

(2021) 01 J&K CK 0024

In the Jammu And Kashmir High Court

Case No : Writ Petition (Crl) No. 76 Of 2020, Criminal Miscellaneous No. 328 Of 2020

Waqar Younis Sheikh

APPELLANT

Vs

Union Territory Of J&K And Another

RESPONDENT

Date of Decision : 28-01-2021

Acts Referred:

Citation : (2021) 01 J&K CK 0024

Hon'ble Judges : Puneet Gupta, J

Bench : Single Bench

Advocate : Wajid M. Haseeb, Mir Suhail

Final Decision : Disposed Of

Judgement

1. Petitioner-Waqar Younis Sheikh @ Younis Molvi S/o Mohammad Shafi Sheikh through his father has challenged detention order No.

08/DMP/PSA/20 dated 20.06.2020, passed by respondent No.2, on the ground that there was no justification to pass detention order against the said

Waqar Younis Sheikh; that the two FIRs mentioned in the grounds of detention do not reflect the reality against the petitioner; that the grounds of

detention are vague; that the detainee was granted bail in FIR No. 132/2020 but there is no mention of this fact in the detention order; that the

detaining authority has not applied mind of his own but relied upon the police dossier only; that the relevant material has not been furnished to the

petitioner thereby effecting his right to have effective representation against his detention order; that the order of detention was passed in English and

the translated version of the order was not made available in Kashmiri/Urdu language to the detainee who was having knowledge of the above

languages only.

2. The reply affidavit has been filed on behalf of the respondent No.2. The respondent has justified the order of detention by submitting that the order has been passed as per the provisions of the Public Safety Act after fulfilling all the statutory requirements. The respondent has denied the grounds on which the detention order has been challenged as it is submitted that the contents of warrants were read over and explained to the detainee who also put his signatures on the same and was also informed of his right to make representation against his detention order. The order has been passed with complete independent application of mind by the authority.

3. Heard learned counsel for the parties and perused the digital record provided to the Court.

4. Learned counsel for the petitioner has reiterated the submissions made in the petition.

5. Learned counsel for the respondents has referred to the record in order to impress upon the court that the order of detention has been passed as per the provisions of the Public Safety Act.

6. The preventive detention and prosecution have different application. The difference between the preventive detention and prosecution is aptly described in the following observations of the Apex Court in Haradhan Saha's case reported in (1975) 3 SCC 198:

32. The power of preventive detention is qualitatively different from punitive detention. The power of preventive detention is a precautionary power exercised in reasonable anticipation. It may or may not relate to an offence. It is not a parallel proceeding. It does not overlap with prosecution even if it relies on certain facts for which prosecution may be launched or may have been launched. An order of preventive detention, may be made before or during prosecution. An order of preventive detention may be made with or without prosecution and in anticipation or after discharge or even acquittal. The pendency of prosecution is no bar to an order of preventive detention. An order of preventive detention is also not a bar to prosecution.

33. Article 14 is inapplicable because preventive detention and prosecution are not synonymous. The purposes are different. The authorities are different. The nature of proceedings is different. In a prosecution an accused is sought to be punished for a past act. In preventive detention, the past

act is merely the material for inference about the future course of probable conduct on the part of the detenu.â??

7. The order of detention is approved by the Government Order No. Home/PB-V/1303 of 2020 dated 24.06.2020. The Advisory Board constituted

under the Public Safety Act has approved the detention order vide dated 20.07.2020. Consequently, the Government vide order No. Home/PB-V/1504

of 2020 dated 06.08.2020 confirmed the order of detention of 20.06.2020 for a period of three months in the first instance. This period has been

further extended by the Government from time to time. The detainee has been lodged in Central Jail, Jammu, Kot Bhalwal.

8. Perusal of the record reveals that the order of detention of 20.06.2020 has been executed on 24.06.2020 in Central Jail, Srinagar. The execution of

detention order reveals the signature of the detainee-Waqar Younis. The receipt of detention papers also records the signature of detainee. The Court

finds no reason not to believe the contents of aforesaid documents.

9. The issue which is required to be considered in the first instance is if the detention order and the grounds of detention comply with the provisions of

the Public Safety Act. The record reveals that the dossier was prepared by Superintendent of Police, District Pulwama and the same was made

available to respondent No.2 with the finding that the acts of the petitioner are highly prejudicial to the maintenance of public order and peace and the

detention of the petitioner under the provisions of the Public Safety Act, 1978 has become imperative. The respondent No.2 while passing the order of

detention has separately recorded the grounds of detention and thus form part of the detention order itself. The respondent has indeed relied upon the

dossier and agreed with what has been stated in the dossier. As per the grounds of detention the petitioner is instigating the youth of the area to carry

out the stone pelting and other like activities to disturb the peace and tranquility in the area. The normal laws are not sufficient to deter him from

indulging in such activities. Thus, the order is passed to prevent the petitioner from indulging in the activities which are prejudicial to the maintenance

of public order. FIR No. 119/2020 and FIR No. 132/2020 of Police Station, Pulwama have been registered against the petitioner for various offences.

Both the FIRs stand registered against the detainee on more or less for the same offences. The FIRs are the basic reason for passing of the detention

order against the petitioner. Perusal of the file further reveals that the petitioner has been provided five leaves while executing the detention order and they include contents of the PSA warrant, notice (one leaf) and grounds of detention consisting of three leaves. It is apparent from the record that the detaining authority has, as stated above, relied upon mainly on the dossier provided by the Superintendent of Police, District Pulwama. The dossier contains copies of FIR and the statement of the witnesses recorded in FIR No.132/2020. Undisputedly, the petitioner has not been provided any material supporting the detention order except for three leaves. The Court finds that no reason has been given in the reply nor the record provides any clue for not providing the material to the petitioner while executing the warrant of detention. Merely providing the grounds of detention without providing the other material which formed the basis for the detention order, without doubt, is in violation of the statutory requirement more so when the respondents have not been able to explain the omission of not providing the necessary material to the petitioner. Failing to supply the all important material which may be in the form of FIR or the statement of the witnesses or any other document prevents the petitioner to have knowledge of the relevant material which formed basis of the detention order. Not only that, it also prevented the petitioner to make effective and purposeful representation before the Advisory Board constituted under the Public Safety Act or the government. The courts time and again have deprecated the execution of the detention order in such a manner. There can be no escape for the detaining authority from providing the material to the detainee. The non-compliance of the statutory requirement itself makes the detention order untenable in law. The detention order is required to be quashed on the above score alone.

10. The Court having held that the statutory requirement of providing relevant material to the detainee having been not complied with and that the order of detention is required to be quashed on that ground alone, the Court is of the view that there is no need to go into other aspects of the matter.

11. In the light of the above, the detention order passed by respondent No.2 is liable to be quashed. Accordingly, the detention order in question is quashed. The detainee-Waqar Younis Sheikh be released forthwith if otherwise not required in any other case.