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(2023) 06 J&K CK 0038

In the Jammu And Kashmir High Court

Case No : Writ Petition (Criminal) No. 189 Of 2022

Mushtaq Ahmad Mir — APPELLANT

Vs

Union Territory Of J&K & Anr — RESPONDENT

Date of Decision : 16-06-2023

Acts Referred:
Constitution Of India, 1950 — Article 22(5)

Citation : (2023) 06 J&K CK 0038

Hon'ble Judges : Sanjay Dhar, J

Bench : Single Bench

Advocate : Wajid Haseeb, Raees-Ud-Din Ganai

Final Decision : Allowed

Judgement

Sanjay Dhar, J

1) By the instant petition, quashment of order No.02/DMP/PSA/22 dated 01.02.2022, issued by District Magistrate, Pulwama (for brevity "detaining authority") is sought. In terms of the aforesaid order, Mushtaq Ahmad Mir son of Abdul Gani Mir resident of Boonra Tehsil Pulwama, (for short "detenu") has been placed under preventive detention and lodged in Central Jail Kotbhalwal, Jammu.

2) The petitioner has contended that the Detaining Authority has passed the impugned detention order mechanically without application of mind, inasmuch as the grounds of detention are mere reproduction of the dossier. It has been further contended that the statutory procedural safeguards have not been complied with in the instant case. It has been further urged that the material which formed basis of the grounds of detention and the consequent order of detention has not been provided to the detenue. It has also been contended that the grounds of detention are vague, non-existent and stale.

3) The respondents, in their counter affidavit, have disputed the averments made in the petition and insisted that the activities of detenue are highly prejudicial to the security of the State. It is pleaded that the detention order and grounds of

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detention were handed over to the detenue and same were read over and explained to him; that the grounds urged by the petitioner are legally misconceived, factually untenable and without any merit and 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) 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 ground that the detenue's right of making an effective representation against his detention has been violated as whole of the material, on the basis of which the grounds of detention have been formulated, has not been supplied to him.

6) The ground projected by the learned counsel for the petitioner that the detenue has been disabled from making an effective representation against the order of detention as the material, which formed basis of the grounds of detention and the consequent order of detention, has not been furnished to him, appears to have substance. A perusal of the detention record reveals that the petitioner has been provided copies of detention order (01 leaf), notice of detention (01 leaf), grounds of detention (02), dossier of detention (Nil), copies of FIR, statements of witnesses and other relevant documents (Nil), (total 04 leaves). If we have a look at the grounds of detention, it bears reference to FIR No.06/2022. It was incumbent upon respondents to furnish not only the copy of the FIR but also the statements of witnesses recorded during 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, 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 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

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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

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