

(2024) 02 J&K CK 0042

In the Jammu And Kashmir High Court

Case No : Writ Petition (Criminal) No. 333 Of 2022

Umar Aijaz Mir

APPELLANT

Vs

UT Of J&K And Anr

RESPONDENT

Date of Decision : 29-02-2024

Acts Referred:

Constitution Of India, 1950 — Article 226
Jammu And Kashmir Public Safety Act, 1978 — Section 8(a)
Jammu And Kashmir State Ranbir Penal Code, 1989 — Section 147, 148, 149, 152, 332, 336, 353, 357, 427
Unlawful Activities (Prevention) Act, 1967 — Section 13
Explosive Substances Act, 1908 — Section 4B

Citation : (2024) 02 J&K CK 0042

Hon'ble Judges : Rahul Bharti, J

Bench : Single Bench

Advocate : B. A. Tak, Ilyas Nazir Laway

Final Decision : Dismissed

Judgement

Rahul Bharti, J

1. Heard learned counsel for the petitioner as well as for the respondents and perused the pleadings documents therewith and also the detention record produced concerning the petitioner.
2. Through this petition under article 226 of the Constitution of India, the petitioner, acting through his father Aijaz Ahmad Mir, is seeking quashment of his preventive detention by issuance of a writ of Habeas Corpus and thereby earn his release from the detention custody.
3. The petitioner is 27 years of age against whom the Sr. Superintendent of Police, Bandipora came to prepare frame and submit a dossier No. Lgl/PSA-29/2022/14463-70 dated 10.05.2022 thereby seeking the District Magistrate Bandipora-respondent No. 2, to subject the petitioner to preventive detention so as to prevent the petitioner from acting in any manner prejudicial to

the security of the State warranting his detention under the Jammu and Kashmir Public Safety Act, 1978.

4. Acting upon the said dossier of the Sr. Superintendent of Police Bandipora, the respondent No. 2-the District Magistrate Bandipora came to act in purported exercise of his powers under clause (a) of Section 8 of the J&K Public Safety Act, 1978 to pass an order No. 14/DMB/PSA of 2022 dated 19.05.2022 thereby holding the petitioner liable for preventive detention to prevent him from acting in any manner prejudicial to the security of the State and to be arrested, detained and lodged in the Central Jail Kot Bhalwal Jammu.

5. This order of detention came to be passed by the respondent No. 2-the District Magistrate Bandipora by framing grounds of detention upon the basis of which the respondent No. 2-the District Magistrate Bandipora came to draw his subjective satisfaction that alleged activity of the petitioner called for his detention.

6. In the grounds of detention as framed by the respondent No. 2-the District Magistrate Bandipora the petitioner is referred to be inclined towards pelting of stones towards the police/law enforcing agency during the period of 2016 for ulterior motive to receive gains of hefty sums from the high profiled secessionist elements in order to create chaotic atmosphere in Bandipora area. The petitioner was attributed to have criminal bent of mind which is quite evident from his conduct over a period of time playing an active/key role along with his associate for instigating the youth and organizing the violent mobs in order to disturb and destabilize the peaceful area of Bandipora town and its adjacent areas. The petitioner is alleged to have developed close contacts and intimacy with organized stone pelters and other like elements in Bandipora town.

7. In order to show case the petitioner in the aforesaid light in the grounds of detention, the respondent No. 2-the District Magistrate Bandipora has drawn reference from:

FIR no. 86 Police Station, Bandipora for alleging commission of offences under section 148/ 149/336/332/357/427 and 152 Rambir Penal Code;

FIR No. 119 of 2016 Police Station Bandipora under sections 148, 149, 336, 332, 353, 427 of Rambir Penal Code.

FIR No. 132 of 2016 Police Station Bandipora under sections 147, 148, 149, 332, 336, 353, of Rambir Penal Code.

FIR No. 113 of 2016 Police Station Bandipora under sections 148, 149, 336, 353, 188, 307 of Rambir Penal Code.

FIR No. 135 of 2016 Police Station Bandipora under sections 147, 148, 149, 332, 336, 353 of Rambir Penal Code.

FIR No. 137 of 2016 Police Station Bandipora under sections 147, 148, 149, 332, 336, 353, 427 of Rambir Penal Code.

FIR No. 139 of 2016 of Police Station Bandipora, under sections 147, 148, 332, 336, 427 of Rambir Penal Code, 13 ULA(P)

8. By reference to all these aforesaid FIRs of 2016, the petitioner lastly is alleged to have been booked under FIR No. 67/2022 under section 13 of Unlawful Activities (Prevention) Act, 1967 and section 4-B Explosive Substance Act registered with the Police Station Bandipora pursuant to an incident of 20.04.2022 when the petitioner upon being intercepted while riding a Scooty JK15-5762 was found to have one grenade allegedly recovered from his Scooty leading to registration of said offences.

9. The petitioner is attributed with bad description about his personality having a fundamentalist ideology, sympathizer of terrorism and providing of logistic support to the militants, working as OGW of Lashkar-e-toiba maintaining close association with local terrorist namely Jameel Sheer Gojari and Hashir Rafiq Parray.

10. The aforesaid preventive detention of the petitioner came to be confirmed by the Government and his representation made against his detention earning him no reprieve in which the petitioner had denied the allegations and his characterization as made in the grounds of detention.

11. Respondents in their reply have stated the confirmation of the detention of the petitioner by virtue of Government order No. Home/PB-V/1310 of 2022 dated 20.06.2022 about the petitioner coming to be detained on 21.05.2022 and subjected to preventive detention for a period of two years which is going to expire by coming month of May 2024. In the reply affidavit it is submitted that in all the FIRs referred in the grounds of detention the petitioner came to be released on bail.

12. In support of the submissions made by learned counsel for the petitioner seeking quashment of detention order of the petitioner, the learned counsel for the petitioner submits that all the FIRs except the last FIR of 2022 in which the petitioner after getting arrested and challaned came to be enlarged on bail subject to the terms and conditions which at no point of time the petitioner ever breached and that is the reason that in none of the case the prosecution never complained that the petitioner is abusing the bail liberty granted in his favour. By reference to the alleged involvement of the petitioner in the last FIR referred in the grounds of detention which being the FIR No. 67/2022 registered with Police Station Bandipora which actually precipitated the preventive detention jurisdiction against the petitioner, the learned counsel for the petitioner refers to the fact that in this FIR Police roped number of persons including the petitioner and one of the said accused is Javid Iqbal Khan against whom the District Magistrate Bandipora came forward with the detention order No. 16/DMB/PSA of 2022 dated 19.05.2022 by proceeding on the same premise as against the petitioner.

13. Said Javid Iqbal Khan, the detinue in detention order No. 16/DMB/PSA of

2022 dated 19.05.2022, came to question his preventive detention in writ petition no. WP (Crl) No. 345/2022 before this court which came to be quashed by virtue of the judgement dated 13.10.2023 and that the fate of the petitioner's preventive detention cannot be different to the one as came to be in favour of Javid Iqbal Khan by reference to his implication in FIR No. 61/2022 which is the case against the petitioner as well.

14. Perusal of the grounds of detention would show that it is only in the year 2016 the petitioner came to be implicated in all the FIRs and consequently challaned but at no point of time the law enforcement agency ever reckoned the state of things attending the petitioner of his involvement in 2016 FIRs to be sufficient enough to prompt his detention order under Public Safety Act 1978 and that is the reason that from 2017 till 2022 the petitioner is attributed with no act of omission or commission to land him in the clutches of law and enforcement agency. Therefore, the submission of learned counsel for the petitioner that the purported premise of 2016 registered FIRs cannot be taken to be have a live nexus against the petitioner warranting his preventive detention except the implication of the petitioner in FIR no. 67/2022.

15. The learned counsel for the petitioner urges this court to consider the legality of the petitioner's detention in the context of implication in the FIR no. 67/2022 and extend parity treatment as given to co-accused Javid Iqbal Khan also detained by reference to said FIR no. 67/2022 the plea of the learned counsel for the petitioner carries weight and this court can very safely say that the implication of the petitioner in the FIRs of 2016 could not have lend a live basis to the respondent No. 2-the District Magistrate Bandipora to subject the petitioner to preventive detention and thereby it is only petitioner's alleged involvement in FIR No. 67/2022 that actually resulted in inviting a dossier against the petitioner from the SSP Bandipora to seek the preventive detention of the petitioner and the District Magistrate Bandipora came forward with detention order No. 14/DMB/PSA of 2022 dated 19.05.2022 on the same date when the detention order No. No. 16/DMB/PSA of 2022 dated 19.05.2022 against Javid Iqbal Khan came to be passed and eventually getting quashed by judgement dated 13.10.2023 of this court.

16. The perusal of the judgment dated 13.10.2023 of this court reveals that it bears the reasoning on the basis of which the detention order of Javid Iqbal Khan has been quashed and same applies with equal persuasion in the case of the petitioner as such, the petitioner's detention is also held to be misconceived and not warranted and deserves quashment.

17. Accordingly this court holds the preventive detention order No. 14/DMB/PSA of 2022 dated 19.05.2022 of the District Magistrate Bandipora read with consequent orders of confirmation passed by the Government UT of Jammu and Kashmir with respect to the petitioner illegal and accordingly directs the release of person of the petitioner from detention and detainment from the Central Jail Kot Bhalwal Jammu or any other jail wherever the petitioner may be lodged

pursuant to the detention order hereby quashed.