

(2024) 06 J&K CK 0006

In the Jammu And Kashmir High Court

Case No : Writ Petition (Criminal) No. 510 Of 2022

Rayees Ahmad Khan

APPELLANT

Vs

Union Territory Of Jammu & Kashmir And Others

RESPONDENT

Date of Decision : 03-06-2024

Acts Referred:

Jammu And Kashmir Public Safety Act, 1978 — Section 8, 8(1)(a)(i)

Citation : (2024) 06 J&K CK 0006

Hon'ble Judges : Rahul Bharti, J

Bench : Single Bench

Advocate : N. A. Ronga, Jehangir Dar

Final Decision : Disposed Of

Judgement

Rahul Bharti, J

1. Heard the learned counsel for both sides. Perused the writ pleadings and the record therewith and also the detention record.

2. The petitioner is who is under preventive detention custody, allegedly from 17.03.2023, has come forward with the present writ petition filed through his wife – Farhat Begum for seeking a writ of habeas corpus so as to earn his release from the preventive detention custody which the petitioner alleges to be illegal and unconstitutional. This writ petition came to be filed on 02.05.2023 and the preventive detention custody of the petitioner has now lasted more than one year in running.

3. A case for preventive detention of the petitioner came to be proposed by the Sr. Superintendent of Police (SSP), Baramulla when by letter No. Lgl/PSA/2023/584-87 dated 06.03.2023 a dossier was submitted to the respondent No. 2-District Magistrate, Baramulla for invoking jurisdiction under section 8 of the Jammu & Kashmir Public Safety Act, 1978.

4. The background in which the Sr. Superintendent of Police (SSP), Baramulla

submitted a dossier against the petitioner was by his alleged involvement in number of FIRs which being FIR No. 14/2014, FIR No. 70/2016, FIR No. 45/2019, FIR No. 58/2020, FIR No. 36/2021, FIR No. 35/2022 and FIR No. 206/2022 referable to Police Stations Boniyar, Sheeri, Trikuka Nagar & Gangyal.

5. The dossier submitted by the Sr. Superintendent of Police (SSP), Baramulla led the respondent No. 2 – District Magistrate, Baramulla to entertain a purported subjective satisfaction that the facts and circumstances allegedly reported with respect to the petitioner make out a case for ordering the preventive detention under the Jammu & Kashmir Public Safety Act, 1978 and, accordingly, the preventive detention order No. 16/DMB/PSA/2013 dated 10.03.2023 came to be passed by the respondent No. 2 – District Magistrate, Baramulla thereby ordering arrest and preventive detention of the petitioner in order to prevent him from acting in a manner prejudicial to the security of the State and upon his detention to be detained in the Central Jail Kotbhalwal, Jammu.

6. This preventive detention order came to be executed against the petitioner allegedly on 17.03.2023 though the petitioner says he was already picked up before the said date. The preventive detention order so passed by the respondent No. 2 – District Magistrate, Baramulla is supported on purported grounds of detention in which the respondent No. 2 – District Magistrate, Baramulla comes to refer the FIRs, as referred in the dossier, which are reproduced hereunder:-

1. FIR No. 14/2014 u/s 366 RPC of Police Station Boniyar.
2. FIR No. 70/2016 u/s 379 RPC & 6 of Forests Act of Police Station Sheeri.
3. FIR No. 45/2019 u/s 457, 380 IPC of Police Station Boniyar.
4. FIR No. 58/2020 u/s 323, 148, 452, 354 IPC of Police Station Boniyar.
5. FIR No. 36/2021 u/s 8/21 NDPS Act of Police Station Sheeri.
6. FIR No. 35/2022 u/s 8/21, 22, 25, 29 NDPS Act of Police Station Gangyal Jammu.
7. FIR No. 206/2022 u/s 8/21, 22, 27-A NDPS Act of Police Station Trikuta Nagar Jammu.

7. In the grounds of detention, the petitioner came to be referred as an incorrigible anti-national element being in the adverse notice of the Police for committing difference offences including kidnapping/abduction/theft/house breaking in night thereby disturbing peace and tranquility of the area, creating chaos, confusion and fear psychosis in the general public of tehsil Boniyar and Trikanjan area. The petitioner is also alleged to be a habitual smuggler/supplier of narcotic and psychotropic substances posing a great to the health and welfare of the people as well as economy of the nation.

8. By reference to the petitioner's indulgences in the aforesaid FIRs, he is alleged

to be resorting to exploitative and manipulative methods, harbouring deep anti-national sentiments and nurturing anti-national ideology. It is by this reckoning, the petitioner's personal liberty was reckoned to be prejudicial to the security of the State.

9. The detention order came to be approved by the Govt. of UT of J&K by virtue of Govt. Order No. Home/PB-V/485/2023 dated 17.03.2023 whereupon a case was submitted to the Advisory Board for its opinion which came to be tendered on 14.03.2023 resulting in confirmation of the preventive detention order of the petitioner by the Govt. of UT of Jammu & Kashmir vide Govt. Order No. Home/PB-V/809 of 2023 dated 17.04.2023.

10. It is in the aforesaid backdrop of the facts and circumstances that the petitioner came forward with the institution of the present writ petition on 02.05.2023 throwing challenge to his preventive detention on the grounds as mentioned in the writ petition to which this Court needs not advert to for the simple reason that the preventive detention of the petitioner is seriously flawed on account of the fact that the preventive detention order of the petitioner recites the fact that the personal liberty of the petitioner is prejudicial to the security of the State as if it being one of the statutory basis for subjecting a person to suffer preventive detention under section 8 of the Jammu & Kashmir Public Safety Act, 1978.

11. A perusal of the Jammu & Kashmir Public Safety Act, 1978, as it has come to be in its amended form post the Jammu & Kashmir Re-Organization Act, 2019, would show that "security of the State" has ceased to be no more a statutory ground for subjecting a person to suffer loss of personal liberty by a mode of preventive detention. State of Jammu & Kashmir, as a political entity, came to be put to an end by the J&K Reorganization Act, 2019 resulting in creation of two Union Territories i.e. Union Territory of Jammu & Kashmir and Union Territory of Ladakh. Accordingly, section 8 of the Jammu & Kashmir Public Safety Act, 1978 came to be correspondingly amended in exercise of power under the J&K Re-Organization Act, 2019 when by virtue of S.O. 1229(E) of 2020 dated 31.03.2020 issued under the J&K Reorganization (Adaptation of State Laws) Order, 2020, "Security of the State" obtaining in section 8(1)(a)(i) came to be substituted by the statutory ground of "security of the Union Territory of Jammu & Kashmir" meaning thereby if any person is intended to be detained under section 8(1)(a)(i) holding his activities prejudicial to the security of the UT of Jammu & Kashmir then there is no occasion for a District Magistrate/Divisional Commissioner or even for the Govt. of UT of Jammu & Kashmir to employ the expression "security of the State" as a ground of preventive detention in a preventive detention order and, therefore, an order so passed with the said expression "Security of the State" being retained as it is, technically disqualifies to be a valid order of preventive detention against a detainee.

12. The reason for this disqualification is obvious and that is the J&K Public Safety Act, 1978 is a preventive detention jurisdiction the exercise of which is

hedged in procedural safeguards for the sake of benefit of society as well as that of a prospective detainee. Therefore, there cannot be any deviation from following the letters of any given preventive detention law so as to serve the spirit of said law.

13. In the present case, when the petitioner came to be read over the order of detention, the petitioner was made to understand that he was being detained in order to prevent him from acting in a manner prejudicial to the security of the State obviously meaning State of Jammu & Kashmir. State of Jammu & Kashmir has ceased to be an entity for the Govt. as well as for the citizens of the Union Territory of Jammu & Kashmir and it cannot lie at the disposal of any side to still say and understand that the State of Jammu & Kashmir is in existence for whose safety and security detention order under J&K Public Safety Act, 1978 can be passed.

14. Thus, the respondent No. 2 – District Magistrate, Baramulla seriously erred in application of his mind and same state of defective application of mind came to be literally followed by the Govt. of UT of Jammu & Kashmir in approving and confirming the preventive detention of the petitioner even escaping the examination and attention of the Advisory Board.

15. In addition, the preventive detention of the petitioner is seriously questionable in the context of so-called subjective satisfaction of the respondent No. 2 – District Magistrate, Baramulla in the sense that in all the referred FIRs against the petitioner none of those relate to the security of the Union Territory of the Jammu & Kashmir aspect, assuming for the sake of assumption that security of the State is meant to be security of the UT of Jammu & Kashmir though there cannot be any such assumption.

16. The petitioner is supposed to be dealt with under routine penal code in force and the Criminal Procedure Code which is meant to book and punish the petitioner if found guilty in any of the aforesaid FIRs but not to visit the petitioner with a punitive punishment through the mode of preventive detention custody at the sweet discretion of Sr. Superintendent of Police (SSP), Baramulla and the District Magistrate, Baramulla.

17. In the entire grounds of detention, the respondent No. 2 District Magistrate, Baramulla has nowhere taken pain to refer his application of mind to the aspect as to whether he has been fully briefed by the Sr. Superintendent of Police (SSP), Baramulla about the state of the cases relatable to the FIRs mentioned against the petitioner. Thus, the reference to the FIRs in the grounds of detention as well as in the order of detention read with the dossier, was a mode to sensationalize the profiling of the petitioner otherwise the rest of the so-called grounds of detention are nothing but mere hallowed recitals just for sake of statement which by no sense of imagination and inference, can be said to make the petitioner a case for suffering preventive detention.

18. Accordingly, the preventive detention of the petitioner is held to be illegal.

The preventive detention order No. 16/DMB/PSA/2013 dated 10.03.2023 read with approval and confirmation order passed by the Govt. of UT of Jammu & Kashmir are hereby quashed. The petitioner is directed to be released from his custody from the concerned Jail with immediate effect for which the Superintendent of the concerned Jail as well as the respondent No. 2 District Magistrate, Baramulla to ensure that the petitioner does not suffer delay in earning his release from the Jail where he is being detained under the quashed detention order.

19. Disposed of accordingly.

20. Detention record, if any, is returned back.