
(2023) 11 J&K CK 0039

In the Jammu And Kashmir High Court

Case No : Habeas Corpus Petition No. 39 Of 2023

Vishal Sharma

APPELLANT

Vs

UT Of Jammu And Kashmir And Others

RESPONDENT

Date of Decision : 20-11-2023

Acts Referred:

Constitution Of India, 1950 — Article 22

Jammu And Kashmir Public Safety Act, 1978 — Section 8, 13

Citation : (2023) 11 J&K CK 0039

Hon'ble Judges : Sanjay Dhar, J

Bench : Single Bench

Advocate : M.A.Goni, S. Tanzeel Illahi, Monika Kohli r, Mohd Irfan Inqlab

Final Decision : Allowed

Judgement

Sanjeev Kumar, J

1 Impugned in this petition is an order of detention passed by the District Magistrate, Reasi ["the Detaining Authority"] bearing No.07/PSA of 2023 18.07.2023 whereby the petitioner ["the detenu"] has been detained under Section 8 of the Jammu and Kashmir Public Safety Act, 1978 ["the Act"] with a view to prevent him from acting in any manner prejudicial to the maintenance of public order.

2 The impugned order is assailed by the detenu on multiple grounds. However, before I advert to the grounds of challenge urged by learned counsel appearing for the detenu to challenge the impugned order of detention, it is necessary to briefly notice the grounds on which the detention of the detenu has been ordered by the Detaining Authority.

3 As per the dossier submitted by the Sr. Superintendent of Police, Reasi to the Detaining Authority, the detenu is alleged to be a habitual criminal involved in many criminal cases registered with Police Station, Mahore and Police Staion, Reasi.

4 Through the medium of dossier, it was also brought to the notice of the Detaining Authority that the detenu has, by his criminal activities, created fear psychosis among the locals of District Reasi and that his activities have the potential of disturbing peace and public order. On the basis of the dossier supplied by the Sr. Superintendent of Police, Reasi, the Detaining Authority vide the impugned order of detention recorded its subjective satisfaction that the activities, the detenu was allegedly involved in, were prejudicial to the maintenance of public order and put the detenu under preventive detention in exercise of powers vested in it under Section 8 of the Act.

5 Feeling aggrieved, the detenu has filed the instant petition seeking a writ of Habeas Corpus to declare his detention as illegal. The impugned order passed by the Detaining Authority is challenged, inter alia, on the following grounds:

(i) That the relevant material was not placed before the Detaining Authority and, therefore, the subjective satisfaction allegedly derived by the Detaining Authority is vitiated;

(ii) That it has not been brought to the notice of the Detaining Authority that in FIR No. 75/2023 dated 29.03.2023 registered with Police Station, Reasi, the detenu stood admitted to bail by the High Court vide order dated 24.04.2023. The Detaining Authority has, thus, shown no awareness about the factum of detenu having been released on anticipatory bail by the High Court. The subjective satisfaction arrived at by the Detaining Authority without taking into consideration the aforesaid aspect is, thus, vitiated and is an outcome of total non-application of mind;

(iii) That in FIR No. 147/2023 dated 12.07.2023 registered with Police Station Reasi, the detenu was admitted to bail by the Court of learned Chief Judicial Magistrate, Reasi vide his order dated 17.07.2023, but the Detaining Authority has not shown any awareness about the grant of bail;

(iv) That in FIR No. 02/2012 dated 06.01.2012 registered against the detenu which resulted into presentation of challan in the Court of learned Principal Sessions Judge, Reasi, the detenu has been acquitted. This fact has been deliberately withheld by the Sr. Superintendent of Police while supplying dossier to the Detaining Authority. The subjective satisfaction arrived at by the Detaining Authority without taking note of the aforesaid aspect vitiates the detention order; and,

(v) That neither the detenu was supplied with the material relied upon in the impugned order of detention, nor was he provided an adequate opportunity to make representation against his detention.

6 Per contra, the Detaining Authority in her counter affidavit has submitted that the impugned order of detention was passed against the detenu only after being fully satisfied that the activities, the detenu was indulging in, over a period of time had the potential of disturbing peace and public order. It is submitted that

the detenu is a incorrigible criminal and has wreaked reign of terror in the District Reasi and despite there being several criminal cases registered against him, there is no let up in his criminal activities. Regarding adherence to the procedural requirements, it is submitted by the Detaining Authority that the impugned order has been issued in compliance with the provisions of the Act and having due regard to the constitutional provisions in relation to liberty of a citizen.

7 Having heard learned counsel for the parties and perused the material on record, I am of the considered opinion that the impugned order of detention is not sustainable in law for more than one reason.

8 As is apparent from reading of a dossier supplied by the Sr. Superintendent of Police, Reasi to the Detaining Authority, the fact that the detenu had been released on anticipatory bail in FIR No. 75/2023 has not been disclosed. Similarly, in respect of FIR No. 147/2023 registered in Police Station Reasi, there is no whisper in the dossier with regard to the detenu having been enlarged on bail by the Court of learned CJM, Reasi. In view of the incomplete information supplied by the Sr. Superintendent of Police, Reasi, the Detaining Authority has been deprived of requisite information required for deriving subjective satisfaction with regard to the necessity of passing the impugned order. There is no reference in the grounds of detention to the bail granted to the detenu in FIR No. 75/2023 or in FIR No. 147/2023

9 It is, thus, evident that the subjective satisfaction recorded by the Detaining Authority for placing the detenu under preventive detention is vitiated for want of relevant material. The legal position in this regard is well settled. A three-Judge Bench of the Hon'ble Supreme Court in the case of *Rekha vs. State of Tamil Nadu*, (2011) 5 SCC 244 has held thus:

"In this connection, it may be noted that there is nothing on the record to indicate whether the detaining authority was aware of the fact that the bail application of the accused was pending on the date when the detention order was passed on 08.04.2010. On the other hand, in para (4) of the grounds of detention, it is mentioned that "Thiru. Ramakrishnan is in remand in crime No. 132/2010 and he has not moved any bail application so far". Thus, the detaining authority was not even aware whether a bail application of the accused was pending when he passed the detention order, rather the detaining authority passed the detention order under the impression that no bail application of the accused was pending but in similar cases bail had been granted by the courts. We have already stated above that no details of the alleged similar cases has been given. Hence, the detention order in question cannot be sustained".

10 The observations made by the Supreme Court in *Vijay Narain Singh vs. State of Bihar and Others*, (1984) 3 SCC 14, are relevant for our purpose and are, thus, set out below:

"When a person is enlarged on bail by a competent criminal court, great caution should be exercised in scrutinizing the validity of an order of preventive detention

which is based on the very same charge which is to be tried by the criminal court."

11 This position of law is reiterated by the Supreme Court in the case of Rushikesh Tanaji Bhoite vs. State of Maharashtra and others, (2012) 2 SCC 73, paragraph (10) whereof reads thus:

" In the present case, since the order of bail dated August 15, 2010 was neither placed before the detaining authority at the time of passing the order of detention nor the detaining authority was aware of the order of bail, in our view, the detention order is rendered invalid. We cannot attempt to assess in what manner and to what extent consideration of the order granting bail to the detenu would have effected the satisfaction of the detaining authority but suffice it to say that non- placing and non-consideration of the material as vital as the bail order has vitiated the subjective decision of the detaining authority".

12 It is, thus, trite law that if the detenu is released on bail and was out of jail when the order of his detention was passed, then such order of bail must be placed before the Detaining Authority to enable it to arrive at proper subjective satisfaction. I am aware that the satisfaction to be derived by the Detaining Authority for placing an individual under preventive detention is subjective and the sufficiency of material considered by it cannot be made subject matter of judicial review. However, it cannot be denied that if the relevant material is not placed before the Detaining Authority, the subjective satisfaction derived by the Detaining Authority would be vitiated, in that, nobody can guess as to whether in the presence of availability of all requisite material the Detaining Authority may not have passed the detention order.

13 With a view to enable the Detaining Authority to arrive at its subjective satisfaction, it is necessary for the authorities demanding the detention to produce all relevant material before the Detaining Authority. On this ground alone, the order impugned of detention is vitiated and cannot sustain in law.

14 The other argument of Mr. Goni, learned Senior Counsel appearing for the detenu is that the representation made by the detenu has not been considered by the Government and, therefore, a vital right of making representation has been violated. The detneu has not only specifically pleaded that a detailed representation was made by him to the Additional Chief Secretary, Home Department in terms of Section 13 of the Act, but a copy of the representation has been placed on record as Annxure-X appended with the writ petition. The respondents in their counter affidavit have not denied the receipt of representation, but there is nothing on record to show that the representation made by the detenu was ever considered by the Competent Authority. The right to make representation against the detention is a constitutional right guaranteed to a person detained under preventive detention by Article 22 of the Constitution of India and any infraction of such right would vitiate the order of detention.

15 Mr. Goni learned Senior Counsel has urged other grounds of challenge as well.

However, in view of the fact that the writ petition is liable to be allowed on the aforesaid two grounds, as such, this Court does not find it necessary to go into those grounds of challenge urged on behalf of the detenu.

16 For the foregoing reasons, I find merit in this petition and the same is, accordingly, allowed. Resultantly, the impugned detention order is quashed and respondents are directed to release the detenu from the preventive detention forthwith, provided he is not required in any other case.

Detention record be returned to the State Counsel.