

(2022) 03 J&K CK 0038

In the Jammu And Kashmir High Court

Case No : Writ Petition (Criminal) No. 44 Of 2021, Criminal Miscellaneous Cases
No. 1301 Of 2021

Noor Din @ Jattu

APPELLANT

Vs

Union Territory Of J & K & Ors

RESPONDENT

Date of Decision : 22-03-2022

Acts Referred:

Constitution Of India, 1950 — Article 21, 22, 22(5)
Jammu And Kashmir Public Safety Act, 1978 — Section 8, 13
Jammu And Kashmir State Ranbir Penal Code, 1989 — Section 34, 147, 148, 188,
307, 323, 324, 325, 341, 354, 364, 427, 436, 452, 506
Arms Act, 1959 — Section 3, 25
Indian Penal Code, 1860 — Section 34, 188, 323, 341, 382
Prevention Of Cruelty To Animals Act, 1960 — Section 11

Citation : (2022) 03 J&K CK 0038

Hon'ble Judges : M.A. Chowdhary, J

Bench : Single Bench

Advocate : Muzaffar Iqbal Khan, Dewakar Sharma

Final Decision : Disposed Of

Judgement

M.A.Chowdhary, J

1. Respondent No.2 namely District Magistrate, Kathua (hereinafter called 'Detaining Authority') in exercise of powers under Section 8 of the Jammu & Kashmir Public Safety Act, 1978 (for short, 'Act of 1978'), passed the detention Order No. PSA/106 dated 23.06.2021 (for short 'impugned order'), in terms whereof the detinue namely Noor Din @ Jattu S/O Alam Din R/O Kakrak Colony, Tehsil Marheen District Kathua has been detained.

2. The impugned detention order has been challenged through the medium of the instant petition, being in breach of the provisions of Article 22(5) of the Constitution of India read with Section 13 of the J&K Public Safety Act, 1978.

3. It is being pleaded in the petition that the detaining authority-respondent No.2

has not attributed any specific allegation against the detainee. Furthermore, it is stated that the detainee has been incapacitated in filing a representation as the grounds of detention are not in a language which could be understood by the detainee. It is also being stated that the detainee is not an English literate person and understands only Urdu language but the order of detention is in English and it is not possible for him to understand such a hyper technical language. It is also the submission of learned counsel for the detainee that the order of detention and the connected documents annexed with the petition clearly show violation of right of the detainee guaranteed in terms of the Article 22(5) of the Constitution of India.

4. Respondents in their counter affidavit have stated that the detainee was ordered to be detained for maintenance of 'public order' and had he been let free there would have been every likelihood of his re-indulging in criminal activities as he is a hardcore criminal. It is further stated that detention of the petitioner under preventive law is only to keep the petitioner at bay, as a precautionary measure and not as a punishment.

5. Heard learned counsel for both the sides at length and considered the record.

6. Learned counsel for the detainee while being heard makes reference to the grounds of the detention and states that on a cursory look on the same it is manifest that same are vague. It is also submitted that the Detaining Authority on the basis of dossier submitted by Senior Superintendent of Police, Kathua, without application of mind and without evaluating the allegations alleged against the detainee in the said dossier, which was not provided to the detainee, proceeded to pass impugned detention order whereby the detainee has been detained and directed to be lodged at Central Jail Jammu. In addition, learned counsel submitted that the allegations levelled against the detainee are totally vague as nothing specific has been stated in the grounds of detention.

7. In rebuttal, learned Dy GA submits that the record reveals that there is no vagueness in the grounds of detention. The procedural safeguards prescribed under the provisions of Public Safety Act and the rights guaranteed to the detainee under the Constitution have strictly been followed in the instant case. The detainee has been furnished all the material, as was required, and was also made aware of his right to make representation to the detaining authority against his detention.

8. Personal liberty is one of the most cherished freedoms, perhaps more important than the other freedoms guaranteed under the Constitution. It was for this reason that the Founding Fathers enacted the safeguards in Article 22 in the Constitution so as to limit the power of the State to detain a person without trial, which may otherwise pass the test of Article 21, by humanising the harsh authority over individual liberty. In a democracy governed by the rule of law, the drastic power to detain a person without trial for security of the State and/or maintenance of public order, must be strictly construed. However, where

individual liberty comes into conflict with an interest of the security of the State or public order, then the liberty of the individual must give way to the larger interest of the nation.

9. Before appreciating the rival contentions of the parties, it would be appropriate to note that the procedural requirements are the only safeguards available to the detainee since the Court cannot go behind the subjective satisfaction of the detaining authority as has been laid down by Hon'ble Apex Court in a case titled Abdul Latif Abdul Wahab Sheikh Vs B.K. Jha & Anr., reported as (1987) 2 SCC 22. The procedural requirements are, therefore, to be strictly complied with, if any value is to be attached to the liberty of the subject and the constitutional rights guaranteed to him in that regard.

10. The detention record, as produced, reveals that the detainee was involved in following of cases registered at Police Stations, Rajbagh and Lakhanpur:-

FIR No. 233/2010 u/s 341, 323, 354 RPC;

FIR No. 41/2012 u/s 452, 323, 34 RPC;

FIR No. 69/2014 u/s 452, 323, 436, 427, 364, 34 RPC; FIR No. 24/2016 u/s 188 RPC;

FIR No. 70/2016 u/s 341, 147, 148, 323, 324 RPC; FIR No. 264/2016 u/s 325, 323 RPC;

FIR No. 59/2017 u/s 307, 147, 148, 323, 324 RPC;

FIR No. 180/2017 u/s 341, 323, 324, 325 RPC r/w 4/25 Arms Act; FIR No. 55/2019 u/s 452, 323, 147 RPC r/w 3/25 Arms Act; FIR No. 90/2019 u/s 341, 323, 34 RPC;

FIR No. 147/2019 u/s 452, 323, 506, 147 RPC; FIR No. 211/2020 u/s 452, 323, 147 RPC;

FIR No. 64/2021 u/s 188 IPC r/w 11 PCA Act; and FIR No. 101/2021 u/s 341, 323, 34, 382 IPC.

Involvement of the detainee in the aforementioned cases appears to have heavily weighed with the detaining authority while passing detention order.

11. The requirement of law is that whole of the record, on which the detention order is based, has to be made available to the detainee in the language that he understands. As per the execution report, he has been furnished copies of detention warrant, grounds of detention, dossier and copies of FIRs total fifty six leaves. However, he has not been provided with copies of charge-sheets and statements of the witnesses. The detainee, thus cannot be said to be provided with whole of the record which based his detention, so as to make an effective representation. The detention order also does not indicate with regard to the right of making representation. The failure on the part of the detaining authority to supply material renders detention illegal and unsustainable.

12. Hon'ble the Supreme Court in a case titled Chaju Ram Vs The State of Jammu & Kashmir, reported as AIR 1971 SC 263, held in Para-9 of the judgment as under:-

".....The detenu is an illiterate person and it is absolutely necessary that when we are dealing with a detenu who cannot read or understand English language or any language at all that the grounds of detention should be explained to him as early as possible in the language he understands so that he can avail himself of the statutory right of making a representation. To hand over to him the document written in English and to obtain his thumb impression on it in token of his having received the same does not comply with the requirements of the law which gives a very valuable-right to the detenu to make a representation which right is frustrated by handing over to him the grounds of detention in an alien language. We are therefore compelled to hold in this case that the requirement of explaining the grounds to the-detenu in his own language was not complied with."

13. It shall also be quite apposite to reproduce the following portions from Paras 3 and 5 of the judgment rendered by Hon'ble the Supreme Court in the case titled "Raziya Umar Bakshi Vs Union of India & Ors." (AIR 1980 SC 1751):

"3.....The service of the ground of detention on the detenu is a very precious constitutional right and where the grounds are couched in a language which is not known to the detenu, unless the contents of the grounds are fully explained and translated to the detenu, it will tantamount to not serving the grounds of detention to the detenu and would thus vitiate the detention ex-facie.

5.....in cases where the detaining authority is satisfied that the grounds are couched in a language which is not known to the detenu, it must see to it that the grounds are explained to the detenu, a translated script is given to him and the grounds bear some sort of a certificate to show that the grounds have been explained to the detenu in the language which he understands."

14. The Hon'ble Apex Court in the judgment rendered in the case of "Sophia Gulam Mohd. Bham V. State of Maharashtra & Ors. (AIR 1999 SC 3051), has also held as under:

"The right to be communicated the grounds of detention flows from Article 22(5) while the right to be supplied all the material on which the grounds are based flows from the right given to the detenu to make a representation against the order of detention. A representation can be made and the order of detention can be assailed only when all the grounds on which the order is based are communicated to the detenu and the material on which those grounds are based are also disclosed and copies thereof are supplied to the person detained, in his own language."

15. Vide impugned order, the Detaining Authority has not communicated to the detenue the time limit, in which, he could make a representation to him, till

approval of the detention order by the Government. In a case of National Security Act, titled "Jitendra Vs. Dist. Magistrate, Barabanki & Ors.", reported as 2004 Cri.L.J 2967, the Division Bench of Hon'ble Allahabad High Court, has held:-

"10. We make no bones in observing that a partial communication of a right (in the grounds of detention) of the type in the instant case, wherein the time limit for making a representation is of essence and is not communicated in the grounds of detention, would vitiate the right fundamental right guaranteed to the detainee under Article 22(5) of the Constitution of India, namely, of being communicated, as soon as may be the grounds of detention."

16. This is another reason, as to why the impugned order would be vitiated since the detainee's right to make a representation to the detaining authority was only available to him till approval of detention order by the Government, it follows as a logical imperative that the detaining authority should have communicated to the detainee in the grounds of detention the time limit, in which, he could make a representation to it i.e., till the approval of the detention order by the State Government.

17. Reproducing the dossier prepared by the Senior Superintendent of Police, Kathua in the order of detention, almost word by word; non furnishing of the whole of the record in which detention order was based; furnishing the material in English and not the language of the detainee, all reflect that the Detaining Authority has not applied its mind to draw the subjective satisfaction to detain the petitioner and detainee has also not been deprived of his fundamental right to make effective representation against the detention order to the Detaining Authority and the government.

18. For the foregoing reasons and the law laid down as above, this petition is allowed. Impugned order of detention No. PSA/106 dated 23.06.2021 passed by the District Magistrate, Kathua, is, as such, quashed. The detainee namely Noor Din @ Jattu S/O Alam Din R/O Kakrak Colony, Tehsil Marheen District Kathua, is ordered to be released from the preventive custody forthwith provided he is not required in connection with any other case(s).

19. Detention record, as produced, be returned to the learned GA.

20. Disposed of, accordingly.