

(2020) 05 J&K CK 0013
In the Jammu And Kashmir High Court
Case No : Writ Petition (C) No. 605 Of 2019

Sahil Ahmad Bhat

APPELLANT

Vs

Union Territory Of J&K And Others

RESPONDENT

Date of Decision : 05-05-2020

Acts Referred:

Jammu And Kashmir Public Safety Act, 1978 — Section 8
Jammu And Kashmir State Ranbir Penal Code, 1989 — Section 147, 148, 149, 336, 427
Constitution Of India, 1950 — Article 22(5)

Citation : (2020) 05 J&K CK 0013

Hon'ble Judges : Dhiraj Singh Thakur, J

Bench : Single Bench

Advocate : M. A. Wani, Asifa Padroo

Final Decision : Dismissed

Judgement

Dhiraj Singh Thakur, J

1) The present Habeas Corpus Petition has been filed for quashing the order of detention dated 25.10.2019 issued by the District Magistrate, Ganderbal, who, in purported exercise of power vested in him under Section 8 of the Jammu & Kashmir Public Safety Act, 1978, has ordered the detention of the petitioner with a view to prevent him from acting in any manner prejudicial to the maintenance of public order.

2) The detention order has been issued, purportedly, on the basis of the material made available by the Police Agency to the District Magistrate, Ganderbal, wherein it has been alleged that the petitioner was a chronic stone pelter and had developed his contacts with likeminded people affiliated with anti-social elements. The material also suggest that the petitioner was encouraging the minors of the area to create law and order problem by inciting them to pelt stones on police and para-military forces besides commercial establishments and private vehicles. This, it is alleged, is done by the petitioner to create circumstances which are conducive for the propagation of secessionist ideology.

Various FIRs, in this regard, are alleged to have been registered showing the complicity and involvement of the petitioner in the same. Following are the details of the FIRs registered against the petitioner:

(i) FIR No.157/2019 registered with Police Station, Ganderbal, under Sections 147, 148 and 336 RPC. In regard to this FIR, it is alleged that the petitioner along with his associates were amongst the culprits who had motivated the youth to carry out stone pelting attacks on the police and security forces at Fatehpura on 6th of August, 2019.

(ii) FIR No.158/2019 registered at Police Station, Ganderbal, under Sections 147, 148, 149, 336 and 427 RPC, where, once again, there was an incident where a police party headed by Head Constable Mohammad Ashraf along with 36 Bn. SSB, while performing law and order duty at Nagbal, came under attack by a violent mob equipped with stones and sticks. During the said stone pelting incident, a government vehicle bearing No.JK16-0868 was damaged. It is alleged that during investigation, the involvement of the petitioner and his associates was established.

(iii) Similar incidents were allegedly repeated by the petitioner in regard to which FIR No.159/2019 and FIR No.176/2019 were registered with Police Station, Ganderbal.

3) The main ground, on which the order of detention has been challenged, as urged by the learned counsel for the petitioner during the course of arguments, and was that notwithstanding the fact that the authorities did have the power to place the petitioner under preventive detention, yet the necessary safeguards as prescribed under the Act and as held by various pronouncements of the Apex Court had not been followed. It was asserted that the petitioner was not provided the entire material which formed the basis of his preventive detention and in particular the material in the shape of FIRs along with requisite documents. It was urged that failure on the part of the respondents to provide the requisite material, in fact, prevented the petitioner to make an effective representation against the order of detention to the detaining authority.

4) A detailed response has been filed by the respondents. The requisite records have also been produced. A specific stand has been taken by the respondents that all the requisite documents, which were required to be served upon the petitioner, had been served upon him. An affidavit on one SI Waseem Gul has also been placed on record, in which a stand is taken that he had executed PSA warrant issued by the District Magistrate, Ganderbal, and furnished all the documents, namely, copy of the warrant, notice, grounds of detention and other 'relevant documents'.

5) It appears from the records as also the reply filed by the respondents that total 07 leaves were handed over to the detenu against proper receipt which included warrant of detention (one leaf), notice (one leaf), grounds of detention (five leaves), totaling seven leaves in all. There is no mention of the fact that the

petitioner had also been served the documents in the shape of the FIR which formed the basis of the order of detention.

6) In "Thahira Haris Vs. Government of Karnataka & Ors, AIR 2009 Supreme Court 2184, the Apex Court after noticing various judgments on similar and issue, held that it was imperative for valid continuance of detention that the detenu be supplied all the documents, statements and other materials relied upon in the grounds of the detention, failing which the right of the detenu of making a representative as enshrined in Article 22(5) of the Constitution would be violated.

7) In the present case, it is quite clear that the petitioner had not been provided the requisite documents, in particular various FIRs which found a mention in the grounds of detention, thus preventing the petitioner from making an effective representation before the concerned authorities. The order of detention, in those circumstances, cannot be sustained in law. The same is, accordingly, quashed. The petitioner be released forthwith, if not required in any other case. It is, however, made clear that since the order of detention has been quashed on technical grounds, it would be open to the respondents to pass a fresh order, if they deem it necessary, strictly in compliance with the mandate of law.

8) Records be returned to the learned counsel for the respondents against proper receipt.