

(2022) 11 J&K CK 0012
In the Jammu And Kashmir High Court
Case No : Writ Petition (Criminal) No. 275 Of 2021

Rameez Raja Sheikh

APPELLANT

Vs

Union Territory Of J&K & Anr

RESPONDENT

Date of Decision : 07-11-2022

Acts Referred:

Constitution Of India, 1950 — Article 22(5)
Code Of Criminal Procedure, 1973 — Section 161
Jammu And Kashmir Public Safety Act, 1978 — Section 13

Citation : (2022) 11 J&K CK 0012

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

Bench : Single Bench

Advocate : Asif Nabi, Asif Maqbool

Final Decision : Disposed Of

Judgement

M.A.Chowdhary, J

1. District Magistrate, Pulwama – respondent no.2 herein, by Order No. 47/DMP/PSA/21 Dated 18.10.2021, has placed Rameez Raja Sheikh S/O Abdul Ahad Sheikh R/O Sharshali Khrew, Tehsil Pampore District Pulwama, (for brevity "detenu") under preventive detention to prevent him from acting in any manner prejudicial to the security of the State and directed his lodgement in Central Jail Jammu. It is this order of which petitioner/detenu is aggrieved and seeks quashment thereof.

2. Counter Affidavit has been filed by respondents, vehemently resisting the petition. Xerox copy of Detention record has also been produced by counsel for the respondents to substantiate the statements made in counter affidavit.

3. Perusal of impugned detention order reveals that Senior Superintendent of Police, Awantipora, vide his letter No. Conf/PSA/2021/237-40 dated 17.10.2021, produced material/ record, such as, dossier and other connected documents in respect of detenu and it was only after perusal thereof that impugned detention

order has been issued by detaining authority.

4. Grounds of detention make reference that the detenu is a hardcore OGW of banned terrorist Organization Lashker-e-Toiba (LeT). However, no FIR has been mentioned in the grounds of detention to have been registered against detenu. The record, as noted above, does not indicate that copies of statements recorded under Section 161 CrPC and other material collected in connection with investigation of aforesaid case, was ever supplied to detenu. The above mentioned material, thus, assumes significance in the facts and circumstances of the case.

5. Having heard learned counsel for parties and perused the file, it would be appropriate to first go through the detention record, produced by counsel for respondents, so as to ascertain as to whether the material, relied upon by detaining authority while issuing impugned detention order, has been furnished to detenu or not. The detention record, inter alia, contains "Execution Report", acknowledged by detenu, of the detention. A perusal of "Execution Report ", reveals that only 05 leaves have been given to detenu. For quick reference, relevant extract of "Execution report " is reproduced as under:

"Execution Report"

Received the detention order (01 leaf) Notice of detention (01 leaf) grounds of detention (03 leaves), Dossier of detention (Nil) Copies of FIR, Statements of witness and other related relevant documents (Nil) (total 05 leaves) have been handed over to detenu against proper receipt.

6. From the above quoted extract of the "Receipt of Grounds of Detention", it comes to fore that detenu has not been furnished the material, viz. copy of Dossier; and other related documents, at the time of execution of detention order or immediately thereafter. Same is true about Execution Report.

7. It needs no emphasis, that detenu cannot be expected to make a meaningful exercise of his Constitutional and Statutory rights guaranteed under Article 22(5) of the Constitution of India and Section 13 of the J&K Public Safety Act, 1978, unless and until the material on which detention order is based, is supplied to him/her. It is only after detenu has all the said material available that he/she can make an effort to convince detaining authority and thereafter the Government that their apprehensions concerning activities of detenu are baseless and misplaced. If detenu is not supplied the material, on which detention order is based, he will not be in a position to make an effective representation against his detention order.

8. Failure on part of detaining authority to supply material, relied at the time of making detention order to detenu, renders detention order illegal and unsustainable. While saying so, I draw the support from the law laid down in Thahira Haris Etc. Etc. v. Government of Karnataka, AIR 2009 SC 2184; Union of India v. Ranu Bhandari, 2008, CrLJ 4567; Dhannajoy Dass v. District Magistrate,

AIR, 1982 SC 1315; Sofia Gulam Mohd Bham v. State of Maharashtra & Ors AIR 1999 SC 3051; and Syed Aasiya Indrabi v. State of J&K & Ors, 2009 (I) SLJ 219.

9. The Supreme Court in Abdul Latief Abdul Wahab Sheikh v. B.K. Jha, 1987 (2) SCC 22 has made it clear that it is only the procedural requirements, which are the only safeguards available to detenu, that is to be followed and complied with as the Court is not expected to go behind the subjective satisfaction of detaining authority.

10. In the present case, the procedural requirements, as discoursed and noted above, have not been followed and complied with by respondents in letter and spirit and as a corollary thereof, petition requires to be allowed.

11. For the foregoing reasons, this petition is disposed of and impugned detention Order No. 47/DMP/PSA/21 dated 18.10.2021, passed by District Magistrate, Pulwama, is quashed. Respondents, including Jail Superintendent concerned, are directed to release the detenu forthwith, provided he is not required in any other case. Xerox copy of the detention record be returned to learned counsel for respondents.

12. Disposed of.