

(2022) 05 J&K CK 0043

In the Jammu And Kashmir High Court

Case No : Writ Petition (Criminal) No. 224 Of 2021

Rouf Ahmad Magray

APPELLANT

Vs

Union Territory Of J&K And Another

RESPONDENT

Date of Decision : 18-05-2022

Acts Referred:

Constitution Of India, 1950 — Article 19, 22(5)
Unlawful Activities (Prevention) Act, 1967 — Section 13
Arms Act, 1959 — Section 7, 25
Jammu And Kashmir Public Safety Act, 1978 — Section 13

Citation : (2022) 05 J&K CK 0043

Hon'ble Judges : Vinod Chatterji Koul, J

Bench : Single Bench

Advocate : Shafqat Nazir, Asifa Padroo

Final Decision : Disposed Of

Judgement

Vinod Chatterji Koul, J

1. Through the medium of this petition, the petitioner seeks quashment of Order no. 40/DMA/PSA/DET/2021 dated 19.10.2021, passed by District Magistrate, Anantnag – respondent no. 2, placing Rouf Ahmad Magray S/o Abdul Majeed Magray R/o Traphoo Achabal District Anantnag (for brevity “detenu”) under preventive detention and directing his lodgement in Central Jail Kotbhalwal, Jammu, on the grounds made mention of therein.

2. Respondents have filed the reply affidavit, insisting therein that the activities indulged in by detenu are highly prejudicial to the security of the State 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 affidavit filed by the respondents.

3. I have heard learned counsel for parties. I have gone through the detention record attached with the file and considered the matter.

4. The case set up by petitioner in the petition is that the detenu was arrested in the year, 2016 in connection with case FIR Nos.80/2016 and 83/2016 under Section 13 ULA(P) Act, 7/25 A. Act, by Police Station Achabal and subsequently placed under preventive detention vide Order No.19/DMA/PSA/DET/2016 dated 16.08.2016, which was challenged in a writ petition, diarised and registered as WP (Crl) No. 522/2016. The said detention order was quashed vide judgement dated 28th February, 2017. However, it is stated that on 17.10.2021, the detenu was again arrested by Police Station Anantnag and subsequently shifted to Central Jail Kot Balwhal, Jammu, to be detained under preventive detention on similar set of allegations vide Order no. 40/DMA/PSA/DET/2021 dated 19.10.2021, impugned herein. Further, the detaining authority has passed the impugned detention order mechanically without application of mind, inasmuch as the grounds of detention are vague, indefinite, non-existent on which no prudent man can make an effective representation against such allegations. It is further contended that the Constitutional and Statutory procedural safeguards have not been complied with in the instant case and the grounds of detention are replica of dossier and unequivocally reflects and shows non-application of mind on the part of detaining authority.

5. Learned counsel for petitioner states that notwithstanding quashment of earlier detention order, respondents have again placed detenu under preventive detention in terms of impugned order of detention. His next submission is that grounds of detention, made use of by detaining authority to place detenu under preventive detention in terms of impugned order of detention, are identical to grounds of detention, made use of by detaining authority while issuing earlier detention order, quashed by this Court, and the same reflects non-application of mind on part of detaining authority. Learned counsel also submits that detaining authority has not given any fresh grounds of detention against detenu although a passing reference has been made in the grounds of detention with respect of the report of Senior Superintendent of Police, Anantnag, that detenu is a major threat to the law and order and if he is allowed to remain at large, it will affect maintenance of the security of the State, which itself does not amount to fresh ground when most of the incidents or facts/ grounds are taken from earlier grounds of detention and, therefore, impugned detention order is bad in law because no fresh ground has been mentioned in second detention order.

6. This Court, in earlier petition, viz. WP (Crl) No. 522/2016 has quashed detention order bearing no. 19/DMA/PSA/DET/2016 dated 16.08.2016, while dealing with grounds of detention made use of in support of the said detention order. The same grounds could not have been relied upon for making a fresh detention order. The authoritative judicial pronouncements on the subject are that even if the order of detention comes to an end either by revocation or by expiry of the period of detention, there must be fresh facts for passing a subsequent detention order. When a detention order is quashed by the Court, issuing a high prerogative writ, like habeas corpus or certiorari, the grounds of said detention order should not be taken into consideration either as a whole or

in part even along with fresh grounds of detention for drawing requisite subjective satisfaction to pass a fresh detention order because once the Court strikes down an earlier order by issuing a rule, it nullifies the entire order. It is, thus, clear that an order of detention cannot be made after considering previous grounds of detention when the same had been quashed by the Court, and if such previous grounds of detention are taken into consideration while forming subjective satisfaction by detaining authority in making a detention order, the order of detention will be vitiated. It is of no consequence if further fresh facts, disclosed in the grounds of impugned detention order, have been considered. Reference in this regard is made to *ChhaganBhagwan Kahar v. N. L. Kalna and others*, AIR 1989 SC 1234 and *Ramesh v. State of Gujarat* AIR 1989 SC 1881. Detention order, impugned herein, is, thus, liable to be quashed as the grounds of detention, made use of by respondent no.2 while passing earlier detention order, subsequently quashed by this Court, have been pressed into service while passing impugned detention order.

7. Learned counsel for petitioner has rightly stated that the detaining authority has not followed the Constitutional and Statutory procedural safeguards as envisaged under Article 22 (5) of the Constitution read with Section 13 of the J&K Public Safety Act, 1978. The grounds of detention are vague and non-existent in the eye of law. His further submission is that there is no nexus, proximate and live link between the allegations levelled in the grounds of detention as the last activity referred to and attributed to detenu is of the year 2016, and that imminent threat to the security of the State could not, thus, be deduced possible and preventive detention of the detenu necessitated.

8. The question whether the prejudicial activities of a person requiring to pass a detention order is proximate to time when the order is made or the live-link between the prejudicial activities and the purpose of detention is snapped, depends on the facts and circumstances of each case. Nonetheless, when there is an undue and long delay between the prejudicial activities and the passing of the detention order, the court has to scrutinise whether the detaining authority has satisfactorily examined such a delay and afforded a tenable and reasonable explanation as to why such a delay has occasioned, when called upon to answer and further the court has to investigate whether the casual connection has been broken in the circumstances of each case. Certainly, in the present case, there is no cogent explanation coming to fore from perusal of the grounds of detention with reference to the live-link between the prejudicial activities and the purpose of the detention and resultantly the impugned detention order is liable to be quashed. In this regard reference is made to the law laid down in *T. A. Abdul Rahman v. State of Kerala* (1989) 4 SCC 741 and *Rajinder Arora v. Union of India and others* (2006) 4 SCC 796].

9. Perusal of the record of the petition reveals that a representation has been made by detenu through his father which, seemingly, has been received by the office of District Magistrate, Anantnag, on 08.11.2021. The learned counsel has

specifically stated in his petition that he has made a representation before detaining authority through his father but same has not been placed before the Advisory Board, which as per the record of detention, considered the matter. These assertions have gone unrebutted as there is no denial in the counter affidavit filed by the respondents. The failure on the part of the respondents to place the representation submitted by the detenu before the Advisory Board and its consequent non-consideration indisputably amounts to violation of the provisions of Article 225 (5) of the Constitution. A reference in this behalf to the judgement of the Apex Court in the case of Rahmatullah Vs. State of Bihar and Ors., 1979(4) SCC 559, would be advantageous. In Para 4 of the aforesaid judgement, the Court observed as under:-

"4. The normal rule of law is that when a person commits an offence or a number of offences, he should be prosecuted and punished in accordance with the normal appropriate criminal law; but if he is sought to be detained under any of the preventive detention laws as may often be necessary to prevent further commission of such offences, then the provisions of Article 22(5) must be complied with. Sub-Article (5) of Article 22 reads:

When any person is detained in pursuance of an order made under any law providing for preventive detention, the authority making the order shall, as soon as may be, communicate to such person the grounds on which the order has been made and shall afford him the earliest opportunity of making a representation against the order.

This Sub-Article provides, inter alia, that the detaining authority shall as soon as may communicate the grounds of detention and shall afford him the earliest opportunity of making a representation against the order. The opportunity of making a representation is not for nothing. The representation, if any, submitted by the detenu is meant for consideration by the Appropriate Authority without any unreasonable delay, as it involves the liberty of a citizen guaranteed by Article 19 of the Constitution. The non-consideration or an unreasonably belated consideration of the representation tantamount to non-compliance of Sub-Article (5) of Article 22 of the Constitution."

10. From the above legal position on the subject, it is clear that non-consideration or an unreasonably belated consideration of the representation tantamount to non-compliance of Article 22(5) of the Constitution, which in turn renders the detention unsustainable in law.

11. It is pertinent to mention here that perusal of grounds of detention reveals that the same are replica of dossier with interplay of some words here and there. This, thus, portrays non-application of mind and in the process of deriving of subjective satisfaction, has become causality. While formulating grounds of detention, detaining authority has to apply its own mind. It cannot simply reiterate whatever is written in the dossier. Here it will be apt to notice the observations of the Supreme Court in the case of "Jai Singh and ors vs. State of

J&K" (AIR 1985 SC 764), which are reproduced hereunder:

"First taking up the case of Jai Singh, the first of the petitioners before us, a perusal of the grounds of detention shows that it is a verbatim reproduction of the dossier submitted by the Senior Superintendent of Police, Udhampur, to the District Magistrate requesting that a detention order may kindly be issued. At the top of the dossier, the name is mentioned as Sardar Jai Singh, father's name is mentioned as Sardar Ram Singh and the address is given as village Bharakh, Tehsil Reasi. Thereafter it is recited "The subject is an important member of"

Thereafter follow various allegations against Jai Singh, paragraph by paragraph. In the grounds of detention, all that the District Magistrate has done is to change the first three words "the subject is" into "you Jai Singh, S/o Ram Singh, resident of village Bharakh, Tehsil Reasi". Thereafter word for word the police dossier is repeated and the word "he" wherever it occurs referring to Jai Singh in the dossier is changed into "you" in the grounds of detention. We are afraid it is difficult to find proof of non-application of mind. The liberty of a subject is a serious matter and is not to be trifled with in this casual, indifferent and routine manner."

12. From perusal of above quoted observations of the Supreme Court, it is crystal clear that grounds of detention and dossier, if in similar language, go on to show that there has been non-application of mind on the part of detaining authority. As already noted, in the instant case, it is clear from the record that the dossier and the grounds of detention contain almost similar wording which shows that there has been non-application of mind on the part of the detaining authority. The impugned order of detention is, therefore, unsustainable in law on this ground alone.

13. For the reasons discussed above, the petition is disposed of and detention Order no. 40/DMA/PSA/DET/2021 dated 19.10.2021, passed by District Magistrate, Anantnag is quashed. Respondents, including Superintendent Jail concerned, are directed to release the detenu forthwith, provided he is not required in any other case. Disposed of.