

(2022) 07 J&K CK 0053

In the Jammu And Kashmir High Court

Case No : Writ Petition (Criminal) No. 193 Of 2022

Muzamil Yaqoob Bhat

APPELLANT

Vs

UT Of J&K And Ors

RESPONDENT

Date of Decision : 26-07-2022

Acts Referred:

Constitution Of India, 1950 — Article 22(5)
Indian Penal Code, 1860 — Section 147, 149, 188, 269, 307, 336, 341, 379, 392
Narcotic Drugs And Psychotropic Substances Act, 1985 — Section 8, 20
Code Of Criminal Procedure, 1973 — Section 161, 164
Disaster Management Act, 2005 — Section 51

Citation : (2022) 07 J&K CK 0053

Hon'ble Judges : Sanjay Dhar, J

Bench : Single Bench

Advocate : Shah Ashiq, Sajad Ashraf

Final Decision : Allowed

Judgement

Sanjay Dhar, J

1) Challenge in this petition is to the order No.DMS/PSA/43/2021 dated 09.09.2021, issued by District Magistrate, Srinagar-respondent No.2 herein, in terms whereof, Shri Muzamil Yaqoob Bhat @ Muzz Don S/o Mohammad Yaqoob Bhat R/o Khonmoh, Kati Mohalla, Pantha Chowk Srinagar (hereinafter referred to as the detainee), has been placed under preventive custody and lodged in District Jail, Kupwara.

2) The petitioner has contended that the Detaining Authority has passed the impugned detention order without application of mind. It has been further contended that the procedural safeguards have not been complied with in the instant case. It has also been urged that the allegations made against the detainee in the grounds of detention are vague and that the material forming the basis of the impugned order of detention has not been provided to the detainee. The petitioner has further contended that the detaining authority has not spelt

out the compelling reasons while passing the impugned order.

3) Upon being put to notice, the respondents appeared through their counsel and filed their reply affidavit, wherein they have disputed the averments made in the petition and insisted that the activities of the detainee are highly prejudicial to the maintenance of public order. It is pleaded that the detention order and grounds of detention along with the material relied upon by the detaining authority were handed over to the detainee and the same were read over and explained to him. It is contended that the grounds urged by the petitioner are legally misconceived, factually untenable and without any merit. That the detainee was informed that he can make a representation to the government as well as to the detaining authority against his detention. It is further claimed in the reply affidavit that all the statutory and constitutional requirements have been fulfilled and complied with by the detaining authority and that the order has been issued validly and legally. The respondents have placed reliance on the judgments of the Supreme Court in *Hardhan Saha v. State of W.B* (1975) 3 SCC 198, *Secretary to Government, Public (Law and Order) and another vs. Nabila and another*, (2015) 12 SCC 127 and *Ashok Kumar vs. Delhi Administration and others*, AIR 1982 SC 1143. In support of the stand taken in the counter affidavit, learned counsel for the respondents has also produced the detention record.

4) Considered the rival submissions and perused the material available on the file as also the detention record as produced by the learned counsel for the respondents.

5) Learned counsel for the petitioner highlighted various grounds while seeking quashment of impugned order but the main ground that has been argued during the course of arguments is that the detainee was not furnished whole of the material which formed basis of the impugned order of detention thereby depriving him from making an effective representation against his detention.

6) A perusal of the detention record produced by learned counsel for the respondents reveals that the material is stated to have been received by the petitioner on 16.09.2021. The detention record contains a document under the style "receipt of grounds of detention", a perusal whereof reveals that it bears the signature of petitioner and according to it, the petitioner has received grounds of detention consisting of 02 leaves. Thus, it is clear that the copy of the dossier has not at all been supplied to the detainee. Apart from this, if we have a look at the grounds of detention, it bears reference to five FIRs Viz. FIR No.37/2018 for offences under Section 341, 392 IPC, FIR No.44/2020 for offences under Section 379 IPC, FIR No.75/2020 for offences under Section 8/20 NDPS Act, FIR No.38/2021 for offences under Section 392 IPC and FIR No.40/2021 for offences under Section 147, 148, 336, 307, 188, 269 of IPC and 51(2) DM Act, all registered with P/S Pantha Chowk. It was incumbent upon respondents to furnish not only the copies of these FIRs but also the statements of witnesses recorded under Section 161/164 of the Cr. P. C during investigation of these FIRs as well as the other material on the basis of which petitioner's

involvement in these FIRs is shown, particularly when the petitioner is not nominated in these FIRs. 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 a 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.

7) 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 detention order is based, is supplied to the detenue. The failure on the part of detaining authority to supply the material renders detention order illegal and unsustainable. While holding so, I am fortified by the 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).

8) For the afore-stated reasons, the petition is allowed and the impugned order of 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.

9) The record, as produced, be returned to the learned counsel for the respondents.