

(2023) 03 J&K CK 0035

In the Jammu And Kashmir High Court

Case No : Writ Petition (Criminal) No. 204 Of 2022

Shameem Ahmad Wani

APPELLANT

Vs

UT Of J&K & Ors

RESPONDENT

Date of Decision : 18-03-2023

Acts Referred:

Constitution Of India, 1950 — Article 22(5)
Jammu And Kashmir. Public Safety Act, 1978 — Section 8, 13

Citation : (2023) 03 J&K CK 0035

Hon'ble Judges : Sindhu Sharma, J

Bench : Single Bench

Advocate : M. Ayoub Bhat, Faheem Nissar Shah

Final Decision : Allowed

Judgement

Sindhu Sharma, J

1. The Detention Order no. 05/DMA/PSA/DET/2022 dated 07.04.2022 passed by the District Magistrate, Anantnag under Section 8 of the J&K has been assailed by the detinue, namely, Shameem Ahmad Wani through his wife, Ishrat.

2. The impugned order of detention has been challenged by the petitioner on the grounds that; (1) the material forming basis of the grounds of detention has not been supplied to him, thus, infringing upon his right to make an effective representation; (ii) the detinue was already in custody in connection with FIR no. 75/2021 under (UAPA) Unlawful Activities (Prevention) Act and the detaining authority has not shown any awareness to this fact; (iii) though the detention order has been passed by the detaining authority for preventing the detinue from acting in any manner prejudicial to the maintenance of public order but in the grounds of detention the involvement of the detinue is considered threat to the security of the State which reflects total non-application of mind by the detaining authority, as such, the detention order is liable to be quashed.

3. The respondents have filed their counter affidavit and produced the detention

record. It is submitted that the detainee was detained by the District Magistrate, Anantnag in accordance with the provisions of Public Safety Act. The order of detention was passed by the detaining authority after arriving at its subjective satisfaction and after considering all the material. The grounds of detention and all the material relied upon by the detaining authority was furnished to the detainee and the detaining authority had complied with all the statutory and Constitutional safeguards as provided under the law.

4. Heard learned counsel for the parties and perused the record.

5. Perusal of the record reveals that the petitioner has not been supplied all the material relied upon by the detaining authority while arriving at its subjective satisfaction while passing the order of detention. The execution report reflects that the petitioner has only been supplied copies of detention order notice of detention and grounds of detention but all the other relevant material like FIR, statement of witnesses etc. relied upon by the detaining authority have not been furnished to him. This has resulted in infraction of constitutional and statutory safeguards guaranteed to him under Article 22(5) of the Constitution of India and Section 13 of the J&K Public Safety Act for making an effective and purposeful representation.

6. The law as laid down in "Sophia Ghulam Mohd. Bham V. State of Maharashtra and others", AIR 1999 SC 3051, the Apex Court observed as under:-

"...The right to be communicated the grounds of detention flows from Article 22(5) while the right to be supplied all the material on which the grounds are based flows from the right given to the detainee to make a representation against the order of detention. A representation can be made and the order of detention can be assailed only when all the grounds on which the order is based are communicated the detainee and the material on which those grounds are based are also disclosed and copies thereof are supplied to the person detained, in his own language..."

7. Similar view has also been fortified in "Icchu Devi Choraria (Smt.) v. Unio of India and others", (1980)4 SCC 531 and "Thahira Haris Etc. Vs. Govt. of Karnataka & ors.", AIR 2009 SC 218.

8. The detainee has, thus, been hampered by non-supply of relevant material from making an effective and purposeful representation which can only be made provided all the material on which the detention order is based is furnished to him.

9 The detention record produced by the respondents reveals that the order of detention has been passed while considering the activities of the detainee as prejudicial to maintenance of public order while the grounds of detention reflect activities of the detainee as being prejudicial to the security of the State. This reflects the total non-application of mind by the detaining authority and while arriving at its subjective satisfaction. It would be apt to notice the judgment of

the Hon'ble Apex Court in Dr. Ram Manohar Lohia v. State of Bihar, AIR 1966 SC 740 in this regard in which the Hon'ble Apex Court has held as under:

"One has to imagine three concentric circles. Law and order represents the largest circle within which is the next circle representing public order and the smallest circle represents security of State. It is then easy to see that an act may affect law and order but not public order just as an act may affect public order but not security of the State. By using the expression "maintenance of law and order" the District Magistrate was widening his own field of action and was adding a clause to the Defence of India Rules.

10. As per the law laid down by the Hon'ble Apex Court, there is a clear distinction between public order and security of the State and order of detention based on both the grounds is not sustainable in law. The detaining authority had issued the order of detention to prevent the detainee from acting in any manner prejudicial to maintenance of public order whereas in paras 3 and 4 of the grounds of detention, the activities of the detainee are considered to be prejudicial to the security of the State. Thus, there is total non-application of mind by the detaining authority while passing the order of detention, as such, the same is unsustainable in law.

11. In view of the aforesaid discussion, there is no need to advert to other grounds raised in this petition.

12. Keeping in view the aforesaid facts and circumstances and the law as laid down by the Apex Court, this petition is allowed and the detention order No. 05/DMA/PSA/DET/2022 dated 07.04.2022 passed by the District Magistrate, Anantnag, under which the detainee-Shameem Ahmad Wani S/o Ghulam Nabi Wani is under detention is quashed. The respondents are directed to release the detainee from the custody forthwith, provided he is not arrested or detained in any other case.

13. Detention record be returned to learned counsel for the respondents by the Registry forthwith.