on the following grounds:

- i) that respondents have not provided copy of dossier, documents and other connected material to detenu to enable him to make an effective representation against his detention;
- ii) that grounds of detention are replica of dossier of activities submitted by police authorities;
- iii) that involvement of detenu shown in the dossier is baseless and concocted story as detenu has never taken part in anti-government or anti-state protest

and no FIR has been lodged against him inasmuch as impugned detention is based on apprehension and without any ground;

iv) that respondents have not informed detenu has independent right to make a representation to detaining authority, besides the government.

2. Respondents have resisted the petition by filing reply affidavit in which they have denied contentions contained in the petition and have submitted that there is no illegality in the order of detention as it was necessary to place detenu under preventive detention so as to prevent him from acting in any manner prejudicial to security of the State. Detaining authority has, in its affidavit, justified the grounds of detention as well as impugned detention order while denying allegation of non-supply of relevant material to the detenu. To substantiate their case, the respondents have produced the detention record.

3. I have heard learned counsel for parties and considered the matter.

4. Learned counsel for petitioner has stated that impugned order of detention is unconstitutional, illegal and bad in law as detaining authority has not followed the Constitutional and Statutory procedural safeguards as provided under Article 22(5) of the Constitution of India. According to learned counsel for petitioner, the documents, statement of witnesses and other relevant material referred to and relied upon in grounds of detention by detaining authority have not been supplied to detenu and, as such, he could not make a representation against detention.

In view of above submission, I have gone through the detention record produced by learned counsel for respondents, which reveals that copy of grounds of detention, copy of detention order, copy of dossier, copies of FIR, statements of witnesses and other related relevant documents relied upon by detaining authority while passing impugned order of detention, were provided to detenu. Perusal of Execution Report as well as Receipt of Grounds of Detention and other material, reveals that as many as 31 leaves, comprising of copies of order of detention, grounds of detention, dossier, FIR, seizure FIR, statements of witnesses and other related documents have been furnished to detenu. Perusal thereof also reveals that detenu had been informed to make a representation against his detention both to the Government as well as detaining authority.

Interestingly, although, it is vehement contention of petitioner at ground (a) of writ petition that copy of dossier was not provided to detenu, yet of his own volition, petitioner has placed on record copy of dossier as Annexure to writ petition (pages 22 to 25). This per se depicts and shows that the material, relied upon by detaining authority, has been furnished and provided to detenu. In that view of matter, submission of learned counsel for petitioner that detenu has not been provided material relied upon by detaining authority, has no substance and is, therefore, misconceived. And on this count writ petition is liable to be dismissed.

5. It is also stated by learned counsel for petitioner that detaining authority has not assigned any compelling reason for passing order of detention.

The above submission is misconceived because perusal of grounds of detention clearly reveals compelling and cogent reasons given by detaining authority to pass order of detention. Perusal of grounds of detention reveals and gives various instances and occurrences therein to reflect that such activities have given derivation for subjective satisfaction to detaining authority to pass impugned order of detention. The sufficient grounds have been given by detaining authority to place detenu under preventive detention.

6. Another submission of learned counsel for petitioner is that subjective satisfaction has not been derived by detaining authority which is sine quo non for passing the order of detention and that grounds of detention are mere repetition of dossier prepared by concerned Senior Superintendent of Police.

I have examined detention record, produced by learned counsel for respondents. It is evident from the detention record that the detention order was made on proper application of mind, to the facts of the case and detenu was delivered at the time of execution of the detention order, the material and grounds of detention and was also informed that he had a right to represent against his preventive detention both before detaining authority as also the Government. Perusal of detention record reveals that detenu has been informed that he can make a representation against his detention to the Government as well as to detaining authority. The grounds of detention are definite, proximate and free from any ambiguity. The detenu has been informed with sufficient clarity what actually weighed with detaining authority while passing the detention order. The detaining authority has narrated the facts and figures that made the authority to exercise its powers under Section 8 of the Act of 1978, and record subjective satisfaction that detenu was required to be placed under preventive detention in order to prevent him from acting in any manner prejudicial to the security of the State.

7. In examining the question whether ordinary laws of land would have sufficed, and whether recourse to preventive detention was unnecessary, it must be borne in mind that the compulsions of the basic need to maintain order in the society without which the enjoyment of all rights, including right to personal liberty of citizens, would lose their meaning, provide justification

for laws of preventive detention. These laws suggest that an individual's conduct, prejudicial to maintenance of public order, security of State, preservation of forest wealth, provides grounds for satisfaction for a reasonable assessment of possible future manifestations of similar propensities on the part of the offender. The object of the law of preventive detention is not punitive, but is only preventive. In preventive detention no offence is to be proved nor is any charge formulated. The justification of such detention is suspicion and reasonability.

8. The essential concept of preventive detention is that detention of a person is

not to punish him for something he has done, but to prevent him from doing it. Its basis is the satisfaction of the Executive of a reasonable probability of detenu acting in a manner similar to his past acts, and preventing him by detention from so doing. Preventive detention, an anticipatory measure, is resorted to when the executive is convinced that such detention is necessary to prevent a person detained from acting in a manner prejudicial to certain objects which are specified by the law. In preventive detention no offence is proved, and justification of such detention is suspicion or reasonable probability. The order of detention is based on a reasonable prognosis of the future behaviour of a person based on his past conduct in the light of surrounding circumstances. The power of preventive detention is exercised in reasonable anticipation. It may or may not relate to an offence. It does not overlap with the prosecution even if it relies on certain facts for which prosecution may be, or may have been, launched. An order of preventive detention may be made before or during prosecution. It may be made with or without prosecution and in anticipation or after discharge or even acquittal. The pendency of prosecution is no bar to an order of preventive detention. An order of preventive detention is also not a bar to prosecution.

Reference made by counsel for petitioner to Farooq Ahmad Sheikh v. State and ors, 2017 (II) SLJ 2017; judgement dated 31.05.2017 in HCP no.35/2017; judgement dated 19.07.2016 in HCP no.64/2016; Powanammal v. State of Tamil Nadu and others 1999 Vol (2) SCO-413, in view of the distinguishable facts and circumstances of the present case, will not give any help to the case of petitioner.

9. It is useful to make mention of here that a six Judge Constitution Bench of the Supreme Court way back in the year 1951, in the case of The State of Bombay v. Atma Ram Shridhar Vaidya, AIR 1951 SC 157, while looking into the scope subjective satisfaction arrived at by the detaining authority has held that the same is extremely limited and that the Court, while examining the material, which is made basis of subjective satisfaction of detaining authority, would not act as a court of appeal and find fault with satisfaction on the ground that on the basis of the material before detaining authority, another view was possible. Such being the scope of enquiry in this field, and the contention of counsel for petitioner, therefore, cannot be accepted. While going through the grounds of detention and dossier, I do not find that grounds of detention are ditto copy of dossier supplied by sponsoring authority. As is evident from the detention record, the material has been supplied to detenu. and all this material was before detaining authority when it arrived at subjective satisfaction that the activities of detenu are such, which would entail preventive detention under J&K Public Safety Act, 1978.

10. It is not impertinent to mention here that the powers of preventive detention under the Act of 1978 are in addition to those contained in the Criminal Procedure Code, where preventive detention is followed by an inquiry or trial. By its very nature, preventive detention is aimed at preventing commission of an offence or preventing detained person from achieving a certain end. The

authority, making the order, therefore, cannot always be in possession of full detailed information when it passes the order and the information in its possession may fall far short of legal proof of any specific offence, although it may be indicative of a strong probability of impending commission of a prejudicial act. The Act of 1978, therefore, requires that the State Government must be satisfied with respect to any person that with a view to preventing him from acting in any manner prejudicial to public order, security of State, or preservation of forest wealth, it is necessary so to do, make an order directing that such person be detained.

11. As can be gathered from the provisions of Section 8, before the Government can pass an order of preventive detention it must be satisfied with respect to the individual person that his activities are directed against one or other of the objects mentioned in the section, and that the detaining authority was satisfied that it was necessary to prevent him from acting in such a manner. The provisions of the Section 8, thus, clearly provide that it is the satisfaction of the State Government on the point which alone is necessary to be established. It is significant that while the objects intended to be defeated are mentioned, the different methods, acts or omissions by which that can be done are not mentioned, as it is not humanly possible to give such an exhaustive list. The satisfaction of the Government, however, must be based on some grounds. There can be no satisfaction if there are no grounds for the same. There may be a divergence of opinion as to whether certain grounds are sufficient to bring about the satisfaction required by the section. One person may think one way, another the other way. If, therefore, the grounds on which it is stated that the State Government was satisfied are such as a rational human being can consider connected in some manner with the objects which were to be prevented from being attained, the question of satisfaction except on the ground of mala fides cannot be challenged in a court. Whether in a particular case the grounds are sufficient or not, according to the opinion of any person or body other than the State Government, is ruled out by the wording of the section. It is not for the court to sit in the place of the Government and try to determine if it would have come to the same conclusion as the Government. As has been generally observed, this is a matter for subjective decision of the Government and that cannot be substituted by an objective test in a court of law. Such detention orders are passed on information and materials which may not be strictly admissible as evidence under the Evidence Act in a court, but which the law, taking into consideration the needs and exigencies of administration, has allowed to be considered sufficient for subjective decision of the Government.

12. To wrap up, it is relevant to refer to the observations of the Supreme Court while dealing with the question of preventive detention in the case of Prakash Chandra Mohan v. Commissioner, 1986 Cr. L. J. 786. The Supreme Court observed that it must be remembered that observance of written law about the procedural safeguards for protection of individual is normally the high duty of public official but in all circumstances not the highest. The law of self-

preservation and protection of the country and national security may claim in certain circumstances higher priority.

13. For the reasons discussed above, the instant petition is without any merit and is, accordingly, dismissed with connected CM(s).

14. Detention record be returned to counsel for respondents.