

(2023) 02 J&K CK 0059

In the Jammu And Kashmir High Court

Case No : Writ Petition (Criminal) No. 404 Of 2022

Shamir Ahmad Dar

APPELLANT

Vs

Union Territory Of J&K And Others

RESPONDENT

Date of Decision : 17-02-2023

Acts Referred:

Constitution Of India, 1950 — Article 22(5)

Citation : (2023) 02 J&K CK 0059

Hon'ble Judges : Vinod Chatterji Koul, J

Bench : Single Bench

Advocate : Asif Ahmad, Usman Gani

Final Decision : Disposed Of

Judgement

Vinod Chatterji Koul, J

1. Through the medium of this writ petition, the petitioner prays for quashment of detention Order No.43/DMK/PSA/2022 dated 25.06.2022, passed by District Magistrate, Kulgam, whereby detenu, namely, Shamir Ahmad Dar S/o Ghulam Ahmad Dar R/o Wedow, Mishipora Qaimoh District Kulgam, has been placed under preventive detention with a view to prevent him from acting in a manner prejudicial to the security sovereignty and integrity of State, and directing his lodgement in Central Jail, Kotbhalwal Jammu on the following grounds:

i) that the allegations made in the grounds of detention are vague and non-existent and detaining authority has not followed constitutional and statutory procedural safeguards as provided under Article 22 (5) of the Constitution of India;

ii) that the detenu has never associated himself with any terrorist organization and has also no connection with any terrorist organization and he has never acted on the directions and signals of any persons whether inside or outside the Union Territory and that the detenu has never provided any logistic support or transported any arms of any person from one place to another and the detenu is

not an OGW and is not in touch with any organization.

iii) that the material provided in support of order of detention of FIR No. registered in Police Station Qaimoh against detenu way back in the year 2018 and that grounds of detention are remote in time and nature and have no proximity and live nexus with the requirement for detention of detenu.

iv) that the last alleged activity against the detenu is of year 2018 and the detention order has been passed in the year 2022 on the basis of the past alleged activity, as such, there is delay of more than four year in passing the detention order.

v) that the detaining authority has not prepared the grounds of detention by itself, which is a pre-requisite for him before passing any detention order which clearly depicts the non application of mind on the part of detaining authority.

vi) that grounds of detention do not disclose any activity on the basis whereof order of detention can be passed and it appears that impugned detention order has been passed against detenu due to mistaken identity and misinformation;

vii) that detaining authority has not assigned any compelling and cogent reason for passing order of detention.

2. Respondents have filed reply affidavit, insisting therein that the activities indulged in by detenu are prejudicial to the security, sovereignty and integrity of the State, and that the activities narrated in the grounds of detention have been reiterated in the reply affidavit filed by respondents. The factual averments that detenu was not supplied with relevant material relied upon in the grounds of detention have been refuted. It is insisted that all the relevant material, which has been relied upon by the detaining authority, was provided to the detenu at the time of execution of warrant.

3. I have heard learned counsel for the parties and considered the matter. I have gone through the detention record produced by counsel for respondents

4. Though various submissions have been made by counsel for petitioner, yet an important aspect of the matter has been brought by him before this Court during the course of advancement of arguments. He has invited attention of this Court to impugned order of detention, particularly first line thereof and thus, it would be advantageous to reproduce the same hereunder:

"Whereas, on the basis of grounds of detention placed before me by the Superintendent of Police Kulgam....."

5. From the above, it is interestingly evident that detaining authority has said that it is "on the basis of grounds of detention placed before" him "by the Superintendent of Police Kulgam" that detaining authority is satisfied to place detenu under preventive detention.

6. It is important to mention here that detaining authority may get inputs from

different agencies, including Superintendent of Police concerned, but responsibility to formulate grounds of detention exclusively rests with detaining authority. It is the detaining authority, who has to go through reports and other inputs received by him from concerned police and other agencies and on such perusal arrive at a subjective satisfaction that a person is to be placed under preventive detention. It is, therefore, for detaining authority to formulate grounds of detention and satisfy itself that grounds of detention so formulated warrant passing of order of preventive detention. However, in the instant case, it is evident from impugned order of detention that grounds of detention have not been prepared by detaining authority and resultantly impugned detention order is vitiated.

7. Based on the above discussion, the instant petition is disposed of and Detention Order No.43/DMK/PSA/2022 dated 25.06.2022, issued against the detenu is quashed. Respondents, including Jail Superintendent concerned, are directed to release the detenu forthwith, provided he is not required in any other case. Disposed of.