

(2021) 02 J&K CK 0102
In the Jammu And Kashmir High Court
Case No : Writ Petition (Crl) No. 300 Of 2019

Nayeem Ahmad Mir

APPELLANT

Vs

State Of J&K And Another

RESPONDENT

Date of Decision : 01-02-2021

Acts Referred:

Arms Act, 1959 — Section 7, 27

Citation : (2021) 02 J&K CK 0102

Hon'ble Judges : Puneet Gupta, J

Bench : Single Bench

Advocate : Wajid M. Haseeb, Saba Gulzar, B. A . Dar

Final Decision : Dismissed

Judgement

1. Nayeem Ahmad Mir through his father has challenged detention order No. DMS/PSA/83/2019 dated 17.08.2019, passed by respondent No.2

on the ground that there was no justification to pass a detention order against the said detainee; the detainee was already in custody in F.I.R No.

215/2018 and had neither applied for bail and was facing trial without being admitted to bail; that the detention order has been passed after more

than eight months of the alleged activity which resulted into passing of the impugned detention order; that the detaining authority has not applied its

mind of his own but relied upon the police dossier only; that the relevant material has not been furnished to the petitioner thereby effecting his right

to have effective representation against his detention order; that the order of detention was passed in English and the translated version of the order

was not made available in Kashmiri/Urdu language to the detainee who was having knowledge of the above languages only.

2. The counter has not been filed.

3. Heard learned counsel for the parties and perused the digital record provided to the Court.

4. Learned counsel for the petitioner has reiterated the submissions made in the petition.

5. Learned counsel for the respondents has referred to the record in order to justify the detention order passed under the provisions of the Public

Safety Act.

6. The order of preventive detention against the detainee can be passed for the acts which are likely to be prejudicial to the public order or even the

security of the State. The preventive detention and the prosecution of the person act in different sphere and the distinction is succinctly highlighted

in the judgment of Apex Court reported in (1975) 3 SCC 198. Similarly, the nature of satisfaction recorded by the detaining authority and the

extent to review such satisfaction by the court is aptly observed in Union of India Vs. Dimple Happy Dhakad (Appeal No. 1064/2019 decided on

18.07.2019).

7. The order of detention is approved by the Government Order No. Home/PB-V/1482 of 2019 dated 26.08.2019. The Board constituted under

the Public Safety Act has approved the detention order vide dated 12.09.2019. Consequently, the Government vide order No. Home/PB-V/2062

of 2019 dated 30.09.2019 confirmed the order of detention dated 17.08.2019 for a period of six months in the first instance and lastly vide

Government Order No. Home/PB-V/1488 of 2020 dated 06.08.2020 for a further period of six months and the detainee has been presently

lodged in Central Jail, Agra, Uttar Pradesh.

8. Perusal of the record reveals that the order of detention of 17.08.2019 has been initially executed on 21.08.2019 in Central Jail, Srinagar. The

execution of detention order reveals the signature of the detainee-Nayeem Ahmad Mir. The Court finds no reason not to believe the contents of

aforsaid documents. The record further reveals that the dossier with regard to the petitioner was prepared by Superintendent of Police, District

Srinagar. The respondent No.2 while passing the order of detention has separately recorded the grounds of detention and thus form part of the

detention order itself. The respondent No.2 has also taken into consideration the dossier submitted by the Superintendent of Police, District

Srinagar while passing the detention order. As per the grounds of detention the petitioner is indulging in anti-national activities. The file further reveals that six leaves consisting of copies of PSA warrant, grounds of detention, notice, dossier and F.I.R have been handed over to the detainee under proper receipt. The petitioner has been provided the material which formed basis of grounds of detention. The Court finds no reason to disbelieve the document dated 21.08.2019 which mentions of providing of the relevant material to the petitioner-detainee. The detainee has also been informed of the detention order in Urdu and Kashmiri languages which the petitioner has fully understood. Again the Court finds the argument of the learned counsel for the petitioner that as the petitioner has not been provided translated version of detention order and grounds of detention in Kashmiri/Urdu language which he understands as such there is non-compliance of the statutory requirement cannot be held to be valid ground for quashing the detention order on that ground. As the detainee has been explained the detention order in the language he understands, the same is sufficient compliance of the statutory requirement of law and no fault can be found on the said ground.

9. The other ground taken in the petition is that though the F.I.R was registered against him on 08.12.2018 for various offences yet the order impugned came to be passed after more than eight months which itself shows that there was no plausible reason for the respondent No.2 to pass the impugned order. Learned counsel for the respondents has submitted that the order has been passed after due application of mind and taking into consideration all the relevant factors as such no fault can be found in the order.

10. There is no dispute with the proposition of law as laid down in numerous authorities that the order of detention can be passed before, during or even after the case is registered and the trial takes place against the detainee. The order passed under the Public Safety Act even after eight months of filing of F.I.R does not make any difference to the case of the petitioner on the ground agitated by the learned counsel for the petitioner. The order is passed when the detainee was still in custody and was not bailed out in the F.I.R. in question. In case the detention order is passed on consideration after some period of the filing of F.I.R. and arrest of the detainee in the said F.I.R. the same cannot be the ground to quash the

detention order on that ground. It is not that the petitioner was bailed out a long time back and the detaining authority woke up from slumber to

pass detention order on the same facts which resulted into filing of F.I.R.

11. The satisfaction of the detaining authority is subjective in nature and there is no dispute with this proposition of law. If the authority has taken

decision on the relevant material available and records the opinion that the detention order is required to be passed as the activity of the detainee is

not in the national interest and the security of the State is likely to be threatened by the acts of the detainee, the same cannot be interfered by the

Court and the court is not to substitute its opinion in the matter with that of the detaining authority. It is the detaining authority which has all the

material before it on the basis of which the authority records the satisfaction for passing the detention order on the grounds mentioned in the Public

Safety Act. In the present case, the detention order specifically records that the acts of the detainee are likely to be prejudicial to the security of the

State. The activity of the petitioner is held to be prejudicial to the national interest as he is stated to be involved in the offences under Section 7/25

Arms Act and is an active militant of LeT banned outfit who motivated the subject to work as OGW with the said militant organization. It cannot

be said that the grounds mentioned in the order of detention are apparently specious.

12. The other ground taken in the petition is that the petitioner was deprived of making representation before the Advisory board as all the relevant

material was not supplied to him nor the translated version of the documents supplied was made available to the petitioner. It appears that the

petitioner has not opted to make representation to the Advisory Board though supplied with the necessary documents and also made aware of the

fact that he can make representation if he so desires. As the Court has held above that the relevant material was supplied to the petitioner at the

time of execution of the detention warrant and was made aware of the contents of the relevant documents in the language which the petitioner

understood and that he can also make representation if he so desires, in the light of the above the argument of the petitioner pales into insignificance

and cannot be the ground for quashing the detention. If the petitioner has failed to exercise his right to make representation the respondents cannot

be blamed for the same. The procedural safeguards provided under the Public Safety Act have been complied with by the concerned authorities.

13. It is argued on behalf of the petitioner that the order of detention has been passed by the respondent No.2 only on the basis of one F.I.R which has been registered against the petitioner. The other side has contended that the activities of the petitioner had forced the respondents to invoke the provisions of the Public Safety Act against the petitioner. The Act does not bar the detaining authority from passing the detention order even on the sole act of the detainee as the sole act can also be of such magnitude so as to attract the invocation of provisions of the Public Safety Act. The acts of the detainee which became the basis for passing of the detention order cannot be said to be such which could not be the basis of the detention order.

14. The court finds no infirmity in the impugned order. In the light of the above, the detention order impugned, passed by respondent No.2, is upheld. The petition is found to be without merit and is, accordingly, dismissed.