
(2021) 02 J&K CK 0075
In the Jammu And Kashmir High Court
Case No : Writ Petition (Crl) No. 616 Of 2019

Showkat Ahmad Mir

APPELLANT

Vs

Union Territory Of J&K And Another

RESPONDENT

Date of Decision : 12-02-2021

Acts Referred:

Jammu And Kashmir State Ranbir Penal Code, 1989 — Section 147, 148, 149, 307, 332, 336, 341, 353, 427
Arms Act, 1959 — Section 7, 27
Unlawful Activities (Prevention) Act, 1967 — Section 10, 13, 18, 20
Constitution Of India, 1950 — Article 22(5)

Citation : (2021) 02 J&K CK 0075

Hon'ble Judges : Rajnesh Oswal, J

Bench : Single Bench

Advocate : Hussain Rashid, Asif Maqbool

Final Decision : Allowed

Judgement

1. The present petition has been filed by the father of the petitioner on behalf of the petitioner for quashing order of detention bearing No.

75/DMB/PSA/2019 dated 21.10.2019 issued by the District Magistrate, Baramulla, respondent No. 2 herein by virtue of which the petitioner has been

ordered to be detained under the Jammu and Kashmir Public Safety Act, 1978 (for short the Act) in order to prevent him from acting in any manner in

the activities, which are prejudicial to the maintenance of security of the State.

2. It is stated in the petition that the petitioner was arrested on 04.09.2019 by the Police Station, Sopore in a false and frivolous case in connection with

FIR bearing No. 33/2019 registered with Police Station, Bomai for commission of offences under sections 307 RPC and 7/27 Arms Act and during

continuation of his arrest in the aforesaid FIR, the petitioner was taken into

preventive detention vide order of detention dated 21.10.2019 (supra). The petitioner has challenged the order of detention on the ground that the same is illegal, baseless and the detaining authority has not followed the constitutional as well as statutory norms as provided under Article 22(5) of the Constitution of India as well as section 13 of the Act while passing the order of detention. It is further submitted that the petitioner has read up to 8th class and he is shopkeeper by profession and has never indulged in any activities, which are prejudicial to the security of the State and the allegations shown in the grounds of detention are false and frivolous. It is further contended that the petitioner has not been provided any material on the basis of which the detaining authority has passed the order of detention and as a result of which, the petitioner could not make any purposeful representation to the Government against his preventive detention. It is also submitted that the petitioner was already in custody in connection with FIR 33/2019 and the detaining authority has nowhere recorded any compelling reasons while ordering the preventive detention of the petitioner.

3. The respondents have filed the counter affidavit, in which they have categorically stated that the procedural as well as statutory requirements under Article 22(5) of the Constitution of India as well as section 13 of the Act have been complied with by the respondents while passing the detention order. They have further stated that all the requisite documents were provided to the petitioner.

4. Mr. Hussain Rashid, learned counsel for the petitioner has vehemently reiterated the same grounds those have been taken in his petition. It is submitted by the learned counsel for the petitioner that one of the co-accused in FIR No. 33/2019 (supra) was also detained under preventive detention and his detention order was quashed by the Coordinate Bench of this Court in WP (Crl) No. 623/2019.

5. On the contrary, Mr. Asif Maqbool, learned Deputy Advocate General appearing for the respondents has vehemently argued that all the documents have been furnished to the petitioner. Mr. Maqbool has also argued that the detention order is legal and all constitutional safeguards have been complied with while passing the order of detention. Mr. Maqbool has also produced the scanned detention record.

6. A perusal of the grounds of detention reveals that the petitioner is involved in

FIR No. 8/2017 for commission of offences under sections 10 and 13

of ULA(P) Act registered with Police Station, Bumai, FIR No. 63/2016 under sections 307, 332, 353, 341, 336, 427, 147, 148 and 149 registered with

Police Station, Bumai, FIR No. 83/2017 under Section 13 of ULA(P) Act of Police Station, Bumai and FIR No. 220/2019 under sections 13, 18 and 20

ULA(P) Act and 120-B and 506 RPC of Police Station, Sopore. Besides, the petitioner has also been involved in FIRs bearing No. 33/2019 for

commission of offences under sections 307 RPC and 7/27 Arms Act of Police Station, Bumai as well as FIR No. 233/2019 for commission of

offences under sections 307 RPC and 7/27 Arms Act of Police Station, Sopore. It is evident in the grounds of detention that the detaining authority has

shown its awareness about the custody of the petitioner in FIR No. 33/2019 (supra). It is also stated in the grounds of detention that there is likelihood

of the petitioner being admitted to bail.

7. One of the star grounds of the petitioner is that the petitioner was already in custody in connection with FIR No. 33/2019 in Police Station, Bumai

and the detaining authority has not divulged any compelling reasons so as to necessitate the detention of the petitioner under the Act except by simply

stating there is likelihood of the petitioner being released on bail. Learned counsel for the petitioner has argued that no reference to any bail application

has been made in the grounds of detention as to whether the petitioner had filed any bail application before the competent court or not. It is

vehemently argued that there was no material before the detaining authority so as to state in the grounds of detention that there is possibility of the

petitioner being enlarged on bail. Learned counsel for the petitioner has relied upon the judgment of the Apex Court in *Rekha v. State of Tamil Nadu*

(2011) 5 SCC 244, in which it has been held:

“27. In our opinion, there is a real possibility of release of a person on bail who is already in custody provided he has moved a bail

application which is pending. It follows logically that if no bail application is pending, then there is no likelihood of the person in custody

being released on bail, and hence the detention order will be illegal. However, there can be an exception to this rule, that is, where a co-

accused whose case stands on the same footing had been granted bail. In such cases, the detaining authority can reasonably conclude that

there is likelihood of the detenu being released on bail even though no bail application of his is pending, since most courts normally grant

bail on this ground. However, details of such alleged similar cases must be given, otherwise the bald statement of the authority cannot be

believed.â??

8. Reliance has also been placed upon the judgment of the Supreme Court in â?? Sama Aruna vs State of Talenganaâ?? reported in 2018(12) SCC 150.

Paragraph No. 27 is extracted here under:

27. There is another reason why the detention order is unjustified. It was passed when the accused was in jail in Crime No. 221 of 2016. His custody

in jail for the said offence was converted into custody under the impugned detention order. The incident involved in this offence is sometime in the

year 2002-2003. The detenu could not have been detained preventively by taking this stale incident into account, more so when he was in jail.

9. In the order of detention, there is no whisper as to on which basis the respondent No. 2 has derived his satisfaction that it has become necessary to

detain the petitioner when he was already in custody, particularly when no bail application was filed by the petitioner. More so, it is evident that the

grounds of detention are the verbatim reproduction of dossier prepared by respondent No. 3. The detaining authority was required to apply its mind

independently with regard to the material placed before it so as to derive its satisfaction that it has become necessary to detain the petitioner. But the

same has not been done in the instant case. This renders the detention order illegal. Reliance is placed on the decision of Apex Court in case, titled, Jai

Singh v. State of J & K, reported in (1985) 1 SCC 561 and the relevant portion is reproduced s under:

â??-----First taking up the case of Jai Singh, the first of the petitioners before us, a perusal of the grounds of detention shows that it is a verbatim

reproduction of the dossier submitted by the senior Superintendent of Police, Udhampur to the District Magistrate requesting that a detention order

may kindly be issued. At the top of the dossier, the name is mentioned as Sardar Jai Singh, father's name is mentioned as Sardar Ram Singh and the

address is given as Village Bharakh, Tehsil Reasi. Thereafter it is recited â??The subject is an important member ofâ?'.â? Thereafter follow various

allegations against Jai Singh, paragraph by paragraph. In the grounds of

detention, all that the District Magistrate has done is to change the first three words "the subject is" into "you Jai Singh, s/o Ram Singh, resident of Village Bharaoh, Tehsil Reasi". Thereafter word for word the police dossier is repeated and the word "he" wherever it occurs referring to Jai Singh in the dossier is changed into "you" in the grounds of detention. We are afraid it is difficult to find greater proof of non-application of mind. The liberty of a subject is a serious matter and it is not to be trifled with in this casual, indifferent and routine manner."

(Emphasis Supplied)

10. Since the order of detention is required to be quashed on these grounds only, so there is no need to consider the other grounds of challenge.

11. In view of the above, this petition is allowed. Detention order No. 75/DMB/PSA/2019 dated 21.10.2019 is quashed. The petitioner (detenue) be set free from the preventive custody, provided he is not required in any other case.