
(2021) 07 J&K CK 0026
In the Jammu And Kashmir High Court
Case No : Writ Petition (Crl) No. 196 Of 2020

Umar Yousaf Bhat

APPELLANT

Vs

Government Of J&K And Others

RESPONDENT

Date of Decision : 28-07-2021

Acts Referred:

Jammu And Kashmir Public Safety Act, 1978 — Section 8, 10A
Unlawful Activities (Prevention) Act, 1967 — Section 3(1), 3(3)
Code Of Criminal Procedure, 1973 — Section 107, 151

Citation : (2021) 07 J&K CK 0026

Hon'ble Judges : Sanjeev Kumar, J

Bench : Single Bench

Advocate : Imtiyaz Sofi, Mir Suhail

Final Decision : Allowed

Judgement

Sanjeev Kumar, J

1) Impugned in this petition is order of detention bearing 42/DMP/PSA/ 20 dated 24.11.2020 passed by the District Magistrate, Pulwama (the

Detaining Authority) in exercise of powers conferred under Section 8 of the Public Safety Act (the Act), whereby the petitioner (the

Detenue) has been detained in preventive custody with a view to preventing him from acting in any manner prejudicial to the maintenance of public

order. The detention has been ordered by the Detaining Authority on the basis of the activities of the detenue delineated in the grounds of detention,

served upon the detenue immediately on the execution of the detention order.

2) From a perusal of the grounds of detention, it transpires that pursuant to the dossier of activities of the detenue, placed by the police before the

Detaining Authority, the detenue was placed under preventive detention in terms

of the impugned order of detention. As per the grounds of detention claimed to have been served upon the detainee, the detainee had joined the rank of Jamat-e-Islami, a organization declared unlawful organization by the Ministry of Home Affairs, Govt. of India under Sub-Sections (1) and (3) of Section 3 of the Unlawful Activities (Prevention) Act and subsequently his involvement was also found in an attack on the security forces by a violent mob during encounter between terrorists and the security forces on 06.06.2020 at village Beigpora. The detainee was booked in FIR No.59/2020 and was taken in police custody. He was, however, granted bail by the competent court of jurisdiction and, therefore, released from custody. Subsequently, the detainee was arrested twice by the police in terms of Section 107 read with Section 151 Cr.P.C. for maintaining peace and tranquillity in the area.

3) The detainee has assailed the impugned order of detention on several grounds. However, Mr. Sofi, learned counsel for the detainee has restricted his challenge to the impugned order on the ground that the requisite material, relied upon by the Detaining Authority to derive his satisfaction with regard to the necessity of passing the detention order, was not served upon the detainee and that deprived the detainee of his constitutional right to make effective representation against his detention to the competent authority.

4) The respondents have opposed the writ petition by filing reply affidavit of the Detaining Authority. From a perusal of the detention record produced by the learned counsel for the respondents, it is seen that at the time of execution of the detention order, the detainee was furnished five leaves, detention order and grounds of detention, but copy of FIR and record of the proceedings taken against the detainee under Section 107/151 Cr.P.C. was not served upon the detainee and, therefore, the detainee is right in saying that he was deprived of his constitutional right to make effective representation against his detention. The aforesaid ground of challenge goes to the root of validity of the detention and, therefore, the detention order cannot sustain on any other ground.

5) Reliance of the learned counsel for the respondents on Section 10-A of the Act is misplaced.

6) For the foregoing reasons, I find merit in this petition and the same is, accordingly, allowed. The impugned order of detention is quashed. The

respondents are directed to release the detenue/petitioner from preventive custody forthwith, if not required in any other case.

7) Detention record be returned back to the learned counsel for the respondents.