

(2023) 02 J&K CK 0042

In the Jammu And Kashmir High Court

Case No : Writ Petition (Criminal) No. 215 Of 2022

Ubaid Bashir

APPELLANT

Vs

Union Territory Of J&K & Anr

RESPONDENT

Date of Decision : 16-02-2023

Acts Referred:

Arms Act, 1959 — Section 7, 25

Citation : (2023) 02 J&K CK 0042

Hon'ble Judges : Sanjay Dhar, J

Bench : Single Bench

Advocate : M. A. Wani, Sajad Ashraf

Final Decision : Dismissed

Judgement

Sanjay Dhar, J

1) In this petition, the petitioner has challenged the Government Order No. 06-DMK/PSA of 2022 dated 18.03.2022, issued by respondent No. 2-District Magistrate, Kupwara (hereinafter to be referred as "Detaining Authority"). In terms of the aforesaid order, the petitioner-Ubaid Bashir S/o Bashir Ahmad Wani, R/o Maidanpora Lolab, District Kupwara (for short "the detenu") has been placed under preventive detention in order to prevent him from acting in any manner prejudicial to the maintenance of security of the State.

2) The petitioner has contended that the grounds of detention have been prepared mechanically, inasmuch as the same are replica of the dossier. It is also contended that the petitioner has not been informed of his right to make a representation against the order of detention. It is further contended that the detaining authority has not assigned any compelling reason for passing the order of detention. Lastly, it has been submitted that the petitioner has not been provided the material, which has formed the basis of grounds of detention, as a result of which he was hampered from making an effective representation against the impugned order of detention.

3) The respondents, in their counter affidavit, have denied the contentions raised by the petitioner. It has been submitted that the activities of the petitioner are highly prejudicial to the maintenance of the security of the State. It has also been submitted that the whole of the material, which formed basis of the grounds of detention, were handed over to the petitioner. The petitioner was also informed about his right to make a representation against the order of detention. It has also been urged that the grounds raised in the petition are illegal, misconceived and untenable. The respondents have produced the detention record in support of their contentions.

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

5) So far as the contention of the petitioner that the detaining authority has not applied its mind while framing the grounds of detention is concerned, the same appears to be without any merit for the reason that in the grounds of detention, the detaining authority has analysed the police dossier, noted the facts mentioned in the police dossier and thereafter, framed its own subjective satisfaction to come to a conclusion that the activities of the petitioner are prejudicial to the maintenance security of the State. The grounds of detention are not replica of the police dossier as has been claimed by the petitioner. It is a settled law that this Court cannot sit in an appeal and review the subjective satisfaction arrived at by the detaining authority.

6) It has been contended by the petitioner that there were no compelling reasons for the detaining authority to pass the impugned order of detention, particularly when an FIR had already been registered against the petitioner.

7) It is true that in the grounds of detention reference has been made to the FIR No. 42/2022 for offence under section 7/25 Arms Act registered with the Police Station, Pulwama, but in the grounds of detention, it is also noted that after registration of the aforesaid FIR, the petitioner was providing logistic support that lead to the terrorist acts of the JeM. On this basis, the detaining authority has come to a conclusion that if the petitioner is allowed to remain at large, it would threaten the security of the State. Thus, it cannot be said that there were no compelling circumstances for the detaining authority to pass the impugned order of detention despite the petitioner had been booked for a criminal offence.

8) It has also been contended that the petitioner has not been provided the whole of the material on the basis of which the grounds of detention have been formulated and that he has not been informed about his right to make a representation against the impugned detention order.

9) In this regard, a perusal of record of detention reveals that the petitioner has executed a receipt, according to which he has been provided copy of the detention order (01 leaf), grounds of detention (02 leaves), dossier of detention (14 leaves) and other related documents (01 leaf) total (18 leaves). The dossier of detention runs into two pages. Annexed with the dossier are copies of the FIR,

statement of witnesses and seizure memo as annexures A, A-1 and A-2 to the same. Thus, the petitioner has been provided not only the copy of the FIR reference whereof is made in the grounds of detention but also the statements of the witnesses and the copy of the seizure memo. Besides this, the petitioner is also shown to have received copy of the detention order, grounds of detention and the dossier of detention as also the notice of the detention. These are the documents that have been relied upon by the detaining authority at the time of formulating the grounds of detention. Thus, it cannot be stated that the whole of the material has not been provided to the detainee.

10) The record further reveals that the petitioner has been, vide communication dated 18.03.2022 of District Magistrate, Kupwara, informed about his right to make a representation to the Home Department of the Government as also to the detaining authority. To this effect, an affidavit has been sworn in by the Executing Officer, ASI Muzaffar Ishaq, a copy whereof is available in the detention record.

11) Thus, the ground urged by the petitioner that he has not been informed about his right to make a representation or that he has not been provided the whole of the material, is not substantiated from the detention record.

12) For all what has been discussed herein above, I do not find any reason to interfere with the impugned order of detention. The writ petition lacks merit and is dismissed accordingly.

13) The record be returned to the learned counsel for the respondents.