

(2021) 04 J&K CK 0054
In the Jammu And Kashmir High Court
Case No : Writ Petition (Crl) No. 45 Of 2020

Riyaz Khaliq Parray

APPELLANT

Vs

Ut Of J&K And Another

RESPONDENT

Date of Decision : 27-04-2021

Acts Referred:

Unlawful Activities (Prevention) Act, 1967 — Section 18, 39, 43D
Code Of Criminal Procedure, 1973 — Section 161, 164A
Arms Act, 1959 — Section 7, 25

Citation : (2021) 04 J&K CK 0054

Hon'ble Judges : Sanjeev Kumar, J

Bench : Single Bench

Advocate : Wajid Haseeb, Asifa Padroo

Final Decision : Allowed

Judgement

1) Impugned in this petition is an order of detention passed by District Magistrate, Baramulla, (the detaining authority), vide his order

No.85/DMB/PSA/2020 dated 17.02.2020 (the impugned order), whereby petitioner has been detained in preventive detention with a view to

preventing him from indulging in the activities which are prejudicial to the security of Union Territory. The impugned order has been passed by the

detaining authority on the basis of material supplied by Senior Superintendent of Police, Sopore, vide his communication No.Pross/PSA/2020/5558

dated 14.02.2020. The petitioner, who has filed this petition through his father, is aggrieved of the impugned order of detention and has challenged the

same on several grounds.

2) Before advertent to the grounds of challenge taken by the petitioner to assail the impugned order, it would be appropriate to briefly notice the

grounds of detention on the basis of which the preventive detention of the petitioner has been ordered.

3) As per the dossier supplied by the police, the petitioner is 12th pass and was initially engaged in fruit business to augment his family income. During

the month of July, 2019, the petitioner developed his contacts with one Over Ground Worker of Hizbul Mujahideen, namely, Rameez Ahmad Malla

and through him he met one foreign militant known by the name of Maz Bahi and got motivated to provide all sorts of assistance to the militants of

banned outfit Hizbul Mujahideen. The petitioner was instrumental in strengthening militancy network in the area of Rafiabab. For his involvement in

the activities, the petitioner was apprehended on 07.11.2019 in connection with case FIR No.161/2019 under Sections 18, 39 of ULA(P) Act and 7/25

Arms Act registered in Police Station, Dangiwacha, which is under investigation. The dossier as also the grounds of detention narrates whole

sequence of events leading to the involvement of the petitioner in the aforesaid FIR. The detaining authority, on the basis of dossier of activities

supplied by the police and after going through the allegations contained in FIR No.161/2019, arrived at satisfaction that the petitioner though under

judicial remand in case FIR No.161/2019, would, in every likelihood, indulge in subversive activities if he is admitted to bail by the Court and, therefore,

it was imperative to put him under preventive detention. It is in the aforesaid backdrop, the impugned order of detention is passed by the detaining

authority.

4) The petitioner has assailed the impugned order of detention, inter alia, on the following grounds:

(I) That the allegations in the grounds of detention are vague and indefinite and no prudent man can make an effective representation against these

allegations;

(II) That at the time of passing of the detention order, the detenue was already in custody in FIR No.161/2019 and he had neither applied for bail nor

bail was otherwise due to him, particularly in view of the fact that the offences alleged against him were covered under Section 43D of ULA(P) Act.

The detaining authority despite having knowledge of the custody of the detenue has not spelled out any justified and compelling reasons to detain the

petitioner under preventive detention;

(III) That the detention order has been based on single alleged activity which as per the respondents occurred on 07.09.2019 and the detention order

has been passed on 17th of February, 2020 i.e. after a delay of more than three months and, therefore, in the absence of any explanation with regard

to delay, the detention order is vitiated and cannot sustain;

(IV) That the relevant material, like copy of dossier, FIR, statements under Section 161 and 164-A Cr. P. C, seizure memos etc. etc. which have been

relied upon in the grounds of detention, was never supplied to the detainee to enable him to make an effective representation nor he was made aware

of his right to make representation against his detention to the detaining authority or the government.

5) Learned counsel for the petitioner has reiterated the aforesaid grounds while addressing his arguments.

6) On being put on notice, the detaining authority has filed a detailed reply affidavit and has justified the detention of the petitioner on the ground that

the activities indulged in by the petitioner are highly prejudicial to the security of the Union Territory and, therefore, his remaining at large is a threat to

the security of Union Territory. The activities narrated in the grounds of detention have been reiterated in the reply affidavit filed by the detaining

authority. The factual averments that the petitioner was not supplied with the relevant material relied upon in the grounds of detention have been

refuted. It is submitted that all the relevant material, which has been relied upon by the detaining authority, was provided to the petitioner at the time of

execution of warrant and that the petitioner never made any representation either to the detaining authority or to the government.

7) To counter the stand of the detaining authority projected in the reply affidavit, the petitioner has filed rejoinder affidavit and has pleaded that on the

date when detention order was passed by the detaining authority, the petitioner was already admitted to bail vide order dated 6th of February, 2020,

whereas the detaining authority, in the grounds of detention, has indicated that there is every likelihood of the petitioner being admitted to bail. It is,

thus, submitted that the impugned order of detention is vitiated for total non-application of mind on the part of detaining authority.

8) Having heard learned counsel for the parties and perused the record, I find substance in the submission of learned counsel for the petitioner that

there is non-application of mind on the part of detaining authority. The petitioner has been detained under preventive detention for his alleged

involvement in subversive activities which led to the registration of FIR No.161/2019 under Sections 18, 39 of ULA(P) Act and 7/25 Arms Act. In the

aforesaid FIR, the petitioner was released on bail by Special Judge (Designated Court), under NIA Act, Srinagar, on 6th of February, 2020, whereas

Superintendent of Police, who forwarded the relevant record including dossier and other connected documents to the detaining authority vide his

communication dated 14th of February, 2020, interestingly, did not bring the factum of petitioner having been released on bail in FIR No.161/2019, to

the notice of detaining authority. It is because of this omission on the part of Senior Superintendent of Police, the detaining authority has categorically

stated in the grounds of the detention that the detenue was under judicial remand and that there was every likelihood of his being admitted to bail. The

detaining authority has also noted that there was well-founded apprehension based on report received from field information that the petitioner, if

released on bail, would again indulge in subversive activities.

9) In view of aforesaid, it is clear that either there is lapse on the part of police to provide all relevant material to the detaining authority or there is lack

of application of mind on the part of detaining authority. The fact, however, remains that at the time of passing of the detention order, the detaining

authority was not aware whether the detenue was in police/judicial custody or he stood released on bail. It is difficult for me to say as to what impact

it would have made on the satisfaction of the detaining authority but it cannot be denied that it was a relevant information that was required to be

produced before the detaining authority to enable it to derive subjective satisfaction with regard to necessity of placing the petitioner under preventive detention.

10) The non-application of mind by the detaining authority is fatal and goes to the root of the detention and, therefore, is sufficient to vitiate the

impugned order of detention. For that reason, there is hardly any necessity to consider other grounds of challenge urged by the learned counsel for the petitioner.

11) In view of the aforesaid, this petition is allowed and the impugned order of detention is quashed. Direction is issued to the respondents to release

the detainee from the preventive custody forthwith, provided he is not required in connection with any other case.