

(2024) 01 J&K CK 0017

In the Jammu And Kashmir High Court

Case No : Writ Petition (Criminal) No. 21 Of 2023

Shahbaz Ahmed

APPELLANT

Vs

Union Territory Of J&K And Others

RESPONDENT

Date of Decision : 29-01-2024

Acts Referred:

Constitution Of India, 1950 — Article 226
Jammu And Kashmir Public Safety Act, 1978 — Section 8

Citation : (2024) 01 J&K CK 0017

Hon'ble Judges : Rahul Bharti, J

Bench : Single Bench

Advocate : Asheesh Singh Kotwal, Mohd. Aamir Awan, Z.A. Chauhan, Mohd. Irfan Inqualbi

Final Decision : Disposed Of

Judgement

Rahul Bharti, J

1. Heard learned counsel for the parties, perused the pleadings and also examined the record.

2. The respondent No. 2-District Magistrate Reasi, by virtue of an order No. 02-PSA of 2023 dated 20.02.2023, has come to subject the petitioner to preventive detention in exercise of jurisdiction under Section 8 of the Jammu and Kashmir Public Safety Act, 1978. It is this loss of his personal liberty through the mode of aforementioned detention order which the petitioner is calling in question to seek its restoration and for that purpose the present writ petition for a writ of habeas corpus under article 226 of the Constitution of India has been brought by the petitioner acting through his mother.

3. The impugned detention order No. 02-PSA of 2023 dated 20.02.2023 passed by the respondent No. 2-District Magistrate, Reasi is based upon the grounds of detention as formulated separately by the respondent No. 2-District Magistrate, Reasi.

4. In the said grounds of detention, the respondent No. 2-District Magistrate, Reasi has referred to a dossier No. Pros/Dossier-04/2023/9738-41 dated 17.02.2023 served by the respondent No. 3-Superintendent of Police (SSP), Reasi whereby the preventive detention of the petitioner was solicited.

5. In the said dossier, the petitioner came to be introduced as a person instrumental in instigating the masses to create law and order problem in the area by being active in anti-national activities and maintaining effective contacts with some anti-national elements/PAK handlers through social media apps. The petitioner came to be alleged to be in close contact with OGWs of the area and engaged in providing mobile numbers of the families of the killed terrorists and missing youth of the area to the PAK handlers so as to revive militancy/terrorist activity in the area of district Reasi. The petitioner's cousin, namely, Mohd. Rafiq and Nazir Ahmed are said to have joined LET outfit in the year 1998 and one of whom came to be eliminated by the security forces and other having surrendered. With respect to the alleged activities of the petitioner, the Police Station Mahore, Police Post Dewal and Operation Camp Sarh are said to have generated Daily Diary Reports No. 14 dated 03.02.2023, 04 dated 08.02.2023 and 13 dated 12.02.2023.

6. Thus, in a nutshell within a span of ten days period reckoning from 03.02.2023 to 12.02.2023, the alleged documented activities of the petitioner came to be reckoned by the Senior Superintendent of Police (SSP), Reasi as prejudicial to the security of the country and in particular of Union Territory of Jammu and Kashmir warranting the preventive detention of the petitioner.

7. The grounds of detention formulated by the respondent No. 2-District Magistrate, Reasi followed the script of the dossier and by repeat of the same the subjective satisfaction on the part of the respondent No. 2-District Magistrate, Reasi subjecting the petitioner to preventive detention is said to have been arrived at resulting in issuance of the detention order.

8. The petitioner is a twenty one (21) years' young person whose personal liberty has come to be clipped by the respondent No. 2-District Magistrate, Reasi by reckoning his activities to be prejudicial to the security of the nation and in particular in UT of Jammu and Kashmir.

9. The detention order came to be executed on 21.02.2023 through Executing Officer, Inspector Arun Singh PID No. EXJ-046179 of DPL Reasi who is said to have read over the detention order to the petitioner explaining to him in Gojri language the contents of the detention order and the grounds of detention and also making aware the petitioner about his right to make a representation against the order of detention.

10. The detention order No. 02-PSA of 2023 dated 20.02.2023 so passed by the respondent No. 2-District Magistrate, Reasi came to be approved by the Government vide a Govt. Order No. Home/PB-V/366 of 2023 dated 24.02.2023. Later, vide a Govt. Order No. Home/PB-V/457 of 2023 dated 10.03.2023, the

preventive detention of the petitioner came to be confirmed by the Government by subjecting him to suffer detainment for a period of six months in the first instance to be kept under detention in District Jail, Jammu followed by another Govt. Order No. Home/PB-V/857 of 2023 dated 14.08.2023 thereby further extending the period of detention to last for another six months. The period of detention of the petitioner is, thus, in currency.

11. The manner in which the detention of the petitioner has come to be effected hints out clearly that the Senior Superintendent of Police (SSP), Reasi in his dossier had not presented a true state of facts for the notice of the respondent No. 2-District Magistrate, Reasi. In his dossier dated 17.02.2023, the Senior Superintendent of Police (SSP), Reasi at no point ever suggested that the petitioner was under any sort of detainment at the hands of the law and enforcement authority/agency on account of his alleged implication in reference to the aforementioned DDRs. Dossier is dated 17.02.2023 whereas the order of detention is dated 20.02.2023.

12. The Executing Officer enjoined upon the duty to execute the detention warrant, in his execution report has stated that he came to take into custody the person of the petitioner from the Police Station Mahore on 21.02.2023 at about 0650 hours. This execution report does not reveal that how come the petitioner was already in the catch of the Police Station Mahore in the sense whether he was summoned in connection with the execution of the detention warrant or that he was already under state of arrest or detainment for undisclosed reasons so as to be exchanged in terms of custody from Police Station Mahore to preventive detention custody. This aspect has a relevance too serious to be taken casually when this Court comes across with a fact on record that the execution of the detention warrant upon the petitioner, as per the execution report of Executing Officer, Inspector Arun Singh PID No. EXJ-046179 of DPL Reasi, reveals that its execution had taken place on 21.02.2023 when the Executing Officer came to take the custody of the petitioner from the Police Station Mahore but whereas, on the other hand, the respondent No. 2-District Magistrate, Reasi, vide a communication no. DM/RSI/2022-23/JC/6463-68 dated 20.02.2023 addressed to the petitioner's mother Sakina Begum, was apprising her that the petitioner had already been taken into custody i.e., a day before the execution of the detention warrant and that is the reason that the Executing Officer in his execution report, which is on record, has stated that he was taking the custody of the petitioner from the Police Station Mahore. Thus, there is more than what meets the eye in the case attending the detainment of the petitioner which has not been brought out in true light by and from the end of the respondents which renders the very exercise of preventive detention jurisdiction against the petitioner on the part of the respondents seriously suspect and vitiated.

13. A personal liberty of a citizen of India, notwithstanding any alleged desperate characterization and profiling of him by law and enforcement authority/agency, cannot be fiddled with without adopting due course of law that too in letter and

spirit. The respondents in their counter affidavit have least bothered to explain as to how come the petitioner was already in the catch and custody of the Police Station Mahore a day before the execution of the detention warrant to be simply handed over at the asking of the Executing Officer Inspector Arun Singh PID No. EXJ-046179 of DPL Reasi.

14. In view of this serious lacuna with respect to the very detainment of the petitioner in purported reference to the execution of the detention warrant, the detainment of the petitioner under the preventive detention jurisdiction is held to be illegal and deserves to be quashed.

15. For the reasons mentioned above, this writ petition is allowed. Preventive detention order No. 02-PSA of 2023 dated 20.02.2023 whereby the petitioner has been subjected to preventive detention is hereby quashed as a consequence whereof the petitioner is ordered to be restored to its personal liberty by the respondent no. 4-Superintendent, District Jail, Ambphalla, Jammu.

16. Disposed of accordingly.