

(2022) 10 J&K CK 0017

In the Jammu And Kashmir High Court

Case No : Writ Petition (Criminal) No. 304 Of 2021

Rahil Manzoor Malla

APPELLANT

Vs

Union Territory Of J&K & Anr

RESPONDENT

Date of Decision : 13-10-2022

Acts Referred:

Jammu And Kashmir Prevention Of Illicit Traffic In Narcotic Drugs And Psychotropic Substances Act, 1988 — Section 3

Narcotic Drugs And Psychotropic Substances Act, 1985 — Section 8, 21

Citation : (2022) 10 J&K CK 0017

Hon'ble Judges : Sanjay Dhar, J

Bench : Single Bench

Advocate : Syed Mohtasim, Sajjad Ashraf

Final Decision : Allowed

Judgement

Sanjay Dhar, J

1) The Divisional Commissioner, Kashmir, in exercise of powers conferred under Section 3 of the Jammu and Kashmir Prevention of Illicit Traffic in Narcotic Drugs and Psychotropic Substances Act, 1988 (hereinafter referred to as "Act of 1988"), has, vide order No.DIVCOM-"K"/164/2021 dated 10.09.2021, ordered detention of Shri Rahil Manzoor Malla S/o Manzoor Ahmad Malla R/o Meerak Shah Colony, Habak Srinagar (hereinafter referred to as the detainee).

2) By the instant petition, veracity and legality of the impugned detention order has been challenged by contending that the Detaining Authority has passed the impugned detention order mechanically without application of mind, inasmuch as 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 Statutory procedural safeguards have not been complied with in the instant case, inasmuch as whole of the material has not been provided to the petitioner. It has been further urged that there has been non-application of mind on the part of detaining authority while passing the impugned detention order as

the detainee was already admitted to bail in the FIR, mention whereof has been made in the grounds of detention.

3) The respondents, in their counter affidavit, 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 was read over and explained to him. That the grounds urged by the petitioner are legally misconceived, factually untenable and without any merit. To substantiate their stand taken in the counter affidavit, the respondents have produced the detention record.

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 there has been non-application of mind on the part of the detaining authority as the detainee has already been admitted to bail in FIR No.30/2021 for offences under Section 8/21 of NDPS Act registered with P/S Nigeen, but this fact has not been mentioned in the grounds of detention.

(II) That the whole of the material forming basis of the grounds of detention has not been furnished to the detainee.

6) It has been contended that the impugned detention order suffers from non-application of mind on the part of the detaining authority, inasmuch as the grounds of detention do not bear any reference to the fact that the petitioner had already been admitted to bail in FIR No. 30/2021 vide order dated 19.07.2021 passed by learned 2nd Additional Sessions Judge, Srinagar. A copy of the order issued by the said Court in this regard has been placed on record by the petitioner. The non-mentioning of this important fact in the grounds of detention exhibits non-application of mind on the part of detaining authority. This shows that the detaining authority has not meticulously examined the record while passing the impugned order of detention which renders the same unsustainable in law. I am supported in my aforesaid view by the judgment of the Supreme Court rendered in the case of Anant Sakharan Raut v. State of Maharashtra & Ors. AIR 1987 SC 137.

7) Next it is urged that whole of the material forming basis of the grounds of detention has not been supplied to the petitioner which deprived him from making an effective representation against his detention.

8) A perusal of the detention record produced by learned counsel for the respondents reveals that the material is stated to have been received by the petitioner on 14.09.2021. Report of Executing Officer in this regard forms part of the detention record, a perusal whereof reveals that it bears the signature of petitioner and according to it, the petitioner has received copy of detention order

(01 leaf), notice of detention (01 leaf), grounds of detention (02 leaves), dossier of detention (Nil), copies of FIR, statements of witnesses and other related documents (02 leaves) (total 06 leaves). Nothing has been brought on record to indicate that the copy of the police dossier has been furnished to the detainee. Rather the record produced by the respondents corroborates the fact that whole of the material relied upon by the detaining authority and transmitted to him by the concerned sponsoring agency has not been furnished to the detainee. Obviously, the petitioner has been hampered by non-supply of these vital documents in making a 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. Furnishing of whole of the material is a necessary requirement for enabling the detainee to make an effective representation against the order of detention. I am supported in my aforesaid 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 others*", (1982) 3 SCC 440.

9) 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.

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