

**(2022) 11 J&K CK 0033**

**In the Jammu And Kashmir High Court**

**Case No : Writ Petition (Criminal) No. 123 Of 2022**

Rizwan Akbar Najar

APPELLANT

Vs

Union Territory Of J&K And Others

RESPONDENT

**Date of Decision : 17-11-2022**

**Acts Referred:**

Constitution Of India, 1950 — Article 22(5)

Jammu And Kashmir Public Safety Act, 1978 — Section 13

**Citation : (2022) 11 J&K CK 0033**

**Hon'ble Judges : Vinod Chatterji Koul, J**

**Bench : Single Bench**

**Advocate : Owais Shafi, Sajad Ashraf**

**Final Decision : Disposed Of**

## Judgement

Vinod Chatterji Koul, J

1. Through the medium of this petition, petitioner seeks quashment of the Detention Order No. DMS/PSA/05/2022 dated 07.04.2022, passed by District Magistrate, Srinagar, whereby detenu, namely, Rizwan Akbar Najar S/o Mohammad Akbar Najar R/o Natipora Channa Mohalla, Chanapora, Srinagar, has been placed under preventive detention with a view to prevent him from indulging in the activities which are prejudicial to the maintenance of security of the State, and release of the detenu.

2. The main grounds, on which the detention is sought to be quashed, are that the grounds of detention are vague, indefinite and no prudent man can make an effective representation against these allegations inasmuch as case mentioned in grounds of detention has no nexus with detenu and detaining authority has not given any reasonable justification to pass impugned order of detention; that the material relied upon including dossier by the detaining authority to pass detention order has not been furnished to the detenu to enable him to make an effective representation against his detention, as a consequence of which

impugned order of detention is liable to be quashed.

3. Respondents have filed reply/counter affidavit, insisting therein that there are very serious allegations against detenu as he has always been in the lead role in anti-social and anti-national activities, which are detrimental to the sovereignty and integrity of the country and, therefore, his remaining at large is a threat to the security of the State. The activities narrated in the grounds of detention have been reiterated in the reply/counter affidavit filed by respondents. The factual averments that detenu was not supplied with relevant material relied upon in the grounds of detention have been refuted. It is insisted that all the relevant material, which has been relied upon by the detaining authority, was provided to the detenu at the time of execution of warrant.

4. I have heard learned counsel for the parties and considered the matter.

5. Taking into account the rival contentions of the parties and submissions made by learned counsel for parties, it would be relevant to go through the detention record produced by counsel for respondents. The detention record, inter alia, contains "Execution Report". It would be advantageous to reproduce relevant portion of Execution Report hereunder:

"The 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 relevant documents (Nil) (Total 04 Leaves) have been handed over to the above said detune..."

Thus, it is unambiguously clear and evident from perusal of Execution Report that only four leaves have been given to detenu.

6. Perusal of impugned detention order reveals that on the basis of dossier placed before detaining authority by Senior Superintendent of Police, Srinagar, vide no.LGL/Det-PSA/2022/6046-49 dated 06.04.2022, the detaining authority was satisfied that with a view to prevent detenu from acting in any manner prejudicial to the maintenance of security of the State, it was necessary to detain him under the necessary provisions of law. So, it is on the basis of dossier and other connected material/documents that the impugned detention order has been passed by the detaining authority. The grounds of detention, when looked into, makes reference to various alleged activities of the detenu. Involvement of detenu in the alleged prejudicial activities appears to have weighed with detaining authority, while making detention order. The record, as noted above, does not indicate that copy of dossier and other material record produced before the detaining authority was ever supplied to the detenu. The above material, thus, have had significance in the facts and circumstances of the case.

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. It is only after detenu has all the said material available that he can make an effort to convince detaining authority and thereafter the Government that their apprehensions vis-à-vis his activities are baseless and misplaced. If detenu is not supplied the material, on which the detention order is based, he will not be in a position to make an effective representation against his detention order. The failure on the part of the detaining authority to supply the material, relied at the time of making the detention order to the detenu, renders the detention order illegal and unsustainable. In this regard, I may draw support from the law laid down in the cases of Thahira Haris Etc. Etc. v. Government of Karnataka, AIR 2009 SC 2184; Union of India v. Ranu Bhandari, 2008, Cr. L. J. 4567; Dhannajoy Dass v. District Magistrate, AIR 1982 SC 1315; Sofia Gulam Mohd Bham v. State of Maharashtra and others AIR 1999 SC 3051; and Syed Aasiya Indrabi v. State of J&K & ors, 2009 (I) S.L.J 219.

8. The Supreme Court in Abdul Latief Abdul Wahab Sheikh v. B.K. Jha, 1987 (2) SCC 22 has held that it is only the procedural requirements, which are the only safeguards available to the detenu, that is to be followed and complied with as the Court is not expected to go behind the subjective satisfaction of the detaining authority. In the present case, the procedural requirements, as discussed above, have not been followed and complied by the respondents in letter and spirit and resultantly, the impugned detention needs to be quashed.

9. Based on the above discussion, the petition is disposed of and Detention Order No.DMS/PSA/05/2022 dated 07.04.2022, passed by District Magistrate, Srinagar, is quashed. As a result whereof, respondents, including concerned Superintendent Jail, are directed to set the detenu at liberty forthwith provided he is not required in any other case. Disposed of.

10. Detention record be returned to counsel for respondents.