

(2023) 03 J&K CK 0042

In the Jammu And Kashmir High Court

Case No : Writ Petition (Criminal) No. 37 Of 2023, Criminal Miscellaneous Case
No. 62 Of 2023

Suhail Ahmad Bhat

APPELLANT

Vs

Union Territory Of J&K And Others

RESPONDENT

Date of Decision : 28-03-2023

Acts Referred:

Constitution Of India, 1950 — Article 22(5)
Unlawful Activities (Prevention) Act, 1967 — Section 13, 18, 19, 39

Citation : (2023) 03 J&K CK 0042

Hon'ble Judges : Moksha Khajuria Kazmi, J

Bench : Single Bench

Advocate : Danish Majid Dar, M. Shafi, Sajad Ashraf

Final Decision : Allowed

Judgement

Moksha Khajuria Kazmi, J

1/- The petitioner through his brother Farooq Ahmad bhat is challenging and seeking quashment of the Detention Order No. DMS/PSA/10/2023 dated 21.01.2023, hereinafter for short impugned order, issued by the District Magistrate, Srinagar, whereby the petitioner has been ordered to be detained under the provisions of the Public Safety Act to be lodged at Central Jail, Jammu, Kotbalwal, with a further prayer to restrain the respondents from arresting the petitioner pursuant to the said impugned order.

2/- The detention order, inter alia, is challenged on the grounds:

a) That the petitioner has been enlarged on bail in case FIR no. 55/2022 of P/S Soura under section 13 & 39 UA (P) Act pressed into service by the respondents for issuing the impugned order.

b) That the petitioner is suffering from heart ailment and is undergoing treatment at Delhi pursuant to the orders of the Special Judge NIA Court, Srinagar dated 23.01.2023;

c) That the allegations made in the grounds of detention are vague, non-existent and no details are given as to what were the activities that the petitioner has indulged in which are prejudicial to the security of state;

d) That the procedural safeguards prescribed under the provisions of Public Safety Act provided under Article 22 (5) of the Constitution of India have not been followed;

e) The allegations made in the grounds of detention are false, frivolous and without any cogent material and reasoning.

3/- Pursuant to notice, respondents appeared through their learned counsel and filed the counter affidavit stating therein that the detention order is well founded, in fact and law, and seek dismissal of the Habeas Corpus Petition.

4/- Heard learned counsel for the parties and perused the records.

5/- Admittedly, the order impugned despite having been issued in the month of January, 2023, has not been executed yet and the petitioner is undergoing a specialized treatment at Delhi after obtaining a valid permission from the court of Special Judge Designated Under NIA Act, Srinagar, in terms of order dated 23.01.2023.

6/- The respondents, therefore, are in know of the fact that petitioner is not absconding or evading arrest but is available in Delhi in connection with medical treatment and they could have executed the impugned order had they been interested to do so.

7/- The impugned order of detention cannot operate for an indefinite period of time in disregard of the mandate of the provisions of the Public Safety Act especially when the same remains unexecuted for the failure of the respondents without any plausible reason. The un-execution of the impugned order solely reflects of the intention of the respondents not to execute the impugned detention order. The certified copy of the order dated 20.12.2022 passed by the learned Special Judge Designated Under NIA Act, Srinagar, reveals that the petitioner has been discharged for the commission of offences punishable under sections 18, 19, 39 of UA (P) Act.

8/- The ratio laid down by the Hon'ble Apex Court in the judgment referred to and relied upon by the learned counsels for the petitioner reported as 2014 (1) SCC 280 squarely applies to the facts of the instant case. The Hon'ble Apex Court has laid down that although preventive detention order is not punitive and in case of long delay, a fresh application of mind by the detaining authority is normally required as the live proximate link is snapped due to such delay.

9/- In the circumstances the impugned detention order does not sustain the test of law and cannot be allowed to operate.

10/- Viewed thus, the petition is allowed and the impugned order of detention bearing No. DMS/ PSA/10/2023 dated 21.01.2023 issued by the District

Magistrate, Srinagar, is quashed.

11/- The detention record be returned to the learned counsel for the respondents against receipt.