

(2021) 02 J&K CK 0116
In the Jammu And Kashmir High Court
Case No : Writ Petition (Crl) No. 424 Of 2019

Nazir Ahmad Tantray

APPELLANT

Vs

State Of J&K And Another

RESPONDENT

Date of Decision : 05-02-2021

Acts Referred:

Jammu And Kashmir Public Safety Act, 1978 — Section 13

Jammu And Kashmir State Ranbir Penal Code, 1989 — Section 148, 149, 307, 336, 427

Constitution Of India, 1950 — Article 22(5)

Citation : (2021) 02 J&K CK 0116

Hon'ble Judges : Rajnesh Oswal, J

Bench : Single Bench

Advocate : B. A. Tak, Asif Maqbool

Final Decision : Allowed

Judgement

1. Through the medium of this petition, filed by the brother of the petitioner on behalf of the petitioner, the petitioner has questioned order of detention

bearing No. 23/DMB/PSA/2019 dated 06.08.2019 issued by the District Magistrate, Baramulla, respondent No. 2 herein ,by virtue of which the

petitioner has been detained in preventive detention under the Jammu and Kashmir Public Safety Act, 1978 (for short the Act) in order to prevent him

from acting in any manner prejudicial to the security of the State (now Union Territory).

2. The order of detention has been assailed by the petitioner on following grounds:

i) the detaining authority has not complied with the statutory as well as procedural safeguards as provided under 22(5) of the Constitution of India

while passing the detention order

ii) the material relied upon by the detaining authority while passing the detention order has not been furnished to the petitioner.

iii) the grounds on which the petitioner has been detained are stale and have no live link with the objective sought to be achieved under the Act.

3. The respondents have filed the counter affidavit, in which they have categorically stated that the procedural as well as statutory safeguards enshrined under Article 22(5) of the Constitution of India and section 13 of the PSA Act have been complied with by the respondents while passing the detention order. They have further stated that they have supplied all the requisite documents to the petitioner so as to enable him to make an effective representation to the detaining authority and to the Government. The respondents have also placed on record the execution receipt and the detention order.

4. Mr. B. A. Tak, learned counsel for the petitioner has vehemently reiterated the same grounds those have been taken in his petition. Learned counsel for the petitioner submits that there is no subjective satisfaction derived by the detaining authority that there is any necessity to detain the petitioner. He has further argued that no material has been supplied to him so as to enable him to make an effective representation to the detaining authority or the Government against his preventive detention.

5. On the contrary, Asif Maqbool, learned counsel appearing for the respondents has vehemently argued that all the documents have been served upon the petitioner. Mr. Maqbool has also argued that the detention order is legal and all procedural and statutory safeguards have been complied with while passing the order of detention.

6. Heard and considered. I have perused the detention record meticulously.

7. A perusal of the grounds of detention record reveals that the detaining authority has relied upon nine FIRs registered against the petitioner, out of which seven FIRs were registered in the year, 2013, one in the year, 2014 and one FIR in the year, 2016. Further, from the grounds of detention, it is evident that the petitioner was earlier detained vide detention order No. 75/DMB/ARA/PSA/2016 dated 17.08.2016 but the said order was quashed by this Court on technical grounds and now yet again the petitioner has been ordered to be detained on the basis of past activities regarding which aforementioned FIRs were registered against the petitioner. In the grounds of

detention there is no allegation against the petitioner that at any particular point of time after 2016, he has indulged in any unwarranted activity that necessitated the detaining authority to pass the order of detention against the petitioner. The only last activity regarding which FIR has been registered pertains to the year, 2016 when FIR bearing No. 210/2016 for commission of offences under sections 148, 149, 336, 307 and 427 RPC was registered against the petitioner on 13.08.2016.

8. Reliance is placed upon the decision of Apex Court in Syed Zakir Hussain Malik vs. State of Maharashtra reported in (2012) 8 SCC 233. Relevant

paragraph Nos. 27 and 28 read as under:

27. As regards the second contention, as rightly pointed out by learned counsel for the appellant, the delay in passing the detention order, namely, after 15 months vitiates the detention itself. The question whether the prejudicial activities of a person necessitating to pass an order of detention is proximate to the time when the order is made or the live-link between the prejudicial activities and the purpose of detention is snapped depends on the facts and circumstances of each case. Though there is no hard and fast rule and no exhaustive guidelines can be laid down in that behalf, however, when there is undue and long delay between the prejudicial activities and the passing of detention order, it is incumbent on the part of the court to scrutinize whether the Detaining Authority has satisfactorily examined such a delay and afforded a reasonable and acceptable explanation as to why such a delay has occasioned.

28. It is also the duty of the court to investigate whether casual connection has been broken in the circumstance of each case. We are satisfied that in the absence of proper explanation for a period of 15 months in issuing the order of detention, the same has to be set aside.

Since, we are in agreement with the contentions relating to delay in passing the Detention Order and serving the same on detenu, there is no need to go into the factual details.

(Emphasis Supplied)

9. There is delay in passing the detention order and on this ground only, order of detention is required to be quashed.

10. In view of the above, this petition is allowed. Detention order No. 23/DMB/PSA/2019 dated 06.08.2019 is quashed. Petitioner (detenu) be set

free from the preventive custody provided he is not required in any other case.