
(2022) 07 J&K CK 0014

In the Jammu And Kashmir High Court

Case No : Writ Petition (Criminal) No. 137 Of 2021

Shabir Ahmad Dar

APPELLANT

Vs

UT Of J&K And Another

RESPONDENT

Date of Decision : 05-07-2022

Acts Referred:

Jammu And Kashmir Public Safety Act, 1978 — Section 8
Jammu And Kashmir State Ranbir Penal Code, 1989 — Section 302, 364
Arms Act, 1959 — Section 7, 27

Citation : (2022) 07 J&K CK 0014

Hon'ble Judges : Sanjeev Kumar, J

Bench : Single Bench

Advocate : Wajid M Haseeb, Asif Maqbool

Final Decision : Allowed

Judgement

Sanjeev Kumar, J

1. Shabir Ahmad Dar [“the detainee”] has filed this petition through his father seeking to quash detention order passed by District Magistrate, Pulwama [“the detaining authority”] vide order no. 07/DMP/PSA/21 dated 27.1.2021.

2. By virtue of the impugned detention order passed by the detaining authority in exercise of powers conferred under section

8 of the Jammu and Kashmir Public Safety Act 1978 [“the Act”], the detainee has been taken into preventive custody with a view to prevent him from acting in any manner prejudicial to the security of the state. The impugned detention order has been ordered on the basis of material supplied by the police in the shape of dossier.

3. As per the grounds of detention, the detainee was working as a daily wager in the Agriculture Department till the year 2013, where-after he went to Saudi Arabia. He worked in Saudi Arabia as driver for about seven years. It is alleged that the detainee had been providing assistance to the terrorists in carrying out

the subversive activities and was also motivating the youth of the area to join terrorist organisations to strengthen their cadres for which FIR no. 134 of 2017 under Unlawful Activities (Prevention) Act was registered at Police Station Awantipora.

4. The detainee was bailed out in the aforesaid FIR under the orders of the competent court of law. The detainee was also booked in FIR 112 of 2018 for running social media group with the aim to promote terrorism and motivate the youth to join terrorist ranks in the name of "jihad". The grounds of detention further reveal that the detainee was also found involved in the killing of one Manzoor Ahmad Lone and was booked in FIR 33 of 2019 for commission of offences under section 302, 364 RPC and 7/27 Arms Act. It is on the basis of these allegations contained in the dossier supplied by the district police to the detaining authority that became the basis of grounds of detention framed in support of the impugned order of detention.

5. The impugned detention order is assailed by the detainee primarily on two counts: (1) That the detainee was in the custody of the respondents in FIR 33 of 2019 when the impugned detention order was passed. (2) That the detention order was executed on 8.9.2021 i.e. after about eight months of its passing. It is thus contended that the impugned order is vitiated on account of its delayed execution.

6. The impugned order is also assailed by the detainee on the ground that though the detaining authority has shown its awareness in respect of judicial custody of the detainee with the respondents, yet it has failed to disclose the compelling circumstances for passing the impugned detention order.

7. Having heard learned counsel for the parties and perused the record, I am of the view that the impugned order of detention is not sustainable in law, and, therefore deserves to be quashed.

8. Admittedly pursuant to the material in the shape of dossier supplied by the District Police Pulwama, the detaining authority passed the detention order on 27.1.2021. At the relevant point of time the detainee was in the custody of the respondents having been arrested in FIR no. 134 of 2017 registered at police station Awantipora. He was released on bail in the aforesaid FIR but was later on again arrested in FIR 33 of 2019 for commission of murder of one Manzoor Ahmad Lone. He was bailed out in the said case also on 27.7.2021. These facts averred by the detainee are not rebutted by the respondents. It, thus, clearly transpires that despite the fact that the detainee was available with the respondents in the judicial custody yet the order of detention passed on 27.1.2021 was not executed.

9. As is averred by the detainee and not refuted by the respondents, the detention order was executed only on 8.9.2021. There is admittedly a delay of eight month in execution of the order and no reasons for such a delay in execution of the detention order are forthcoming in the reply affidavit filed by the

detaining authority. Possibly there could have been no reason for such a delay for the detenu was all along in the custody of the respondents and, therefore, available to be taken into preventive detention in the execution of the impugned order of detention. The inordinate delay of eight months in execution of order of detention particularly when there is no explanation offered for such a delay vitiates the impugned order of detention.

10. The observations of the Supreme Court made in paragraph No.15 of the judgment in the case of *Adishwar Jain v. Union of India and another*, (2006) 11 SCC 339 are noteworthy and are reproduced hereunder:

"15. Delay, as is well known, at both stages has to be explained. The court is required to consider the question having regard to the overall picture. We may notice that in *Sk. Serajul v. State of West Bengal* [(1975) 2 SCC 78], this Court opined:

"There was thus delay at both stages and this delay, unless satisfactorily explained, would throw considerable doubt on the genuineness of the subjective satisfaction of the District Magistrate, Burdwan recited in the order of detention. It would be reasonable to assume that if the District Magistrate of Burdwan was really and genuinely satisfied after proper application of mind to the materials before him that it was necessary to detain the detenu with a view to preventing him from acting in a prejudicial manner, he would have acted with greater promptitude both in making the order of detention as also in securing the arrest of the detenu, and the detenu would not have been allowed to remain at large for such a long period of time to carry on his nefarious activities..."

11. From the judgment aforesaid, more particularly the observations made in paragraph No.15, it is abundantly clear that the delay at both stages has to be explained and unless this delay is satisfactorily explained, it will throw considerable doubt on the genuineness of the subjective satisfaction derived by the Detaining Authority. Delay, whether it is in making the detention order or it pertains to its execution, both are required to be satisfactorily explained. To the similar effect is the legal position summed up in para 11 of the judgment in *K.P.M. Basheer v. State of Karnataka*, (1992) 2 SCC 295 (supra). For ready reference, para 11 of the judgment is reproduced hereunder: -

"11. Under these circumstances, we are of the view that the order of detention cannot be sustained since the 'live and proximate link' between the grounds of detention and the purpose of detention is snapped on account of the undue and unreasonable delay in securing the appellant/detenu and detaining him. As we have now come to the conclusion that the order of detention is liable to be set aside on this ground alone we are not dealing with other contentions raised in the Memorandum of Appeal as well as in the writ petition."

12. The petition also succeeds on the second ground. From bare reading of the grounds of detention it will be crystal clear that the detaining authority has though shown its awareness about the arrest of the detenu in FIR 33 of 2019

registered at police station Awantipora and the detainee being in judicial custody in Central Jail Srinagar, yet it has failed to indicate any compelling reasons necessitating issuance of order of preventive detention. Mere assertion in the grounds of detention that the remaining at large of the detainee would be to the serious prejudice of the security of the state, in that, the detainee would continue his activities prejudicial to the security of the state is not sufficient to sustain impugned order. It is trite law that there is no bar for the detaining authority to issue an order of preventive detention while the detainee is in police or judicial custody but in doing so the detaining authority is under obligation to justify preventive detention by indicating compelling reasons which necessitate taking of such extreme step of curtailing the liberty of a citizen by invoking preventive detention law against the detainee.

13. In the instant case, the detaining authority has failed to show any compelling reasons which necessitated the issuance of order of detention while the detainee was in the custody of the state.

14. For all these reasons I find merit in this petition and the same is accordingly allowed. Resultantly, the impugned detention order is quashed and respondents are directed to release the detainee from the preventive detention forthwith provided he is not required in any other case.