
(2022) 04 J&K CK 0059

In the Jammu And Kashmir High Court

Case No : Writ Petition (Criminal) No. 311 Of 2021

Tariq Ahmad Hajam

APPELLANT

Vs

UT Of J&K & Ors

RESPONDENT

Date of Decision : 22-04-2022

Acts Referred:

Citation : (2022) 04 J&K CK 0059

Hon'ble Judges : Sanjay Dhar, J

Bench : Single Bench

Advocate : Bilal Ahmad Khan, Sajad Ashraf

Final Decision : Allowed

Judgement

Sanjay Dhar, J

1) Impugned in this petition is the order of detention bearing No.DMS/PSA/92/2021 dated 02.12.2021, issued by District Magistrate, Srinagar ("the Detaining Authority"). In terms of the impugned order, Shri Tariq Ahmad Hajam son of Mohammad Ramzan Hajam resident Barthana Qamarwari, Srinagar, has been placed under preventive detention and lodged in Central Jail, Srinagar.

2) Petitioner has contended that the Detaining Authority has passed the impugned detention order mechanically without application of mind. It has been further contended that the Constitutional and Statutory procedural safeguards have not been complied with in the instant case. It has also been urged that the allegations made against the detainee in the grounds of detention are vague. Petitioner has gone to contend that whole of material forming the basis of the detention order has not been provided to him

3) The writ petition is opposed by the respondents who have filed reply affidavit on behalf of the detaining authority. The factual submissions made by the petitioner have not been refuted in the reply affidavit filed by the respondents. It has been contended that the detention order is based on the subjective

satisfaction of the detaining authority and the same cannot be gone into by this Court in exercise of its extraordinary writ jurisdiction. It is contended that the detainee has been detained only after following the due procedure; that there has been proper application of mind on the part of the Detaining Authority while passing the impugned order and that the detainee has been provided all the material. The learned counsel for the respondents also produced the detention records to lend support to the stand taken in the counter affidavit.

4) I have heard learned counsel for parties and I have also gone through detention record.

5) The main ground urged by the learned counsel for the petitioner is that the constitutional and statutory procedural safeguards have not been complied with in the case of the petitioner, inasmuch as whole of the material forming basis of the grounds of detention has not been furnished to him.

6) A perusal of the detention record produced by learned counsel for the respondents reveals that the material is stated to have been received by the petitioner on 08.12.2021. Report of Executing Officer in this regard forms part of the detention record, a perusal whereof reveals that it bears the signature of petitioner and according to it, copy of PSA warrant (one leaf), notice of detention (one leaf), grounds of detention (two leaves), and copy of FIR (one leaf) in total 05 leaves, have been supplied to him.

7) It is clear from the execution report, which forms part of the detention record, that copy of the dossier has not at all been supplied to the detainee. Apart from this, if we have a look at the grounds of detention, it bears reference to FIR No.179/2020 of P/S Parimpora. It was incumbent upon respondents to furnish not only the copy of the FIR but also the statements of witnesses recorded during investigation of the said FIR as well as the other material on the basis of which petitioner's involvement

in the FIR is shown. Thus, contention of the petitioner that whole of the material relied upon by the detaining authority, while framing the grounds of detention has not been supplied to him, appears to be well-founded. Obviously, the petitioner has been hampered by non-supply of these vital documents in making a representation before the Advisory Board, as a result whereof his case has been considered by the Advisory Board in the absence of his representation, as is clear from the detention record. Thus, vital safeguards against arbitrary use of law of preventive detention have been observed in breach by the respondents in this case rendering the impugned order of detention unsustainable in law.

8) For the afore-stated reasons, the petition is allowed and the impugned detention order is quashed. The detainee is directed to be released from the preventive custody forthwith, unless, of course he is not required in connection with any other case.

9) The record, as produced, be returned to the learned counsel for the

respondents.