

(2022) 08 J&K CK 0042

In the Jammu And Kashmir High Court

Case No : Writ Petition (Criminal) No. 117 Of 2021

?Syed Mohammad Azhar Amin Shah

APPELLANT

Vs

Union Territory Of J&K & Ors

RESPONDENT

Date of Decision : 24-08-2022

Acts Referred:

Unlawful Activities (Prevention) Act, 1967 — Section 13, 18, 19

Citation : (2022) 08 J&K CK 0042

Hon'ble Judges : Sanjay Dhar, J

Bench : Single Bench

Advocate : Shabir Ahmad, Ilyas Nazir Laway

Final Decision : Dismissed

Judgement

Sanjay Dhar, J

1) By the instant petition, quashment of order No.30/DMP/PSA/21 dated 18.08.2021, issued by District Magistrate, Pulwama (for brevity "Detaining Authority") is sought. In terms of the aforesaid order, Syed Mohammad Azhar Amin Shah (for short "detenu") has been placed under preventive detention and lodged in Central Jail, Srinagar.

2) The petitioner has contended that the Detaining Authority has passed the impugned detention order mechanically without application of mind, inasmuch as the procedural safeguards have not been complied with in the instant case. It has been further urged that the material which formed basis of the grounds of detention and the consequent order of detention has not been provided to the detenu.

3) The respondents, in their counter affidavit, have disputed the averments made in the petition and insisted that the activities of detenu are highly prejudicial to the security of the State. It is pleaded that the detention order and grounds of detention were handed over to the detenu and the same were read over and explained to the detenu. That the grounds urged by the petitioner are legally

misconceived, factually untenable and without any merit and that all the constitutional and procedural safeguards have been strictly followed while issuing the impugned order. The respondents have produced the detention records in order to buttress the contentions raised in the counter affidavit.

4) I have heard learned counsel for parties and perused the detention record.

5) A number of grounds have been urged by learned counsel for the petitioner for impugning the order of detention. However, the main grounds that have prevailed during the course of arguments are:

(I) That the petitioner has not been supplied whole of the material which has formed the basis of the grounds of detention and the consequent order of detention;

(II) That the representation of the petitioner has not been considered;

(III) That the grounds of detention are vague lacking in specific details;

(IV) That there has been lack of application of mind on the part of the detaining authority while framing the grounds of detention;

6) It has been contended by learned counsel for the petitioner that the petitioner has not been furnished whole of the material that has formed basis of the grounds of detention and consequent order of detention.

7) If we have a look at the detention record, the petitioner has been furnished warrant of detention (01 leaf), notice (01 leaf), grounds of detention (02 leaves), dossier (03 leaves), copy of FIR (01 leaf) and other related documents. In all, the petitioner has been furnished 19 leaves. This is evident from the receipt executed by the petitioner which forms part of the detention record. In the grounds of detention, reliance has been placed upon dossier of the police and FIR No.15/2021 for offences under Section 13, 18, 19 UA(P) Act of Police Station, Rajpora. Both these documents including the documents relating to the FIR appear to have been furnished to the petitioner. Besides this, the execution report also demonstrates that the petitioner has been furnished the copies of warrant of detention, grounds of detention and the notice. Thus, it cannot be stated that the petitioner has not been provided whole of the material which has been relied upon by the detaining authority while framing grounds of detention and the consequent order of detention. Contention of the petitioner in this regard is not substantiated from the detention record produced before this Court.

8) It has been claimed by the petitioner that he had made a representation against the impugned detention order which has not been considered by the detaining authority.

9) Though in para (6) of the counter affidavit, the respondent detaining authority has stated that the petitioner did not choose to file a representation against the impugned detention order before the competent authority, yet later on, a supplementary affidavit has been filed by the detaining authority in which it has

been admitted that representation of father of the petitioner was received and the same was considered and rejected in terms of Order No.DCP/PA/21/1512-16 dated 01.09.2021. it has been submitted that a copy of the rejection order was conveyed to the petitioner. A copy of the rejection order is available in the detention record. In view of the above, the ground projected by the petitioner is not substantiated from the material on record.

10) It has been contended by learned counsel for the petitioner that the grounds of detention are vague, inasmuch as the same lack in material particulars and according to the learned counsel, in the absence of these material particulars, it was not possible for the petitioner to make an effective representation against the impugned order of detention.

11) A perusal of the grounds of detention reveals that it has been specifically alleged therein that the petitioner is an over ground worker of proscribed outfit Jash-e-Mohammad. It is further indicated in the grounds of detention that the petitioner has been using his cell phone No.7006181194 for provoking and instigating young persons towards militancy by use of social media. It is also alleged in the grounds of detention that the petitioner has been in touch with Jash-e-Mohammad terrorist, namely, Faisal Ahmad Baba, who was later on killed in an encounter with security forces. It is further alleged in the grounds of detention that in the year 2020, a terrorist of Jash-e-Mohammad, namely, Sajed Ahmad was killed and from his pocket a piece of paper containing cell number of the petitioner was recovered. The grounds of detention give details about the social media application "Akhir-se-Akhir Tak" which is being used by the petitioner to invite the youth to indulge in anti-national activities.

12) From the above it is clear that meticulous details about the activities of the petitioner are recorded in the grounds of detention. Therefore, it cannot be stated that the grounds of detention are vague. The contention of learned counsel for the petitioner in this regard is without any merit.

13) Lastly, it has been argued by learned counsel for the petitioner that there has been total non-application of mind on the part of the detaining authority while framing the grounds of detention. In this regard it has been submitted that the detaining authority while forming the grounds of detention, has used the term 'public order' at some places and the term 'security of the state' at other places, which, according to the learned counsel, shows unawareness of the detaining authority about the actual nature of activities of the petitioner.

14) A perusal of the grounds of detention reveals that while summing up the activities of the petitioner, the detaining authority has clearly recorded its satisfaction that the activities of the petitioner are highly prejudicial to the security of the state and it is on this ground only that the impugned order of detention has been passed. There is, thus, no doubt in the mind of the detaining authority as to the nature of the activities in which the petitioner is alleged to have been indulging. The ground urged by learned counsel for the petitioner in

this regard is, therefore, without any merit.

15) For the foregoing reasons, I do not find any merit in this petition. The same is, accordingly, dismissed.

16) The record, as produced, be returned to the learned counsel for the respondents.