

(2023) 05 J&K CK 0010

In the Jammu And Kashmir High Court

Case No : Writ Petition (Criminal) No. 608 Of 2022

Showkat Ahmad Bhat

APPELLANT

Vs

U.T Of J&K And Another

RESPONDENT

Date of Decision : 10-05-2023

Acts Referred:

Constitution Of India, 1950 — Article 226

Jammu And Kashmir Public Safety Act, 1978 — Section 8, 11(1), 11(1)(a), 11(1)(b)

Citation : (2023) 05 J&K CK 0010

Hon'ble Judges : Moksha Khajuria Kazmi, J

Bench : Single Bench

Advocate : R. A. Jan, Aswad Attar, Sajad Ashraf, Furqan Sofi

Final Decision : Disposed Of

Judgement

Moksha Khajuria Kazmi, J

1. Instant Habeas Corpus petition has been filed by the father of Showkat Ahmad Bhat, (for short detinue,) seeking quashment of detention order No. 59/DMP/PSA/22 dated 25.06.2022 (for short detention order) passed by the respondent No. 2-District Magistrate, Pulwama (Detaining Authority), whereby the said Showkat Ahmad Bhat, son of Gh. Hassan Bhat resident of Wahibugh Tehsil and District Pulwama, has been taken into preventive custody by invoking the powers under Section 8 of the J&K Public Safety Act, 1978 and directed to be lodged in Central Jail (Kotbalwal), Jammu,

2. The challenge to the impugned detention order is made on many grounds such as;

(i) That the detinue came to be detained in terms of detention order No. 26/DMP/PSA/22 dated 09.09.2020, passed by the Detaining Authority and was lodged in Central Jail Kotbalwal Jammu, that was challenged by the petitioner in WP (Crl) No. 143 of 2020, which was ultimately quashed by this Court vide order dated 01.03.2021.

(ii) In compliance to the judgment the detenue was released from the preventive custody but within a short span of time has again been detained by virtue of detention order impugned in the instant petition.

(iii) The grounds of detention on which the detenue has been detained pursuant to the impugned order were in fact also the grounds that constituted the basis of the earlier detention order, copy whereof is annexed with this petition as annexure-III.

(iv) That the impugned detention order being passed on the same grounds that formed the basis of the earlier detention is vitiated in law and, thus, rendered void, ab-intio and non-est in law.

(v) That the impugned detention order has been passed on the grounds that have already been nullified by this Court earlier by issuance of a writ of Habeas Corpus.

(vi) That the grounds of detention order reflect that the Detaining Authority was not aware of the relevant material and the facts while passing impugned detention order.

3. I have heard learned senior counsel, Mr. R. A. Jan, for the petitioner and Mr. Sajad Ashraf, learned GA for respondents. I have perused the detention record produced by learned counsel for respondents and considered the matter.

4. Learned senior counsel for petitioner while arguing the matter mainly laid thrust on the point that the allegations and the grounds pressed into service have already been made use of by the Detaining Authority in the earlier detention order, i.e., order No. 26/DMP/PSA/20 dated 09.09.2020, which was quashed by this Court vide judgement dated 01.03.2021, forming annexure II to the petition. The learned senior counsel also submitted that the Detaining Authority while issuing impugned detention order has not even made a whisper qua earlier detention order which reflects the unawareness of the the Detaining Authority and as a consequence the impugned detention order is rendered illegal.

5. Learned counsel for respondents submits that the detention order has been passed on subjective satisfaction by the Detaining Authority and detention order is in accordance with law and, there is no violation or infringement of rights of the detenue, guaranteed under the Constitution of India. Hence, he pleads that petition be dismissed.

6. It may be noticed here that this Court, in earlier petition, i.e, WP (Crl) No.143/2020 had quashed the detention order, bearing No.26/DMP/ PSA/20 dated 09.09.2020. The same grounds, on the basis of which the earlier detention order was made, could not have formed a ground for making a fresh detention order.

7. In this view, I am fortified by a three Judge judgement of the Supreme Court rendered in the case of Ibrahim Bachu Bafan v. State of Gujarat (1985) 2 SCC

24, wherein, their Lordships in paragraph 10 have held as under:

"...The power conferred under clauses (a) and (b) of sub-section (1) of Section 11 is in fact extension of the power recognized under Section 21 of the General Clauses Act and while under the General Clauses Act, the power is exercisable by the authority making the order, the named authorities under clauses (a) and (b) of Section 11 (1) of the Act are also entitled to exercise the power of revocation. When the High Court exercises jurisdiction under Article 226 of the Constitution it does not make an order of revocation. By issuing a high prerogative writ like habeas corpus or certiorari it quashes the order impugned before it and by declaring the order to be void and striking down the same it nullifies the order. The ultimate effect of cancellation of an order by revocation and quashing of the same in exercise of the high prerogative jurisdiction vested in the High Court may be the same but the manner in which the situation is obtained is patently different and while one process is covered by Section 11(1) of the Act, the other is not known to the statute and is exercised by an authority beyond the purview of sub-section (1) of Section 11 of the Act. It is, therefore, our clear opinion that in a situation where the order of detention has been quashed by the High Court, sub-section (2) of Section 11 is not applicable and the detaining authority is not entitled to make another order under Section 3 of the Act on the same grounds".

8. The authoritative judicial pronouncements on the subject are that even if the order of detention comes to an end either by revocation or by expiry of the period of detention, there must be fresh facts for passing a subsequent detention order. When a detention order is quashed by the Court by issuing a high prerogative writ, like Habeas Corpus or certiorari, the grounds of said detention order should not be taken into consideration either as a whole or in part even along with fresh grounds of detention for drawing requisite subjective satisfaction to pass a fresh detention order because once the Court strikes down an earlier order by virtue of a writ, it nullifies the entire order. It is, therefore, clear that an order of detention cannot be made after considering previous grounds of detention when the same have been quashed by the Court, and if such grounds of detention are taken into consideration while forming subjective satisfaction by the Detaining Authority in making a fresh detention order, the order of detention will be vitiated. It is of no consequence if further fresh facts, disclosed in the grounds of impugned detention order, have been considered. Reference in this regard may be made to judgments rendered in the cases of Chhagan Bhagwan Kahar v. N. L. Kalna and others, AIR 1989 SC 1234 and Ramesh v. State of Gujarat AIR 1989 SC 1881. The Detention order, impugned herein, is, thus, liable to be quashed as the grounds of detention pressed into service by the respondent no.2 while passing earlier detention order, which were subsequently quashed by this Court, have been again put into service.

9. For the foregoing reasons, this Habeas Corpus petition is allowed and the detention Order No. 59/DMP/PSA/22 dated 25.06.2022, passed by the District Magistrate, Pulwama, is quashed. Respondents, including Jail Superintendent

concerned, are directed to release the detainee forthwith, provided he is not required in any other case. Disposed of.

10. Registry to return the detention record to learned counsel for respondents against proper receipt.