
(2019) 03 J&K CK 0067

In the Jammu And Kashmir High Court

Case No : Habeas Corpus Petition (HCP) No. 489 Of 2018

Nisar Ahmad Qazi

APPELLANT

Vs

State And Ors

RESPONDENT

Date of Decision : 15-03-2019

Acts Referred:

Constitution Of India, 1950 — Article 22(3)

Citation : (2019) 03 J&K CK 0067

Hon'ble Judges : Ali Mohammad Magrey, J

Bench : Single Bench

Advocate : M.Ashraf Wani, Mir Suhail

Final Decision : Dismissed

Judgement

1. The detenu, Nisar Ahmad Qazi, son of Gh. Hassan Qazi resident of Ticken Pulwama, through his father seeks quashment of detention order no. 68/DMP/PSA/ 2018 dated 27. 11.2018, purporting to have been passed by District Magistrate Pulwama, with consequential relief for release of the detenu forthwith.

2. The detenu, through his father, challenges the aforesaid detention order through the medium of aforesaid petition, inter alia, on the grounds that the order of detention suffers from non-application of mind;

"a) that no compelling reason or circumstance was disclosed in the order or grounds of detention to take the detenu in preventive detention, moreso in view of the fact that as on the date of passing of the aforesaid order of detention, the detenu was already in custody;

b) that the detenu has not been provided the material forming basis of the detention order, to make an effective representation against his detention order;

c) that the detaining authority has not spelt out as to what were "other connected documents."

d) that the order of detention has neither been read over or explained to the

detenu by respondent no.2 or anybody on his behalf in the language which the detenu understood viz Urdu/Kashmir.

e) that while passing the order of detention against the detenu, the respondent no.2 has violated all the procedural safeguards enshrined in Art. 21 and 22(5) of the Constitution of India."

3. Notice was issued to respondents. They appeared through their learned counsel and filed counter affidavit wherein they submitted that the detention order is well founded in fact and law and seeks dismissal of the Habeas Corpus petition.

4. Heard learned counsel for the parties. Perused the record and considered the matter. Detention record has been produced by the learned counsel for respondents.

5. Mr. Mohd Ashraf wani, learned appearing counsel for petitioner/detenu while strengthening his argument with reference to the grounds taken in the petition submits that the ground taken in the detention order and the material referred to and relied upon has no relevance because the detenu was already in custody, therefore, there was no possibility that the detenu would indulge in activities prejudicial to the security of the State or public order. It is submitted that in absence of material the detention order is passed without subjective and objective satisfaction of detaining authority, therefore, the detention order is bad in law.

6. Mr. Mohammad Ashraf Wani, learned appearing counsel for the petitioner/detenu submits that the order of detention is an outcome of non-application of mind by the detaining authority, as no compelling reasons have been spelled out in the grounds of detention, forming basis for detaining the detenu despite already been in custody. It is submitted that no bail was sought for the detenu.

7. The learned counsel for petitioner would further submit that the detenu has not been provided the material referred to in the grounds of detention resultantly the right of making effective representation against the impugned order of detention, as enshrined under Article 22 (3) of the Constitution, has been violated.

8. Mr. Mir Suhail, learned AAG on the other hand, submits that the impugned order of detention is well founded and there is nothing bad about it. He submits that the detenu has been provided the material relied upon by the detaining authority while detaining him. He further submits that the detenu has also been informed about his right of making representation against his detention. He submitted that the detaining authority has fully applied its mind while issuing the detention order and there is nothing on record to controvert it. Mr. Mir Suhail, learned AAG further submits that the detention order cannot be set aside merely on the ground that the detaining authority while passing the impugned order must be satisfied that the detenu was likely to be released on bail. Learned

counsel while strengthening his arguments referred to and relied upon 2015 CRI L.J. 1364 Supreme Court.

9. Perusal of the records would reveal that the detenu has been furnished the grounds of detention along with the requisite material. He has also been informed about his right of making representation against his detention, but the detenu has chosen not to make the representation, therefore, the fault, if any, is attributable to the detenu and not to the detaining authority. Thus, the ground raised vis-à-vis non-furnishing of material to the detenu is rejected.

10. The perusal of the record would further reveal that the grounds of detention have been explained to the detenu in the language he understands and the copy has been handed over to him along with the records and the detenu has been informed about his right of making representation against his detention. This would mean that the requirement of Section 13 of the Act has been fulfilled.

11. The next contention of the learned counsel for petitioner that the impugned order is an outcome of non-application of mind is also belied by the records produced by the learned State Counsel. The records would show as to how the detenu has been uncontrollable despite having been framed in various FIRs allegedly for committing various offences including the unlawful activities. The detailed grounds of detention and the records referred to by the detaining authority were sufficient to derive satisfaction as regards the detention of detenu under the provisions of the Act. Thus the order does not appear to be suffering from non-application of mind.

12. As per the settled position of law if a detention order is issued on more than one ground independent of each other, the detention order will survive even if one of the grounds is found to be unfound or legally unsustainable. In the present case the detention order is issued on more than one ground independent of each other, therefore, the detention order does not get vitiated even if one of the grounds taken in support of the petition is turns affirmative. My this view is fortified by a law laid down by the Supreme Court in case titled "Gautam Jain v. Union of India and anr.", reported as 2017 (1) Jammu Kashmir Law Times, Vol. 1 (SC) p. 1.

13. The next ground taken by the detenu that the detaining authority did not record as to under which compelling reasons the detenu is required to be kept in custody under preventive laws when he was already in jail and was not granted bail.

14. Since the court has already held that the detention survives even if one of the grounds taken in support of the petition remains unexplained or proves to be bad in law, therefore, the detention order can be maintained in absence of any explanation on this count by the respondents.

15. In view of the above fact situation and having regard to the law laid down by the Hon'ble Supreme Court, this petition fails and is dismissed as such. The

impugned detention order, accordingly, sustains and is maintained. Record be returned to the learned State Counsel in the open court.