

(2024) 05 J&K CK 0026

In the Jammu And Kashmir High Court

Case No : Writ Petition (Criminal) No. 242 Of 2023

Peerzada Mohammad Waseem

APPELLANT

Vs

UT Of J&Kand Another

RESPONDENT

Date of Decision : 03-05-2024

Acts Referred:

Constitution Of India, 1950 — Article 22, 22(5), 22(6)
Jammu And Kashmir Public Safety Act, 1978 — Section 8
Jammu And Kashmir State Ranbir Penal Code, 1989 — Section 149, 341, 392
Unlawful Activities (Prevention) Act, 1967 — Section 13

Citation : (2024) 05 J&K CK 0026

Hon'ble Judges : Sindhu Sharma, J

Bench : Single Bench

Advocate : N.A. Ronga, Nadiya Abdullah, Mohsin Qadri

Final Decision : Allowed

Judgement

Sindhu Sharma, J

1. District Magistrate, Srinagar vide detention order No. DMS/PSA/28/2023 dated 12.04.2023, under Section 8 of Jammu and Kashmir Public Safety Act, 1978, has placed Peerzada Mohammad Waseem (hereinafter referred to as detainee), S/o Peerzada Shabir Ahmad, R/o Wanganpora, Srinagar, in preventive detention with a view to prevent him from acting in any manner prejudicial to the maintenance of security. This order of detention has been assailed by the detainee through his mother Mst. Tasleema.

2. The impugned order of detention has been assailed by the detainee on the ground that the same has been passed mechanically without any application of mind. The detainee had already been detained vide detention order No. DMS/PSA/41/2022 dated 11.04.2022, which was assailed by him by way of writ petition bearing WP(CrI) No. 200/2022. This order of detention was quashed by this Court on 13.04.2023 and the detainee has again been detained on the same grounds which has vitiated the order of detention.

3. The detaining authority was also not aware of the fact that while the legality and validity of detention was being considered by this Court on 16.02.2023 and before the judgment was pronounced on 13.04.2023, quashing the order of detention, the detaining authority has passed the order of detention without waiting for the judgment of the Court in this regard.

4. The detention of detainee has been ordered after considering the dossier submitted by the Senior Superintendent of Police on 08.09.2024 on the ground of the involvement of the detainee in as many as seven cases. The detainee is stated to be involved in FIR No. 51/2017 under Sections 302, 148, 149, 392, 341 RPC and 13 UA P Act at Police Station Nowhatta, and was admitted to bail in the aforesaid FIR and the detaining authority has not shown any awareness of the same while passing the order of detention.

5. It is also pleaded that all the relevant material relied upon by the detaining authority while passing the order of detention has not been furnished to the detainee. The detainee, thus, could not make an effective representation against his detention.

6. The respondents have filed their counter affidavit and produced the detention record. The respondents submit that the detainee was detained pursuant to the detention order dated 12.04.2023, as he was found to be involved in activities prejudicial to the security of the State.

7. The detaining authority after examining the dossier carefully and perusing the material on record was satisfied that the activities of the detainee are prejudicial to security of the State and in the facts and circumstances, the detention of the detainee was found necessary. All the relevant material relied upon by the detaining authority has been provided to the detainee. The detention order and warrants of detention was also executed by the concerned authority against proper receipt.

8. Heard learned counsel for the parties and perused the record.

9. The detainee was detained vide order dated 12.04.2023 for his activities which were considered to be prejudicial to security of the State. The detaining authority in the grounds of detention has arrived at the satisfaction that the activities of the detainee are likely to impact the overall scenario and liberty to move freely at a point of time will create major act of terror in association with the active anti-national elements in district Srinagar. There are technical inputs that the detainee would operate and reactivate sleeper cells which will have the distinct bearing upon the security of the Union Territory of J&K. In order to stop the detainee from indulging in these activities, his detention under the provisions of the Public Safety Act has become imperative.

10. The grounds of detention reflect total non-application of mind of the detaining authority.

11. Learned counsel for the detainee submits that the detainee was already

granted bail in FIR No. 51/2017 by the Special Judge designated under NIA Act, Srinagar on 06.04.2022. This important fact has not been noticed by the detaining authority while passing the order of detention. The grounds of detention do not show any reference to the fact that the detenu has been admitted to bail. The detaining authority has not shown any awareness regarding the same and this reflects non-application of mind by the detaining authority which has rendered the detention illegal.

12. Similar issue has been dealt by the Apex Court in "Anant Sakharam Raut Vs. State of Maharashtra and another" reported in AIR 1987 SC 137, and has held in paragraph 8 as under:-

"We hold that there was clear non-application of mind on the part of detaining authority about the fact that the petitioner was granted bail when the order of detention was passed. In the result we set aside the judgement of the Bombay High Court under appeal, quash the order of detention and direct that the petitioner be released forthwith....

13. It is next argued that the detaining authority has not provided all the material relied upon while passing the order of detention in order to make effective representation. Perusal of the execution report reveals that the detenu has been provided with detention order (01 leaf), notice of detention (01 leaf), grounds of detention (03 leaves), dossier of detention (Nil), copies of FIR, statements of witnesses and other relevant documents (06 leaves). Thus, the dossier of detention on which the detaining authority has based its satisfaction while passing the order of detention has not been provided to the detenu. It was imperative that the detenu knew what weighed with the detaining authority while passing the order of detention in order to make an effective representation. The non-supply of the requisite material has precluded the detenu from making effective representation which has affected the constitutional and statutory right of the detenu as provided under Article 22 of the Constitution of India.

14. Reliance is placed on Tahira Haris etc. etc. Vs. Government of Karnataka and others, reported as AIR 2009 Supreme Court 2184, in which it has been held as under:

"27. There were several grounds on which the detention of the detenu was challenged in these appeals but it is not necessary to refer to all the grounds since on the ground of not supplying the relied upon document, continued detention of the detenu becomes illegal and detention order has to be quashed on that ground alone.

28. Our Constitution provides adequate safeguards under clauses (5) and (6) of Article 22 to the detenu who has been detained in pursuance of the order made under any law providing for preventive detention. He has right to be supplied copies of all documents, statements and other materials relied upon in the grounds of detention without any delay. The predominant object of communicating the grounds of detention is to enable the detenu at the earliest

opportunity to make effective and meaningful representation against his detention".

15. Thus, the dossier of detention has not been provided to the detainee without which the detainee was precluded the right for making an effective and meaningful representation. The detention order is, thus, illegal and unsustainable.

16. The earlier order of detention DMS/PSA/41/2022 was passed on 11.04.2022 to prevent him from acting in any manner prejudicial to the maintenance of public order. The period of detention was till 11.04.2023. This detention was quashed by judgment in WP(Crl) No. 200/2022 dated 13.04.2023. The period of detention was expired, thus, the respondents had passed the fresh order of detention but while passing the same, they have not shown any awareness with regard to the pendency of the petition, which reflects that all the material relatable to the detainee was not placed before the detaining authority which had vitiated the order of detention.

28. Our Constitution provides adequate safeguards under clauses (5) and (6) of Article 22 to the detenu who has been detained in pursuance of the order made under any law providing for preventive detention. He has right to be supplied copies of all documents, statements and other materials relied upon in the grounds of detention without any delay. The predominant object of communicating the grounds of detention is to enable the detenu at the earliest opportunity to make effective and meaningful representation against his detention".

17. Thus, the dossier of detention has not been provided to the detainee without which the detainee was precluded the right for making an effective representation. The detention order is, thus, illegal and unsustainable.

18. In view of the aforesaid facts and law laid down by the Apex Court, the impugned detention order is unsustainable in the eyes of law and is liable to be quashed. Accordingly, this petition is allowed. The detention order No. DMS/PSA/28/2023 dated 12.04.2023, passed by the District Magistrate, Srinagar, under which detenu- Peerzada Mohammad Waseem, S/o Peerzada Shabir Ahmad, R/o Wanganpora, Srinagar, is under detention, is quashed. Accordingly, the respondents are directed to release the detenu from the custody forthwith, provided he is not required in any other case.

19. Detention record be handed over to learned counsel for the respondents by the Registry forthwith.