

(2021) 03 J&K CK 0029
In the Jammu And Kashmir High Court
Case No : Writ Petition (Crl) No. 100 Of 2020

Mushtaq Ahmad Wani

APPELLANT

Vs

Ut Of J&K And Another

RESPONDENT

Date of Decision : 02-03-2021

Acts Referred:

Jammu And Kashmir Public Safety. Act, 1978 — Section 8

Citation : (2021) 03 J&K CK 0029

Hon'ble Judges : Sanjay Dhar, J

Bench : Single Bench

Advocate : Manzoor A. Ganai, B. A. Dar

Final Decision : Allowed

Judgement

1) Through the medium of instant petition veracity and legality of the detention order bearing No.03/DMA/PSA/ DET/2020 dated 07.07.2020, passed by District Magistrate, Anantnag (the detaining authority) is assailed. In terms of the impugned detention order, Mushtaq Ahmad Wani @ Channa S/o Gh. Hassan Wani R/o Soaf Shali, Kokernag District Anantnag (the detainee) has been placed under preventive detention with a view to prevent him from acting in any manner prejudicial to the maintenance of public. The order is, purportedly, passed by the detaining authority in exercise of powers conferred under Section 8 of the J&K Public Safety Act, 1978 (the Act of 1978).

2) The impugned order has been assailed by the petitioner, inter alia, on the following grounds:

(I) That previously the detainee was placed under preventive detention in the year 2019 pursuant to order dated 12.03.2019 which expired in the year 2020 and without there being any fresh material or grounds, the impugned detention order has been passed by the detaining authority on the same grounds which formed basis of the earlier detention order,

(II) That there has been non-application of mind on the part of the detaining

authority as the detinue has already been admitted to bail in FIR No.103/2017 but this fact has nowhere been mentioned in the grounds of detention.

3) On being put to notice, the respondents appeared through their counsel and filed their reply affidavit, wherein it is submitted that detention was necessitated because of involvement of the detinue in very serious offences against the State as mentioned in the FIRs registered against him. The detinue was informed that he can make a representation to the government as well as the detaining authority against his detention. It is further claimed in the reply affidavit that all statutory requirements and constitutional guarantees have been fulfilled and complied with by the detaining authority. The order has been issued validly and legally. The respondents have placed reliance on the judgment of the Supreme Court in *Haradhan Saha v. State of W.B* (1975) 3 SCC 198. The respondents have not, however, chosen to produce the detention record to lend support to the stand taken in the counter affidavit.

4) I have heard learned counsel for the parties and perused the material available on record.

5) So far as the first and the only ground urged by the learned counsel for the petitioner is concerned, the petitioner has placed on record a copy of the detention order No.80/DMA/PSA/DET/2018 dated 12.03.2019 along with copy of the grounds of detention on the basis of which said detention order was passed. A perusal of the grounds of detention which are subject matter of instant petition and the grounds of detention which were subject matter of earlier detention order reveals that they are identical and, in fact, more or less Xerox copies of each other. The grounds of detention which have formed the basis of the impugned detention order reveal that not a single fresh act or omission on the part of the detinue has been cited in the said document.

6) The Supreme Court in the case of *Chhagan Bhagwan Kahar Vs. N. L. Kalna and others*, (1989) 2 SCC 318, while dealing with similar question, has observed 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.

7) Again in the case of *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."

8) From the aforesaid enunciation of law on the subject, it is clear that unless there are fresh grounds of detention, a person cannot be put under preventive detention on the basis of the grounds of detention which have formed basis of an earlier detention order that has either expired or has been quashed by a Court. The ratio laid down by the Supreme Court in the afore cited two cases squarely applies to the facts of the instant case and, therefore, the impugned order of detention cannot be sustained in the eyes of law.

9) For the foregoing reason, this petition is allowed. The impugned order of detention is quashed. Direction is issued to the respondents to release the detainee from the preventive custody forthwith, provided he is not required in connection with any other case.