
(2020) 09 J&K CK 0062

In the Jammu And Kashmir High Court

Case No : Latter Patent Appeals No. 218 Of 2019, Heabus Corpus Petition No. 459 Of 2018

Sartaj Ahmad Allie

APPELLANT

Vs

State Of J&K And Others

RESPONDENT

Date of Decision : 28-09-2020

Acts Referred:

Jammu And Kashmir State Ranbir Penal Code, 1989 — Section 120(B)302, 332
Arms Act, 1959 — Section 7, 27
Unlawful Activities (Prevention) Act, 1967 — Section 10, 13, 16, 18, 20, 38, 39

Citation : (2020) 09 J&K CK 0062

Hon'ble Judges : Rajesh Bindal, J;Rajnesh Oswal, J

Bench : Division Bench

Advocate : Wajid Haseeb, Showkat Naqashbandi

Final Decision : Disposed Of

Judgement

Rajnesh Oswal, J

1. Aggrieved against the judgment dated 01.08.2019 passed by the learned Single Judge, whereby the petition filed by the appellant challenging the detention order bearing No. 25/DMK/PSA/2018, dated 28.11.2018 was dismissed, the instant intra-court appeal has been filed.

2. The brief facts are that the appellant was detained by the order of the respondent No. 2 bearing No. 25/DMK/PSA/2018 dated 28.11.2018 under the provisions of Public Safety Act, 1978. The appellant had challenged the same on various grounds.

3. The respondents had filed counter affidavit and produced the detention record before the learned Single Judge, however, the learned Single Judge dismissed the Habeas Corpus Petition and upheld the detention order passed by the respondent No. 2. The appellant has preferred the instant appeal on the various grounds as narrated in the memo of appeal.

4. Learned counsel for the appellant while assailing the judgment has argued that the Learned Single Judge has not properly considered the grounds raised by the appellant as the documents relied upon by the detaining authority were not supplied to the appellant. The appellant was not made to understand the grounds of detention in the language known to him as the detention order was in English and appellant was not conversant with English language. He could understand only Kashmiri and Urdu language. There was delay in passing the detention order. The appellant was not informed that he can make a representation against the order of detention with the Government. The appellant was already in custody when the detention order was passed and no satisfaction was recorded at by the detaining authority with regard to the necessity of passing the detention order.

5. Per contra, Mr. Showkat Naqashbandi, learned AAG has argued that all the documents relied upon by the detaining authority were supplied to appellant. He was also explained about the grounds of detention in Urdu and was also informed about his right to make representation against his detention. Learned AAG while rebutting the arguments of the Learned Counsel for the appellant has laid much stress upon the documents annexed with the petition and the receipt signed by the appellant in English. The submission is these answer majority of the grounds raised by the appellant. He further argued that the appellant is an over ground worker of Laskar-i-Toiba (a banned militant outfit), involved in providing shelter and other logistic supports to the militants in order to carry out attacks on civilians and security forces. He is an accused in FIR bearing No. 260/2017 registered under sections 302 RPC, 7/27 Arms Act, 10, 13 16 of ULA (P) Act in which there are allegations of involvement of appellant in abduction and murder of one civilian, namely, Showkat Ahmed Dar. Besides that he is also accused in another FIR bearing No. 333/2017 under registered sections 302, 332, 120-B RPC, 7/25 Arms Act, 13, 16, 18, 20, 38 and 39 ULA (P) Act, in which there is involvement of the appellant in an encounter that took place at Badragund on 04.12.2017. In this encounter, three militants were killed and one Army personnel also lost his life. He further submitted that there is no delay in passing the detention order. Learned AAG lastly submitted that there is no illegality in the order passed by the learned Single Judge as each and every ground raised by the appellant was duly considered by the Learned Single Judge.

6. Heard and considered the rival contentions of the parties and we have also perused the detention record.

7. The first contention of the appellant was that he was not furnished the requisite material relied upon by the detaining authority while passing the detention order. The detention record contains the receipt duly signed by the appellant in English. It reveals that the appellant was supplied with the grounds of the detention along with all the documents annexed with the grounds of detention relied upon by the detaining authority. So, the finding recorded by the learned Single Judge that the appellant was furnished the grounds of the

detention along with requisite material, is duly substantiated by the record and cannot be termed as wrong.

8. The second contention of the appellant is that the appellant was not made to understand the grounds of detention in the language, which he understands because the detention order was in English and the appellant was conversant with only Kashmiri or Urdu language. A perusal of the detention record reveals that the documents were read over and explained to the appellant in Urdu language, which he fully understood and in acknowledgment thereof, he has signed the receipt in English, as such, there is no substance in the contention of the appellant.

9. The third contention raised by the appellant is that there is delay in passing the detention order as the last FIR was registered against the petitioner in December, 2017, whereas the detention order was passed in November 2018. The perusal of grounds of detention would reveal that detention order has been passed not only on the ground that two FIRs were registered against the appellant. One FIR bearing No. 260/2017 under registered section 302 RPC, 7/27 Arms Act, 10, 13 16 of ULA (P) Act, in which there are allegations of involvement of appellant in abduction and murder of one civilian, namely, Showkat Ahmed Dar and in another FIR bearing No. 333/2017 registered under sections 302, 332, 120-B RPC, 7/25 Arms Act, 13, 16, 18, 20, 38 and 39 ULA (P) Act, for involvement of the appellant in an encounter that took place at Badragund on 04.12.2017, in which three militants were killed and one Army personnel also lost his life. In the grounds of detention, besides these two FIRs, it is specifically mentioned that the appellant is an over ground worker of Lashkar-e-Toiba outfit and has been found to be involved in providing shelter and other logistic supports to the militants in order to carry out attacks on civilians and security forces. So the contention that there is delay in passing the detention order is also not tenable as the cause for detaining the appellant is continuous.

10. The fourth ground raised by the appellant is that he was not informed of his right to make representation. A perusal of the detention order along with accompanied documents annexed with the petition clearly reveal that the appellant was informed of his right to make representation to the District Magistrate Kulgam within 12 days of passing of this order. He was also informed that the appellant can inform the Home Department if he would like to be heard in person by the Advisory Board. He was also informed that he can make representation to the Government against the said detention order. The receipt duly signed by the appellant would establish that he was informed of his right to make representation to the Government against his detention, if so desired. The learned Single Judge has rightly come to the conclusion that the appellant was informed of his right to make a representation against the detention order.

11. Another contention raised is that the detaining authority has not spelt out in the detention order about the compelling circumstances which necessitated him to pass the detention order when the appellant was already in custody. This issue

is no more *res integra* that the detention order can be validly passed against a person who is already in custody. However, firstly the order of detention must demonstrate awareness of the detaining Authority about the custody of detainee and secondly that the detaining Authority must be further satisfied that the detainee is likely to be released from custody and the nature of the activities of the detainee indicate that if he is released, he is likely to indulge in such prejudicial activities. The Learned AAG has not been able to bring to our notice any such satisfaction recorded by the detaining Authority while passing the detention order. Learned Single Judge though has discussed about the appellant being in custody at the time of passing of detention order but has not dealt this issue in right perspective. On this ground only the appeal deserves to be allowed.

12. Viewed thus, the appeal is allowed and the detention order bearing No. 25/DMK/PSA/2018 dated 28.11.2018 is quashed and the appellant is ordered to be released forthwith provided he is not detained in any other matter including FIR Nos. 260/2017 and 333/2017.

13. Before parting with the order, we are at pains to observe that in routine this Court comes across the cases in which the detention orders issued on the grounds of threat to the security and integrity of State are getting quashed due to non adherence to technical requirements. In many petitions the grounds taken are non-furnishing of material relied upon by the detaining Authority to the detainee; not informing the detainee about his right to make representation; not informing the detainee about the grounds of detention in the language that he understands etc. The law on which is well settled. Due to callous approach of the detaining Authorities in passing such orders, the whole purpose of the Preventive laws is getting defeated. Either the detaining Authorities are not aware about the requirements of law or they are dealing the issues of preventive detention very casually. Be that as it may, time has come when the detaining Authorities must be imparted proper training about the requirements of law in passing the detention order so as to ensure that such orders are not set aside on technical grounds.

14. Registrar Judicial of this bench is directed to send copies of the judgment to the Chief Secretary, Commissioner/Secretary, Department of Home, and Law Secretary, Union Territory of J&K for compliance through email. It is made clear that any such slackness in future may invite imposition of personal cost on the officer concerned.

15. Disposed of accordingly.