

(2019) 10 J&K CK 0008

In the Jammu And Kashmir High Court

Case No : Habeas Corpus Petition (HCP) No. 72 Of 2019, ([WP Cri) No. 72 Of 2019]

Sajad Ahmad Nawoo

APPELLANT

Vs

State Of Jammu & Kashmir And Ors

RESPONDENT

Date of Decision : 04-10-2019

Acts Referred:

Public Safety Act, 1953 — Section 15
Constitution Of India, 1950 — Article 22(3)

Citation : (2019) 10 J&K CK 0008

Hon'ble Judges : Ali Mohammad Magrey, J

Bench : Single Bench

Advocate : Wajid Haseeb, Feroz Ahmad Sheikh

Final Decision : Dismissed

Judgement

Ali Mohammad Magrey, J

1. Challenge in this petition is thrown to Order No. 31/DMB/PSA of 2018-19 dated 05.02.2019, passed by the District Magistrate, Bandipora- respondent No.2 herein (for short "detaining authority") placing under preventive detention Sajad Ahmad Nawoo s/o Mohd Sultan Nawoo R/o Tangpora Naidkhai Tehsil Hajin District Bandipora (for brevity the "detenu") with a view to preventing him from acting in any manner prejudicial to the maintenance of public order and has been lodged in Central Jail, Kot Bhalwal, Jammu.

2. The detention order, inter alia, is challenged on the grounds:

a) That the detenu has not been provided the material forming basis of the detention order, to make an effective representation against his detention order;

b) That the grounds of detention have not been furnished to the detenu in a language which he understood.

c) That the detention order suffers from non-application of mind as the Detaining

Authority did not take note of the fact that the detenu had been in the preventive detention and was discharged also of the allegations forming basis of such detention.

3. Pursuant to notice respondents appeared through their learned counsel and filed the counter affidavit stating therein that the detention order is well founded, in fact and law, and seeks dismissal of the Habeas Corpus Petition.

4. Mr. Wajid Haseeb, learned counsel for the detenu, has invited the attention of this Court to the detention order bearing No. 25/DMB/PSA of 2017-18 dated 06.03.2018, in terms whereof the detenu namely Sajad Ahmad Nawoo was detained and lodged in Central Jail, Kot Bhalwal, Jammu. It is submitted that the said detention order was challenged before this Court in HCP No. 71/2018, which was allowed vide Judgment dated 29th August, 2018 with direction to the concerned authorities to release the detenu forthwith unless required in any other offense.

5. Learned counsel for the detenu submitted that the detenu in terms of said order of this Court dated 29th August, 2018, was required to be released, but instead of releasing the detenu, the detaining authority retained the custody and detained him in terms of detention order dated 05.02.2019.

6. The learned counsel for the petitioner has raised primarily three issues before the Court questioning the validity of the detention. The first point taken by the learned counsel for the petitioner was that non-supply of relevant material/documents vitiates the detention order. In this context, it was the case of the petitioner- detenu that no documents at all were supplied to the petitioner-detenu. The non-supply of relevant documents seriously undermines the capacity of a detenu to make an effective representation against the detention order and that itself would be a ground to declare the detention void.

7. The second point raised by the learned counsel for the petitioner was based on non-application of mind of the detaining authority with reference to having not mentioned that the earlier detention was quashed by the Court.

8. The third point raised by the learned counsel for the petitioner-detenu was based on vagueness in grounds of detention.

9. The learned counsel for petitioner (detenu) further submits that the detenu has not been provided the material referred to in the grounds of detention resultantly the right of making effective representation against the impugned order of detention, as enshrined under Article 22 (3) of the Constitution, has been violated.

10. On the other hand, Mr. Feroz Ahmad Sheikh, Dy AG, stated that the detenu's activities being anti-national, and continuously indulged in instigating/provoking the youth as well as general public against the Government, therefore, his further detention was necessary to prevent him from indulging in such acts, which was also approved by the Government and the State Advisory Board

constituted u/s 14 of P.S. Act. During course of his submissions the respondents counsel besides reiterating the contents of counter affidavit has contended that in circumstances of the case the impugned detention is well founded in fact and law.

11. With regard to the plea of non-supply of material/ documents, Mr. Feroz Ahmad Sheikh, Dy AG placed before me the record pertaining to the detention. On going through the same, I find that there is a signed document said to have been signed by the detenu, Sajad Ahmad Nawoo, in English. The said document is titled "Receipt of Grounds of Detention". The text of the said document is set out herein below:

12. "RECEIPT OF GROUNDS OF DETENTION

Received the detention order (01) leaf, Notice of detention to the detenu(01 leaf), Grounds of detention (04 leaves), copies of FIR (13 leaves) other related documents (23 leaves) (Total 42 Leaves) through executing officer ASI Mehraj Din No. 04/BPR of P/S Sumbal at Central Jail Jammu Kot Balwal today on 20.02.2019, by reading over in English language and explained to me in Kashmiri language which I understood fully. I have been also informed that I can make representation to the Government as well as Detaining Authority against my detention order if I so desire.

Handed over by

Attested Taken over by

Sd:-

Sd:-

Sd:-

ASI Mehraj Din

Sajad Ahmd Nawoo

No. 04/BPR

s/o

Mohd

Sultan

Nawoo

PS Sumbal

R/o

Tengpora,

Naidkhai Distt.

Bandipora."

12. Based upon the said receipt, Mr. Feroz Ahmad Sheikh, Dy AG submits that the grounds of detention had been supplied along with other relevant documents and, therefore, the petitioner-detenu cannot make any grievance on this ground.

13. With regard to the non-application of mind, detaining authority having not mentioned in the detention order that earlier detention was quashed. It is very candidly mentioned in the new grounds of detention that the earlier detention

was quashed, but it needs special mention as reported by the agencies that after quashment of the earlier detention order, the detenu was set at liberty and it is stated that the detenu's activities being anti-national, and continuously indulged in instigating/provoking the youth as well as general public against the Government, therefore, his further detention was necessary to prevent him from indulging in such acts, which was also approved by the Government and the State Advisory Board constituted u/s 14 of P.S. Act. With regard to plea of vagueness of the grounds is concerned, Mr. Feroz Ahmad Sheikh, Dy AG submits that the grounds are clear and without any ambiguity.

14. Mr. Feroz Ahmad Sheikh Dy AG, submits that insufficiency of supply of material shall not form a ground for vitiating the detention of the detenu. He further submits that the detenu was required to file representation on the material whatever supplied and could have projected the grounds of non- supply of the material before the detaining authority, which he has failed, therefore, non-supply of material vitiates the detention, has no substance. He further averred that there is no non-application of mind or vagueness in grounds. He has referred to and relied upon the Judgment reported as AIR 2001 Supreme Court 301 titled R. Keshava Vs. M. B. Prakash and Ors.

15. Mr. Feroz Ahmad Sheikh, Dy AG, further submits that the impugned order of detention is well founded and there is nothing bad about it. He submits that the detenu has been provided the material relied upon by the detaining authority while detaining him in second detention. He further submits that the detenu has also been informed about his right of making representation against his detention. Learned Counsel for the State submitted that the detaining authority has fully applied it's mind while issuing the detention order and there is nothing on record to controvert it. Learned State Counsel referred to and relied upon the law laid down in 1981 (4) SCC 216; AIR (SC) 1975 1143; 2002 (6) SCC 735 ; AIR 2000 SC 301.

16. Heard learned counsel for the parties. Perused the record and considered the matter. Detention record has been produced by the learned counsel for respondents.

17. Perusal of the records would reveal that the detenu has been furnished the grounds of detention along with the requisite material. He has also been informed about his right of making representation against his detention, but the detenu has chosen not to make the representation, therefore, the fault, if any, is attributable to the detenu and not to the detaining authority. Thus, the ground raised vis-à-vis non-furnishing of material to the detenu is rejected.

18. The perusal of the record would further reveal that the grounds of detention have been explained to the detenu in the language he understands and the copy has been handed over to him along with the records and the detenu has been informed about his right of making representation against his detention. This would mean that the requirement of Section 15 of the Public Safety Act has been

fulfilled.

19. The next contention of the learned counsel for petitioner that the impugned order is an outcome of non-application of mind is also belied by the records produced by the learned State Counsel. The detailed grounds of detention and the records referred to by the detaining authority were sufficient to derive satisfaction as regards the detention of detenu under the provisions of the Act. Thus the order does not appear to be suffering from non-application of mind.

20. As per the settled position of law, if a detention order is issued on more than one ground, independent of each other, the detention order will survive, even if, one of the grounds is found to be unfound or legally unsustainable. In the present case the detention order is issued on more than one ground independent of each other, therefore, the detention order does not get vitiated, even if, one of the grounds taken in support of the petition turns affirmative. My this view is fortified by a law laid down by the Supreme Court in case titled "Gautam Jain v. Union of India and anr.", reported as 2017 (1) Jammu Kashmir Law Times, Vol. 1 (SC) p. 1.

21. The next ground taken by the detenu that the detaining authority did not record as to under which compelling reasons the detenu is required to be detained after quashment of the earlier detention order.

22. After quashment of the earlier detention it is seen from the records that after quashment of earlier detention order the detenu was indulged in activities being anti-national, and continuously instigating/provoking the youth as well as general public against the Government, therefore, his further detention was necessary to prevent him from indulging in such acts, which was also approved by the Government and the State Advisory Board constituted u/s 14 of P.S. Act.

23. Since the court has already held that the detention survives, even if, one of the grounds taken in support of the petition remains unexplained or proves to be bad in law, therefore, the detention order can be maintained in absence of any explanation on this count by the respondents.

24. In view of the above fact situation and having regard to the law laid down by the Hon'ble Supreme Court, this Habeas Corpus Petition fails and is dismissed, as such. The impugned detention order challenged in this petition, accordingly, sustains and is maintained. Detention record is returned to the learned State Counsel in the open court.