
(2020) 03 J&K CK 0062
In the Jammu And Kashmir High Court
Case No : Writ Petition (C) No. 499 Of 2019

Tajam-Ul-Islam

APPELLANT

Vs

State Of J&K And Others

RESPONDENT

Date of Decision : 18-03-2020

Acts Referred:

Citation : (2020) 03 J&K CK 0062

Hon'ble Judges : Tashi Rabstan, J

Bench : Single Bench

Advocate : Wajid Haseeb, S.H. Naqashband

Final Decision : Disposed Off

Judgement

Tashi Rabstan, J

1. District Magistrate, Kulgam, has, vide Order no.70/DMK/PSA/19 dated 28.08.2019, placed Tajam-ul-Islam son of Ab. Rasheed resident of Chimmer, D.H.Pora District Kulgam (for succinctness "detenu"), under preventive detention and directed his lodgement in Central Jail, Srinagar.
2. Aforementioned detention order no.70/DMK/PSA/19 dated 28.08.2019 (for short "impugned detention order"), passed by District Magistrate, Kulgam (for brevity "detaining authority") is challenged in petition on hand on the grounds averred therein.
3. Respondents have filed Reply Affidavit in opposition to the petition.
4. I have heard learned counsel for parties. I have perused the detention record produced by learned counsel for respondents and considered the matter.
5. Learned counsel for petitioner, to augment the case set up by petitioner in writ petition on hand, contends that last alleged activity made mention of in grounds of detention, took place on 26.10.2017, whereas impugned detention order has been passed after about two years, that is, on 28.08.2019. Unexplained delay,

according to him, between alleged activity and passing of impugned detention order has rendered impugned detention unjustified. His next limb of argument is that detenu is already in custody and is required in case FIR no.108/2017 and detenu has neither applied for bail nor has bail been otherwise due to him, and that detaining authority being satisfied about custody of detenu, has not spelt out compelling reasons to pass detention order when detenu is already in custody. His another, but important, submission is that impugned detention order on its bare reading unmasks grounds of detention having been prepared by Senior Superintendent of Police and not by detaining authority, in that impugned detention order divulges that it has been issued on the basis of grounds of detention placed before detained authority by Senior Superintendent of Police, Kulgam, which also implies non-application of mind on the part of detaining authority. In addition to this, learned counsel has also stated that grounds of detention are ditto copy of dossier and therefore again impugned order is liable to be quashed.

6. Per contra, learned counsel for respondents insists that detention order has been passed on subjective satisfaction by detaining authority and detention order is in accordance with law and there is no violation or infringement of rights guaranteed under the Constitution of India. Hence, he exhorts dismissal of petition.

7. Given the case set up and submissions made by learned counsel parties, it is apt to mention that whether a person, who is in jail, can be detained under preventive detention law, has been a subject matter of consideration before the Supreme Court very often. In Dharmendra Suganchand Chelawat & anr v. Union of India, AIR 1990 SC 1196, the Supreme Court, while considering the same issue has reconsidered its earlier judgments on the point in Rameshwar Shaw v. District Magistrate, Burdwan, AIR 1964 SC 334; Masood Alam v. Union of India, AIR 1973 SC 897; Dulal Roy v. District Magistrate, Burdwan, AIR 1975 SC 1508; Alijan Mian v. District Magistrate, Dhanbad, AIR 1983 SC 1130; Ramesh Yadav v. District Magistrate, Etah, AIR 1986 SC 315; Suraj Pal Sahu v. State of Maharashtra, AIR 1986 SC 2177; Binod Singh v. District Magistrate, Dhanbad, AIR 1986 SC 2090; Smt Shashi Aggarwal v. State of U.P., AIR 1988 SC 596, and came to the conclusion that an order for detention can be passed against a person in custody and for that purpose, it is necessary that grounds of detention must show that (i) detaining authority was aware of the fact that detenu is already in detention; and (ii) there were compelling reasons justifying such detention despite the fact that detenu is already in detention. The expression "compelling reasons" in the context of making an order for detention of a person already in custody implies that there must be cogent material before detaining authority on the basis whereof it may be satisfied that (a) detenu is likely to be released from custody in near future, and (b) taking into account the nature of antecedent activities of detenu, it is likely that after his release from custody he would indulge in prejudicial activities and it is necessary to detain him in order to prevent him from engaging in such activities.

8. When the above principles are applied to facts of instant case, there is no escape from the conclusion that impugned detention order cannot be sustained. Grounds of detention do not mention: whether detenu is in custody or not at the time of making of detention order; whether application for grant of bail has been made or not at the time detention order was made; whether bail has been granted by court of competent jurisdiction or not at the time of issuance of detention order. Thus, in the present case detaining authority has not drawn any subjective satisfaction vis-à-vis detention of detenu. There is no mention of the fact that detenu has applied for bail in criminal case(s) against him nor is there any satisfaction that detenu has been enlarged on bail before issuance of impugned order of detention. This clearly indicates and shows total absence of application of mind on the part of detaining authority while passing impugned detention order of detention. In that view of matter, impugned detention order is vitiated.

9. Another impact facet of the matter has unmasked while having a close peep of impugned order of detention. It intriguingly mentions that it is "on the basis of grounds of detention placed before" detaining authority "by the Sr. Superintendent of Police Kulgam" that detaining authority is satisfied to place detenu under preventive detention. It is made clear here that detaining authority may get inputs from different agencies, including Senior Superintendent of Police of concerned District, but responsibility to formulate grounds of detention, however, exclusively rests with detaining authority. It is detaining authority, who has to go through reports and other inputs received by him from concerned police and other agencies and on such perusal arrive at a subjective satisfaction that a person is to be placed under preventive detention. It is, thus, for detaining authority to formulate grounds of detention and satisfy itself that grounds of detention so formulated warrant passing of the order of preventive detention. However, in the present case, it is apparent and evident from impugned order of detention that grounds of detention have not been prepared by detaining authority and as a corollary thereof impugned detention order is vitiated.

10. For the foregoing reasons, the petition is disposed of and detention Order no.70/DMK/PSA/19 dated 28.08.2019, passed by District Magistrate, Kulgam, is quashed. Respondents, including Jail Superintendent concerned, are directed to release the detenu forthwith, provided he is not required in any other case. Disposed of.

11. Registry to return detention record to learned counsel for respondents.