

(2023) 03 J&K CK 0022

In the Jammu And Kashmir High Court

Case No : Latters Patent Appeal No. 145 Of 2022, Civil Miscellaneous No. 7712, 7713 Of 2022

Royal Singh @ Royal

APPELLANT

Vs

UT Of J&K And Others

RESPONDENT

Date of Decision : 06-03-2023

Acts Referred:

Constitution Of India, 1950 — Article 22(5)
Jammu And Kashmir. Public Safety Act, 1978 — Section 8(1)(a), 13
Jammu And Kashmir State Ranbir Penal Code, 1989 — Section 34, 120B, 302, 307, 323, 341, 382, 401
Arms Act, 1959 — Section 3, 4, 25
Indian Penal Code, 1860 — Section 34, 109, 341, 382

Citation : (2023) 03 J&K CK 0022

Hon'ble Judges : Tashi Rabstan, J; Moksha Khajuria Kazmi, J

Bench : Division Bench

Advocate : Jagpaul Singh, Monika Kohli, Amit Gupta, Pawan Dev Singh

Final Decision : Dismissed

Judgement

Tashi Rabstan, J

1. This Letters Patent Appeal is directed against the judgment dated 16.12.2022 passed by the learned Single Judge in WP(Crl) No.07/2022, whereby the learned Single Judge while maintaining the detention order, dismissed the writ petition filed by the appellant-writ petitioner.

2. The case as set up by the appellant-detenu before the Writ Court was that when the detention order bearing No.03-PSA of 2022 dated 12.03.2022 came to be passed by the District Magistrate, Jammu, the appellant-detenu was already in police custody in FIR No.208/2018 registered with Police Station Trikuta Nagar (Bahu Fort), Jammu. Further, the appellant-detenu was not supplied with the grounds of detention, copies of FIRs, statements of witnesses or seizure memos, challan or any other material regarding the registration of criminal cases against

him, in the absence of which the appellant-detenu could not make effective representation to the writ respondents, as such the detention order is in contravention to Section 13 of the Public Safety Act. The further case of appellant-detenu was that the detention order came to be passed without application of mind, without appreciating the true material facts and without recording grounds of satisfaction; thus, the liberty of appellant-detenu has illegally and unconstitutionally been curtailed; moreover no time period for detention has been specified in the order of detention. Thus, the specific case of appellant-detenu is that the provisions of Public Safety Act and the constitutional safeguards were not followed by the writ respondents while issuing the order of detention.

3. On the other hand, learned counsel appearing for writ respondents argued that when the ordinary law did not prove adequate enough to deter the appellant-detenu from indulging in repeated acts of criminal nature, the law enforcing agencies had left with no other option but to request for invoking the provisions of the Public Safety Act so that the appellant-detenu is prevented from indulging in the activities which are prejudicial to the peace and public order. Further, the appellant-detenu was provided with all material well within time, but despite that he did not avail the alternate remedy of filing representation.

4. Heard learned counsel appearing for the parties, considered their rival contentions and also perused the appeal file.

5. Although right to personal liberty is the most precious right, guaranteed under the Constitution, which has been held to be transcendental, inalienable and available to a person independent of the Constitution, yet the personal liberty may be curtailed, where a person faces a criminal charge or is convicted of an offence and sentenced to imprisonment. A person is not to be deprived of his personal liberty, except in accordance with procedures established under law, and the procedure as laid down in *Maneka Gandhi v. Union of India*, (1978 AIR SC 597). Where a person is facing trial on a criminal charge and is temporarily deprived of his personal liberty owing to criminal charge framed against him, he has an opportunity to defend himself and to be acquitted of the charge in case prosecution fails to bring home his guilt. Where such person is convicted of offence, he still has satisfaction of having been given adequate opportunity to contest the charge and also adduce evidence in his defence. However, framers of the Constitution have, by incorporating Article 22(5) in the Constitution, left room for detention of a person without a formal charge and trial and without such person held guilty of an offence and sentenced to imprisonment by a competent court. Its aim and object is to save the society from activities that are likely to deprive a large number of people of their right to life and personal liberty. In such a case it would be dangerous for the people at large, to wait and watch, as by the time ordinary law is set into motion, the person having dangerous designs, would execute his plans, exposing general public to risk and causing colossal damage to life and property. It is, for that reason, necessary to

take preventive measures and prevent the person bent upon to perpetrate mischief from translating his ideas into action. Article 22(5) of the Constitution of India, therefore, leaves scope for enactment of preventive detention law.

6. The essential concept of preventive detention is that the detention of a person is not to punish him for something he has done, but to prevent him from doing it. The basis of detention is the satisfaction of the executive of a reasonable probability of likelihood of detenu acting in a manner similar to his past acts and preventing him by detention from doing the same. The Supreme Court in *Haradhan Saha vs State of W.B.* (1975) 3 SCC 198, points out that a criminal conviction, on the other hand, is for an act already done, which can only be possible by a trial and legal evidence. There is no parallel between prosecution in a Court of law and a detention order under the Act. One is a punitive action and the other is a preventive act. In one case, a person is punished to prove his guilt and the standard is proof, beyond reasonable doubt, whereas in preventive detention a man is prevented from doing something, which it is necessary for reasons mentioned in the Act, to prevent.

7. In the instant case, the file reveals that on the basis of the dossier submitted by the SSP, Jammu, the District Magistrate, Jammu after having satisfied passed the order of detention under Section 8(1)(a) of the J&K Public Safety Act, 1978. Further, a perusal of execution report reveals that the order of detention, notice of detention, grounds of detention, dossier of detention, copies of FIRs, statements of witnesses and other related documents (total 188 leaves) were supplied to the appellant-detenu and he acknowledged the same by signing in English. It also reveals that all the relevant documents were read over and explained to him in the language which he understood fully. It also divulges that detenu was informed that he can make a representation to the government as well as the detaining authority. Thus, it belies the claim of detenu that the relevant documents were not supplied to him.

8. Further, in our view, the grounds of detention are definite, proximate and free from any ambiguity. The detenu was informed with sufficient clarity what actually weighed with the detaining authority while passing the detention order. The detaining authority has narrated facts and figures that made the authority to exercise its powers under the J&K Public Safety Act and record subjective satisfaction that detenu was required to be placed under preventive detention in order to prevent him from acting in any manner prejudicial to peace and public order. We are saying so because the file reveals that the appellant-detenu has already been convicted and sentenced to life imprisonment in the year August, 2020, although he was enlarged on bail by the Apex Court. Not only this, the file further reveals that as many as nine different FIRs came to be registered against the appellant-detenu in different police stations of Jammu Zone, i.e., (1) FIR No.171/2005 under Sections 341/323 RPC registered at Police Station Gandhi Nagar, Jammu; (2) FIR No.264/2005 under Section 382 RPC registered at Police Station Gandhi Nagar, Jammu; (3) FIR No.75/2007 under Sections

341/323/382/34 RPC registered at Police Station Pacca Danga, Jammu; (4) FIR No.44/2009 under Sections 307/341 RPC and 4/25 Arms Act registered at Police Station Peer Mitha, Jammu; (5) FIR No.247/2009 under Sections 302/34 RPC and 3/25/27 Arms Act registered at Police Station Gandhi Nagar, Jammu; (6) FIR No.31/2018 under Sections 307 RPC and 3/25 Arms Act registered at Police Station Gandhi Nagar, Jammu; (7) FIR No.208/2018 under Sections 382/401/120-B RPC and 66-D IT Act registered at Police Station Bahu Fort, Jammu; (8) FIR No.91/2021 under Sections 307/120-B, 149 RPC and 3/25 Arms Act registered at Police Station Bahu Fort, Jammu and (9) FIR No.10/2022 under Sections 341/382/109/34 IPC and 3/25 Arms Act registered at Police Station Peer Mitha, Jammu. Thus, it seems the appellant-detenu is a hardcore criminal, history sheeter, habitual in indulging criminal activities, such as, murder, attempt to murder, assault, carrying illegal arms/ammunition etc., thus, has become a terror figure among the people of the area and the actions taken against him under the ordinary law from time to time have not been proved to be deterrent. It seems the appellant -detenu instead of mending his ways has continuously been indulging in criminal activities and has not shown any respect for the law of the land, as such the appellant-detenu has created a sense of alarm, scare and a feeling of insecurity in the minds of the public of the area.

9. As regards the contention of learned counsel for appellant-detenu that the detention order does not survive as the appellant-detenu was already under arrest when the detention order was passed, the record reveals that the dossier was issued on 09.03.2022 by the SSP, Jammu, when, as contended, on the same day itself the custody of appellant-detenu was also handed over to the SHO, Police Station Bahu Fort, Jammu. As such, we do not find any force in this contention of learned counsel for appellant-detenu. Otherwise too, in law there is no bar in passing a detention order against a person who is already in custody in respect of a criminal offence if the detaining authority is subjectively satisfied that detention order should be passed and that there must be cogent material before the authority passing the detention order for inferring that the detenu was likely to be released on bail. ("T. P. Moideen Koya vs. Government of Kerala and ors." reported in 2004 (8) SCC 106). Also, the judgments relied upon by the learned counsel for appellant-detenu are clearly distinguishable on facts and are not applicable to the case in hand.

10. For the reasons discussed above, we do not find any merit in the appeal and the same is, accordingly, dismissed along with connected CMs.