

(2022) 08 J&K CK 0062

In the Jammu And Kashmir High Court

Case No : Writ Petition (Criminal) No. 219 Of 2021

Owais Sidiq Thakoo

APPELLANT

Vs

Union Territory Of J&K & Ors.

RESPONDENT

Date of Decision : 29-08-2022

Acts Referred:

Constitution Of India, 1950 — Article 22(5)

Citation : (2022) 08 J&K CK 0062

Hon'ble Judges : Sanjay Dhar, J

Bench : Single Bench

Advocate : Shariq Reyaz Jan, Rafeeq Ahmad Bhat, Ilyas Laway

Final Decision : Allowed

Judgement

Sanjay Dhar, J

1) By the instant petition, veracity and legality of the detention order No.DMS/PSA/85/2021 dated 23.10.2021, issued by District Magistrate, Srinagar (for brevity "detaining authority") has been challenged. In terms of the aforesaid order, Owais Sidiq Thakoo son of Mohammad Sidiq Thakoo resident of Zaindar Mohalla, Habbakadal, Srinagar (for short "detenue") has been placed under preventive detention and lodged in Central Jail, Srinagar.

2) The petitioner has contended that the Detaining Authority has passed the impugned detention order mechanically without application of mind, inasmuch as the allegations mentioned in the grounds of detention have no nexus with the detenue and that the same have been fabricated by the police in order to justify its illegal action of detaining the detenue. It has been contended that the grounds of detention are vague, non-existent on which no prudent man can make a representation against such allegations. It has been further contended that the Constitutional and Statutory procedural safeguards have not been complied with in the instant case, inasmuch as whole of the material which formed basis of the impugned detention order has not been supplied to the

petitioner.

3) Upon being put to notice, the respondents appeared through their counsel and filed their reply affidavit, wherein they have disputed the averments made in the petition and insisted that the activities of detainee are highly prejudicial to the security of the State. It is pleaded that the detention order and grounds of detention along with the material relied upon by the detaining authority were handed over to the detainee and the same were read over and explained to him. That the grounds urged by the petitioner are legally misconceived, factually untenable and without any merit. That the detainee was informed that he can make a representation to the government as well as to the detaining authority against his detention. It is further claimed in the reply affidavit that all statutory requirements and constitutional guarantees have been fulfilled and complied with by the detaining authority. That the order has been issued validly and legally. The respondents have placed reliance on the judgment of the Supreme Court in *Hardhan Saha v. State of W.B* (1975) 3 SCC 198. The respondents have produced the detention record to lend support to the stand taken in the counter affidavit.

4) I have heard learned counsel for parties and perused the record.

5) Learned counsel for the petitioner, while seeking quashment of the impugned order, projected various grounds but his main thrust during the course of arguments was on the following grounds:

(I) That the detainee was not furnished with whole of the material to enable him to make an effective representation against his detention.

(II) That the grounds of detention are vague and cryptic, inasmuch as the material particulars of the terrorists of banned organization TRF, as mentioned in the grounds of detention, have not been disclosed, which prevented him from making an effective representation against his detention.

6) So far as the first ground of challenge is concerned, a perusal of the detention record produced by learned counsel for the respondents reveals that the certain material is stated to have been received by the petitioner on 30.10.2021. A document under the style 'receipt of detention papers' in this regard forms part of the detention record, a perusal whereof reveals that it bears the signature of the petitioner and according to it, copy of grounds of detention/notice/letter, total four leaves, have been supplied to him.

7) It is clear from the execution report, which forms part of the detention record, that copy of the police dossier has not at all been supplied to the detainee. Thus, contention of the petitioner that whole of the material relied upon by the detaining authority, while framing the grounds of detention, has not been supplied to him, appears to be well-founded. Obviously, the petitioner has been hampered by non-supply of copy of police dossier on the basis of which ground of detention have been framed, in making an effective representation before the

Advisory Board, as a result whereof his case has been considered by the Advisory Board in the absence of his representation, as is clear from the detention record. Thus, vital safeguards against arbitrary use of law of preventive detention have been observed in breach by the respondents in this case rendering the impugned order of detention unsustainable in law.

8) It needs no emphasis that the detainee cannot be expected to make an effective and purposeful representation which is his constitutional right guaranteed under Article 22(5) of the Constitution of India, unless and until the material, on which the detention is based, is supplied to the detainee. The failure on the part of detaining authority to supply the whole material renders the detention order illegal and unsustainable in law. While holding so, I am fortified by the judgments rendered in *Sophia Ghulam Mohd. Bham V. State of Maharashtra and others* (AIR 1999 SC 3051) and, *Thahira Haris Etc. Etc. V. Government of Karnataka & Ors.* (AIR 2009 SC 2184).

9) The next ground projected by the petitioner is that the the grounds of detention are vague and cryptic, inasmuch as the material particulars of the terrorists of banned organization TRF, as mentioned in the grounds of detention, have not been disclosed.

10) On perusal of the detention record produced by learned counsel for the respondents, the ground projected regarding vagueness of the averments made in the grounds of detention, appears to be forceful. There is no mention of the particulars of the place and the identity of the persons/terrorists alleged to have received support of the detainee. The particulars of the period when the detainee is alleged to have offered support to the terrorists are also not mentioned in the grounds of detention. Thus, the grounds, being vague and lacking in material particulars, the detainee could not have made an effective representation against his detention. Therefore, there has been violation of constitutional guarantees envisaged under Article 22(5) of the Constitution. The detention order, as such, is illegal and unsustainable. In my aforesaid view, I am fortified by the judgments of the Supreme Court in the case of *Jahangir Khan Fazal Khan Pathan vs. Police Commissioner, Ahmadabad*, (1989) 3 SCC 590, *Abdul Razak Nane Khan Pathan v. Police Commissioner, Ahmadabad*, AIR 1989 SC 2265.

11) Viewed thus, the petition is allowed and the impugned order of detention is quashed. The detainee is directed to be released from the preventive custody forthwith provided he is not required in connection with any other case.

12) The detention record be returned to the learned counsel for the respondents.