
(2022) 05 J&K CK 0039

In the Jammu And Kashmir High Court

Case No : Writ Petition (Criminal) No. 181 Of 2021

Showkat Ahmad Ganai

APPELLANT

Vs

Union Territory Of J&K & Anr

RESPONDENT

Date of Decision : 18-05-2022

Acts Referred:

Jammu And Kashmir Public Safety Act, 1978 — Section 8

Citation : (2022) 05 J&K CK 0039

Hon'ble Judges : M.A.Chowdhary, J

Bench : Single Bench

Advocate : Wajid Haseeb, Satinder Singh Kala

Final Decision : Disposed Of

Judgement

M. A. Chowdhary, J

1. Through the medium of the present petition, the detinue is seeking a Writ of Certiorari for quashing the detention order bearing No.DMB/PSA/02 of 2021 dated 18.10.2021, passed by District Magistrate, Budgam (for short 'detaining authority') with a view to prevent him from acting in any manner prejudicial to the security of the State. The order is, purportedly, passed by the detaining authority in exercise of powers conferred under Section 8 of the J&K Public Safety Act, 1978 (for short 'the Act').

2. The impugned order has been assailed by the detinue, INTER ALIA, on the following grounds:

a) That previously the detinue was placed under preventive detention pursuant to detention order bearing No.DMB/PSA/08 of 2018 dated 18.07.2018. The said order has been quashed by this Court but without there being any fresh material or grounds, the impugned detention order has been passed by the detaining authority;

b) That the material on the basis of which impugned detention order has been

passed has not been supplied to the detainee thereby disabling him from making an effective representation against his detention;

c) That there has been total non-application of mind while passing the impugned order, inasmuch in the grounds there is no mention about the quashment of earlier detention order.

3. Respondents, despite direction, have not produced the detention record, however, reply affidavit has been filed on their behalf, wherein besides other contentions, it is submitted that detention was necessitated because of involvement of the detainee in very serious offences against the State as mentioned in the FIRs registered against him. The detainee was informed that he can make a representation to the Government as well as the Detaining authority against his detention. It is further claimed in the reply affidavit that all statutory requirements and constitutional guarantees have been fulfilled and complied with by the Detaining authority. The order has been issued validly and legally. The respondents have placed reliance on various judgments of the Supreme Court including *Haradhan Saha v. State of W.B* (1975) 3 SCC 198.

4. Heard learned counsel for the parties and perused the material available on file.

5. Learned counsel for the detainee has placed on file copy of the judgment dated 20.11.2018 passed in HCP No. 188/2018, whereby his earlier detention was quashed with the direction to the respondents to release the detainee forthwith.

6. The grounds of detention that have formed the basis of the impugned detention order reveal that there is no reference to any fresh material against the detainee.

7. The Supreme Court in the case '*Chhagan Bhagwan Kahar Vs. N. L. Kalna and others*, (1989) 2 SCC 318', while dealing with similar question, has observed as under:

"12. It emerges from the above authoritative judicial pronouncements 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 order. A fortiori when a detention order is quashed by the Court issuing a high prerogative writ like habeas corpus or certiorari, the grounds of the said order should not be taken into consideration either as a whole or in part even along with the fresh grounds of detention for drawing the requisite subjective satisfaction to pass a fresh order because once the Court strikes down an earlier order by issuing rule, it nullifies the entire order."

8. Again in the case '*Jahangir Khan Fazal Khan Pathan Vs. The Police Commissioner, Ahmadabad and another*, (1989) 3 SCC 590', the Supreme Court has held as under:

".....It is, therefore, clear that an order of detention cannot be made after

considering the previous grounds of detention when the same had been quashed by the Court, and if such previous grounds of detention are taken into consideration while forming the subjective satisfaction by the detaining authority in making a detention order, the order of detention will be vitiated. It is of no consequence if the further fresh facts disclosed in the grounds of the impugned detention order have been considered.”

9. From the aforesaid enunciation of law on the subject, it is clear that unless there are fresh grounds of detention, a person cannot be put under preventive detention on the basis of the grounds of detention which have formed basis of an earlier detention order that has been quashed by a Court. The ratio laid down by the Supreme Court in the afore cited two cases squarely applies to the facts of the instant case. The earlier detention order was based on the same material as is the basis of the order of detention, impugned herein. Thus, the impugned order of detention cannot be sustained in the eyes of law.

10. The second ground urged by the detenue is that he has not been supplied with the material forming basis of the grounds of detention.

11. Non-production of detention record supports this contention of the detenue. Also there is nothing annexed with the reply affidavit to dispute the contention regarding non-supply of relevant material to the detenue. Neither the report of execution nor any document executed by the detenue acknowledging the receipt of the material is available on file. This goes to support the contention of the detenue that he has not been supplied the relevant material. Obviously, the detenue has been hampered by non-supply of the relevant material in making an effective representation against his detention before the concerned authority/ Advisory Board. Non-furnishing of relevant material forming basis of the grounds of detention deprives a detenue of his constitutional right to make a meaningful representation against the order of detention. The denial of this Constitutional right renders the order of detention unsustainable in law. Support can be had to the aforesaid view by the judgments of the Supreme Court in ‘Sophia Gulam Mohd. Bham v. State of Maharashtra & ors (AIR 1999 SC 3051)’; ‘Thahira Haris etc. Vs. Government of Karnataka & Ors (AIR 2009 SC 2184)’; and Ibrahim Ahmad Bhatti alias Mohd. Akhtar Hussain alias Kandar Ahmad Wagher alias Iqbal alias Gulam Vs. State of Gujarat and others, (1982) 3 SCC 440.’

12. So far as the contention of the detenue that there has been non-application of mind on the part of the Detaining authority while passing the impugned order of detention is concerned, the same appears to be well founded. This is so because the grounds of detention do not bear any reference to the fact that earlier detention order had been quashed by this Court on 20.11.2018 in a judgment delivered in HCP No. 188/2018. This clearly shows that either the Detaining authority has not examined the record meticulously or the whole record pertaining to the detenue has not been placed before it, which in turn exhibits non-application of mind on the part of the Detaining authority, thereby rendering the impugned order of detention unsustainable.

13. For the foregoing reasons, the petition is allowed and the impugned order of detention bearing No. DMB/PSA/02 of 2021 dated 18.10.2021, is quashed. Detenue namely Showkat Ahmad Ganie S/O Mohammad Kamal Ganie R/O Wathoorah Tehsil Chadoora District Budgam, is directed to be released forthwith, if not required in connection with any other criminal case(s) pending against him.

14. Petition is disposed of accordingly.