

(2023) 02 J&K CK 0023

In the Jammu And Kashmir High Court

Case No : Writ Petition (Criminal) No. 73 Of 2022

Saliq Parvaiz Bhat

APPELLANT

Vs

Union Territory Of J&K & Anr

RESPONDENT

Date of Decision : 02-02-2023

Acts Referred:

Constitution Of India, 1950 — Article 22(5)

Indian Penal Code, 1860 — Section 148, 149, 307, 336, 353

Citation : (2023) 02 J&K CK 0023

Hon'ble Judges : Sanjay Dhar, J

Bench : Single Bench

Advocate : B. A Tak, Bikramdeep Singh

Final Decision : Allowed

Judgement

Sanjay Dhar, J

1) Through the medium of instant petition, the petitioner has challenged the legality and veracity of the order No.97/T/MS/PSA/2022 dated 28.01.222, issued by District Magistrate, Shopian. In terms of the aforesaid order, Shri SaliqParvaiz Bhat S/o Parvaiz Ahmad Bhat R/o Gagren Tehsil & District Shopian, has been placed under preventive detention in order to prevent him from acting in any manner prejudicial to the maintenance of public order.

2) The 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 vague, non-existent on which no prudent man can make a representation against such allegations. It has been further contended that the procedural safeguards have not been complied with in the instant case, inasmuch as whole of the material has not been provided to the petitioner. It has been further urged that there has been non-application of mind on the part of detaining authority while passing the impugned detention order as the detenue was already admitted to bail in the FIR, mention whereof has been made in the

grounds of detention.

3) The respondents, in their counter affidavit, have disputed the averments made in the petition and insisted that the activities of the detainee are highly prejudicial to the security of the State. It is pleaded that the detention order and grounds of detention along with the material relied upon by the detaining authority were handed over to the detainee and the same was read over and explained to him and that the grounds urged by the petitioner are legally misconceived, factually untenable and without any merit. To substantiate their stand taken in the counter affidavit, the respondents have produced the detention record.

4) I have heard learned counsel for parties and perused the record.

5) Learned counsel for the petitioner, while seeking quashment of the impugned order, projected various grounds but his main thrust during the course of arguments was on the following grounds:

(I) That there has been non-application of mind on the part of the Detaining Authority while passing the impugned order of detention, inasmuch as, it was not alive to the fact that the detenu had been enlarged on bail in the case registered against him as the said fact is not mentioned in the grounds of detention.

(II) That whole of the material forming basis of the grounds of detention has not been furnished to the detainee.

6) The first ground that has been urged by learned counsel for the detenu is that the impugned order of detention suffers from non-application of mind on the part of the Detaining Authority, inasmuch as the grounds of detention do not bear any reference to the fact that the petitioner has been admitted to bail in the FIR, mention whereof, is made in the grounds of detention. To support the assertion that the petitioner has been admitted to bail, he has placed on record copy of the order whereby he has been enlarged on bail in the FIR, mention whereof is made in the grounds of detention.

7) As per the grounds of detention, the petitioner is involved in FIR No.296/2021 for offences under Section 148, 149, 336, 307, 353 IPC of P/S Shopian. In the said FIR, the detenu, it appears, has been granted bail. In the grounds of detention, there is no mention of grant of bail in favour of the detenu. This clearly exhibits total non-application of mind on the part of the Detaining Authority. It appears that the detaining authority has not meticulously examined the record while passing the order of detention which renders the same unsustainable in law. In this regard, I am supported by the judgment of the Supreme Court in the case of Anant Sakharam Raut v. State of Maharashtra, AIR 1987 SC 137.

8) Next it is urged that whole of the material forming basis of the grounds of detention has not been supplied to the petitioner which deprived him from making an effective representation against his detention.

9) A perusal of the detention record produced by learned counsel for the respondents reveals that the material has been received by the petitioner on 02.02.2022. Report of Executing Officer in this regard forms part of the detention record, a perusal whereof reveals that it bears the signature of petitioner and according to it, the petitioner has received copy of detention warrant (01 leaf), grounds of detention (03 leaves), copy of dossier (Nil) & other related documents (01 leaf) (total 05 leaves).

10) Nothing has been brought on record to indicate that the copy of the police dossier has been furnished to the detainee. If we have a look at the grounds of detention, it bears reference to FIR No.296/2021 of P/A Shopian. It was incumbent upon respondents to furnish not only the copy of the FIR but also the statements of witnesses recorded during investigation of the FIR and other material on the basis of which petitioner's involvement in the said FIR is shown, but it seems that the same has not been done by the respondents. It was incumbent on the respondents to provide the detainee the material on the basis of which petitioner's involvement in the aforesaid FIR is shown particularly because the petitioner is not nominated in the FIR.

11) Thus, contention of the petitioner that whole of the material relied upon by the detaining authority, while framing the grounds of detention has not been supplied to him, appears to be well-founded. Rather the record produced by the respondents corroborates the fact that whole of the material relied upon by the detaining authority and transmitted to him by the concerned sponsoring agency has not been furnished to the detainee. Obviously, the petitioner has been hampered by non-supply of these vital documents in making an effective representation before the Advisory Board, as a result whereof his case has been considered by the Advisory Board in the absence of his representation, as is clear from the detention record. Thus, vital safeguards against arbitrary use of law of preventive detention have been observed in breach by the respondents in this case rendering the impugned order of detention unsustainable in law.

12) It needs no emphasis that the detainee cannot be expected to make an effective and purposeful representation which is his constitutional right guaranteed under Article 22(5) of the Constitution of India, unless and until the material, on which the detention is based, is supplied to the detainee. The failure on the part of detaining authority to supply the material renders the detention order illegal and unsustainable. While holding so, I am fortified by the judgments rendered in *Sophia Ghulam Mohd. Bham V. State of Maharashtra and others* (AIR 1999 SC 3051) and, *Thahira Haris Etc. Etc. V. Government of Karnataka & Ors.* (AIR 2009 SC 2184).

13) For the foregoing reasons, the petition is allowed and the impugned order of detention is quashed. The detainee is directed to be released from the preventive custody forthwith provided he is not required in connection with any other case.

14) The detention record be returned to the learned counsel for the respondents.