

(2021) 12 J&K CK 0072

In the Jammu And Kashmir High Court

Case No : Writ Petition (Criminal) No. 108 Of 2020

Owais Ahmad Bhat

APPELLANT

Vs

Union Territory Of J&K &Anr

RESPONDENT

Date of Decision : 31-12-2021

Acts Referred:

Citation : (2021) 12 J&K CK 0072

Hon'ble Judges : Sanjay Dhar, J

Bench : Single Bench

Advocate : R. A. Jan, Aswad Attar, Mir Suhail

Final Decision : Dismissed

Judgement

Sanjay Dhar, J

1) Challenge in this petition is thrown to the order No.12/DMP/PSA/20 dated 07.07.2020, issued by District Magistrate, Pulwama (for brevity

â??Detaining Authorityâ?) whereby Shri Owais Ahmad Bhat son of Habibullah Bhat resident of Arihal Tehsil & District Pulwama (for short

â??detenuâ?) has been placed under preventive detention and directed to be lodged in Central Jail, Srinagar

2) Petitioner has contended that the Detaining Authority has passed the impugned detention order mechanically without application of mind, inasmuch

as the grounds of detention are mere reproduction of the dossier. It has been further contended that the Constitutional and Statutory procedural

safeguards have not been complied with in the instant case. It has been also urged that the allegations made against the detainee in the grounds of

detention are vague and that the translated version of the documents/grounds of detention has not been provided to the detainee who is a semi-literate

person. It has also been contended that the petitioner has not been informed as to before which authority he had to make a representation.

3) The respondents, in their counter affidavit, have disputed the averments made in the petition and stated that they have followed the provisions of

J&K Public Safety Act. It is contended that the detainee has been detained only after following due procedure; that the grounds of detention were

read over to the detainee; that there has been proper application of mind for detaining the detainee and that the detainee has been provided all the

material. The learned counsel for the respondents also produced the detention records to lend support to the stand taken in the counter affidavit.

4) I have heard learned counsel for parties and I have also gone through detention record.

5) Learned counsel for the petitioner, while seeking quashment of the impugned order, projected various grounds but the main ground that has

prevailed during discussion is that the detainee has been disabled from making an effective representation against his detention as the material forming

basis of the grounds of detention has not been supplied to him.

6) On perusal of the detention record produced by learned counsel for the respondents, the ground regarding non-supply of relevant material appears

to have substance as the said record suggests that the whole of the relevant material has not been supplied to the detainee. The execution report in the

record indicates that the detainee has been supplied 04 leaves comprising copy of warrant/notice/ and grounds of detention. It appears that copy of the

dossier and copy of the FIR including documents relating to the FIR, reference whereof has been made in the grounds of detention, have not been

supplied to the detainee. This goes to support the contention of the petitioner that he has not been supplied whole of the relevant material. Obviously,

the petitioner has been hampered by non-supply of the relevant material in making an effective representation against his detention before the

concerned authority/Advisory Board.

7) Non-furnishing of relevant material forming basis of the grounds of detention deprives a detainee of his Constitutional right to make a representation

against the order of detention. The denial of this Constitutional right renders the order of detention unsustainable in law. I am supported in my

aforsaid view by the judgments of the Supreme Court in Sophia Gulam Mohd.

Bham v. State of Maharashtra & ors (AIR 1999 SC 3051), Thahira

Haris etc. etc. Vs. Government of Karnataka & Ors (AIR 2009 SC 2184) and Ibrahim Ahmad Bhatti alias Mohd. Akhtar Hussain alias Kandar

Ahmad Wagher alias Iqbal alias Gulam Vs. State of Gujarat and othersâ??, (1982) 3 SCC 440.

8) The cumulative effect of the aforesaid discussion leads to the only conclusion that in the instant case, the respondents have not adhered to the legal

and Constitutional safeguards while passing the impugned detention order against the petitioner. The impugned order of detention is, therefore,

unsustainable. Accordingly, the same 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.