

(2021) 12 J&K CK 0047

In the Jammu And Kashmir High Court

Case No : Writ Petition (Criminal) No. 89 Of 2021

Rouf Bashir Allie

APPELLANT

Vs

Union Territory Of J&K & Ors

RESPONDENT

Date of Decision : 22-12-2021

Acts Referred:

Citation : (2021) 12 J&K CK 0047

Hon'ble Judges : Sanjay Dhar, J

Bench : Single Bench

Advocate : M. Wajid Haseeb, Asifa Padroo

Final Decision : Dismissed

Judgement

Sanjay Dhar, J

1) Challenge in this petition is thrown to the order No.04/DMK/PSA/2021 dated 15.06.2021, issued by District Magistrate, Kulgam (for brevity "Detaining Authority") whereby Shri Rouf Bashir Allieson of Bashir Ahmad Allie resident of Batpora Hangulbush Yaripora District Kulgam(for short "detenu") has been placed under preventive detention and directed to be lodged in Central Jail, Srinagar

2) Petitioner has contended that the Detaining Authority has passed the impugned detention order mechanically without application of mind, inasmuch as the grounds of detention are mere reproduction of the dossier. It has been further contended that the Constitutional and Statutory procedural safeguards have not been complied with in the instant case. It has been also urged that the allegations made against the detenu in the grounds of detention are vague and that the translated version of the documents/grounds of detention has not been provided to the detenu who is a semi-literate person. It has also been contended that the petitioner has not been informed as to before which authority he had to make a representation.

3) The respondents, in their counter affidavit, have disputed the averments made

in the petition and stated that they have followed the provisions of J&K Public Safety Act. It is contended that the detainee has been detained only after following due procedure; that the grounds of detention were read over to the detainee; that there has been proper application of mind for detaining the detainee and that the detainee has been provided all the material. The learned counsel for the respondents also produced the detention records to lend support to the stand taken in the counter affidavit.

4) I have heard learned counsel for parties and I have also gone through detention record.

5) Learned counsel for the petitioner, while seeking quashment of the impugned order, projected various grounds but the main ground that has prevailed during discussion is that the detainee has been disabled from making an effective representation against his detention as the material forming basis of the grounds of detention has not been supplied to him.

6) On perusal of the detention record produced by learned counsel for the respondents, the ground regarding non-supply of relevant material appears to have substance as there is nothing in the said record to show that the whole of the relevant material has been supplied to the detainee. The execution report in the record indicates that the detainee has been supplied 04 leaves comprising of grounds of detention/notice/letter addressed to the detainee/other material. Since the detainee, as per the receipt executed by him, has been provided only 04 leaves, as such, it can safely be stated that he has not been furnished the whole of the relevant material which, in the instant case runs into dozens of leaves as the same includes copy of dossier and the relevant material pertaining to as many as three FIRs reference whereof is given in the grounds of detention. This goes to support the contention of the petitioner that he has not been supplied the relevant material. Obviously, the petitioner has been hampered by non-supply of the relevant material in making an effective representation against his detention before the concerned authority/Advisory Board.

7) Non-furnishing of relevant material forming basis of the grounds of detention deprives a detainee of his Constitutional right to make a representation against the order of detention. The denial of this Constitutional right renders the order of detention unsustainable in law. I am supported in my aforesaid view by the judgments of the Supreme Court in *Sophia Gulam Mohd. Bham v. State of Maharashtra & ors* (AIR 1999 SC 3051), *Thahira Haris etc. etc. Vs. Government of Karnataka & Ors* (AIR 2009 SC 2184) and *Ibrahim Ahmad Bhatti alias Mohd. Akhtar Hussain alias Kandar Ahmad Wagher alias Iqbal alias Gulam Vs. State of Gujarat and others*", (1982) 3 SCC 440.

8) The cumulative effect of the aforesaid discussion leads to the only conclusion that in the instant case, the respondents have not adhered to the legal and Constitutional safeguards while passing the impugned detention order against the petitioner. The impugned order of detention is, therefore, unsustainable.

Accordingly, the same is quashed. The detenue is directed to be released from the preventive custody forthwith provided he is not required in connection with any other case.

9) The record, as produced, be returned to the learned counsel for the respondents.