
(2019) 09 J&K CK 0079

In the Jammu And Kashmir High Court

Case No : Writ Petition (Crl) No. 490 Of 2019, CrIM No. 800 Of 2019

Umer Nawaz Khan

APPELLANT

Vs

State Of Jammu & Kashmir And Others

RESPONDENT

Date of Decision : 18-09-2019

Acts Referred:

Citation : (2019) 09 J&K CK 0079

Hon'ble Judges : Sanjeev Kumar, J

Bench : Single Bench

Advocate : Wajid Haseeb

Final Decision : Dismissed

Judgement

Sanjeev Kumar, J

1. This is a petition filed by the petitioner to challenge the Order of his detention passed by respondent no.2 vide no.DMS/PSA/80/2019 dated 16.08.2019. Petitioner also seeks a direction to respondents not to arrest or detain him pursuant to aforesaid order of detention. The order impugned has been challenged, inter alia, on the ground that Senior Superintendent of Police, Srinagar, produced the record as also dossier and other connected documents before District Magistrate, Srinagar, for putting petitioner under detention, so as to prevent him from indulging in activities prejudicial to maintenance of public order. As is contended, the material was provided to District Magistrate, Srinagar, by Senior Superintendent of Police concerned vide his communication dated 10.08.2019, whereas impugned order of detention has been issued by detaining authority on 16.08.2019. It is pleaded that though impugned detention order has been passed on 16.08.2019, yet no immediate effort was made by respondents to execute the same. The inordinate and unexplained delay in execution is said to have rendered the detention order purposeless and therefore, the detention of the petitioner would be unjustified and unconstitutional inasmuch as delay in execution of impugned detention order throws considerable doubt on the

genuineness of subjective satisfaction of detaining authority or the sponsoring authority as regards necessity of preventive detention of person concerned. Learned counsel for petitioner, therefore, insists that in view of aforesaid delay in execution of the order of detention, it is a fit case where this Court could exercise its powers vested in it and stay the detention of petitioner.

2. I have considered the submissions made by learned counsel for petitioner and perused the record.

3. It is now well settled that judicial review against order of detention before it is actually executed is available, though same is required to be exercised sparingly. In the case of *Deepak Bajaj v. State of Maharashtra and another* (2008)16 SCC 14 and *Additional Secretary to the Government of India and others v. Smt. Alka Subhash Gadia and another* 1992 Supp. (1) SCC 496, the Hon'ble Supreme Court has laid down following parameters for exercise of powers of judicial review at pre-execution stage:

(i) that the order is not passed under the Act under which it is purported to have been passed,

(ii) that it is sought to be executed against a wrong person,

(iii) that it is passed for a wrong purpose,

(iv) that it is passed on vague, extraneous and irrelevant grounds, or

(v) that the authority which passed it had no authority to do so.

4. In the backdrop of aforesaid legal position, when the instant case is examined, this Court does not find any of the aforesaid contingencies existing. It is not the case of petitioner that order has not been passed under J&K Public Safety Act nor is it the case of petitioner that it is being executed against a wrong person. There is nothing on record to show that detention order has been passed for a wrong purpose as the purpose has been clearly shown in the order of detention, i.e. that it is necessary to prevent petitioner from indulging in activities prejudicial to the maintenance of public order. It is also not in dispute that District Magistrate, Srinagar, is a competent authority to pass order of detention under the provisions of J&K Public Safety Act. Apart from that, this Court does not find any glaring irregularity on the face of record which would impel exercise of judicial review against detention order at its pre-execution stage.

5. For all these reasons, no case is made out for indulgence in the impugned order of detention that too in exercise of judicial review, muchless interference at pre-execution stage and as a corollary, writ petition is dismissed with connected CM.