

(2023) 03 J&K CK 0025

In the Jammu And Kashmir High Court

Case No : Writ Petition (Criminal) No. 159 Of 2022

Waseem Ahmad Pandith

APPELLANT

Vs

Union Territory Of J&K And Ors

RESPONDENT

Date of Decision : 06-03-2023

Acts Referred:

Constitution Of India, 1950 — Article 22(5)
Code Of Criminal Procedure, 1973 — Section 161
Jammu And Kashmir Public Safety. Act, 1978 — Section 13

Citation : (2023) 03 J&K CK 0025

Hon'ble Judges : Vinod Chatterji Koul, J

Bench : Single Bench

Advocate : Malik Mushtaq, Furqan Yaqub

Final Decision : Disposed Of

Judgement

Vinod Chatterji Koul, J

1. Through the medium of this writ petition, detention order No. 08/DMP/PSA/2022 dated 07.04.2022, passed by District Magistrate, Pulwama whereby detenu, namely, Waseem Ahmad Pandith S/o Gh. Mohammad Pandith R/o Karimabad Tehsil and District Pulwama has been placed under preventive detention with a view to prevent him from acting in any manner prejudicial to the to the Security of State, is sought to be quashed and the detenu set at liberty on the grounds made mention of therein.

2. The main grounds on which the detention is sought to be quashed are that the grounds of detention are vague, indefinite, cryptic inasmuch as the detaining authority has not attributed any specific allegation against the detenu; that the detaining authority has not furnished the material including dossier, relied upon by it, to detenu to enable him to make an effective representation by giving his version of facts attributed to him and make an attempt to dispel the apprehensions nurtured by detaining authority concerning involvement of detenu in alleged activities;

3. It is also averred that there is total non application of mind on the part of detaining authority while passing the order of detention as the detenu at the time of passing of order of detention was already in custody in connection with case FIR No.77 of 2022 and there were no such compelling reason to justify the detention of the detenu as there was no likelihood of the detenu to be released in near future on bail; that the grounds of detention are replica of dossier and unequivocally reflects and shows non-application of mind on the part of detaining authority and as a consequence of which impugned order of detention is liable to be quashed.

4. Respondents have filed reply affidavit, insisting therein that the activities indulged in by detenu are highly prejudicial to the security of the State and, therefore, his remaining at large is a threat to the security of the State. The activities narrated in the grounds of detention have been reiterated in the reply affidavit filed by respondents. The factual averments that detenu was not supplied with relevant material relied upon in the grounds of detention, have been refuted. It is insisted that all the relevant material, which has been relied upon by the detaining authority, was provided to the detenu at the time of execution of warrant.

5. I have heard learned counsel for the parties and considered the matter. I have gone through the detention record produced by counsel for respondents.

6. Taking into account the rival contentions of parties and submissions made by learned counsel for parties, it would be relevant to go through the detention record produced by counsel for respondents. The detention record, inter alia, contains "Execution Report" and "Receipt of detention Papers". It would be advantageous to reproduce relevant portion of "Execution Report" hereunder:

"The detention order (01 leaf), Notice of detention (01 leaf) grounds of detention (02 leaves), Dossier of detention (Nil) Copies of FIR, Statements of witnesses and other related relevant documents (Nil), (Total 04 Leaves) have been handed over to the above said detenu....."

7. It would also be appropriate to reproduce relevant portion of "Receipt of Grounds of Detention" herein:

"Received copies of detention order (01 leaf), Notice of detention (01 leaf) grounds of detention (02 leaves) Dossier of detention (Nil) Copies of FIR, Statements of witnesses and other related relevant documents (Nil) Total 04 leaves through executing officer"

Thus, it is unambiguously clear and evident from perusal of Execution Report and Receipt of grounds of detention that only four leaves have been given to detenu.

8. Perusal of impugned detention order reveals that on the basis of dossier placed before detaining authority by Senior Superintendent of Police, Pulwama vide no. CS/PSA/DPO/22/29-32 dated 05.04.2022, detaining authority was satisfied that there are sufficient grounds to prevent detenu from acting in any

manner prejudicial to the security of State, it was necessary to detain him under necessary provisions of law. So, it is on the basis of dossier and other connected material/documents that impugned detention order has been passed by detaining authority. The grounds of detention, when looked into, give reference to case FIR No. 77/2022 to have been registered against detenu at Police Station Pulwama. Involvement of detenu in the aforesaid case appears to have weighed with detaining authority, while making detention order. The detention record, as noted above, does not indicate that copies of aforesaid First Information Report, Statements recorded under Section 161 Cr. PC and other material collected in connection with investigation of aforesaid case was ever supplied to the detenu, on the basis whereof impugned detention order has been passed. The aforesaid material, thus, assumes importance in the facts and circumstances of the case.

9. It needs no emphasis, that detenu cannot be expected to make a meaningful exercise of his Constitutional and Statutory rights guaranteed under Article 22(5) of the Constitution of India and Section 13 of the J&K Public Safety Act, 1978, unless and until the material on which detention order is based, is supplied to him. It is only after detenu has all the said material available that he can make an effort to convince detaining authority and thereafter the Government that their apprehensions vis-à-vis his activities are baseless and misplaced. If detenu is not supplied the material, on which the detention order is based, he will not be in a position to make an effective representation against his detention order. The failure on the part of the detaining authority to supply the material, relied at the time of making the detention order to the detenu, renders the detention order illegal and unsustainable. In this regard I may draw support from the law laid down in the cases of Thahira Haris Etc. Etc. v. Government of Karnataka, AIR 2009 SC 2184; Union of India v. Ranu Bhandari, 2008, Cr. L. J. 4567; Dhannajoy Dass v. District Magistrate, AIR, 1982 SC 1315; Sofia Gulam Mohd Bham v. State of Maharashtra and others AIR 1999 SC 3051; and Syed Aasiya Indrabi v. State of J&K & ors, 2009 (I) S.L.J 219.

10. The Supreme Court in Abdul Latief Abdul Wahab Sheikh v. B.K. Jha, 1987 (2) SCC 22 has held that it is only the procedural requirements, which are the only safeguards available to the detenu, that is to be followed and complied with as the Court is not expected to go behind the subjective satisfaction of the detaining authority. In the present case, the procedural requirements, as discussed above, have not been followed and complied by the respondents in letter and spirit and resultantly, the impugned detention needs to be quashed.

11. It is pertinent to mention here that perusal of grounds of detention reveals that the same are replica of dossier with interplay of some words here and there. This, thus, portrays non-application of mind and in the process of deriving of subjective satisfaction, has become causality. While formulating grounds of detention, detaining authority has to apply its own mind. It cannot simply reiterate whatever is written in the dossier. Here it will be apt to notice the observations of the Supreme Court in the case of "Jai Singh and ors vs. State of

J&K" (AIR 1985 SC 764), which are reproduced hereunder:

"First taking up the case of Jai Singh, the first of the petitioners before us, a perusal of the grounds of detention shows that it is a verbatim reproduction of the dossier submitted by the Senior Superintendent of Police, Udhampur, to the District Magistrate requesting that a detention order may kindly be issued. At the top of the dossier, the name is mentioned as Sardar Jai Singh, father's name is mentioned as Sardar Ram Singh and the address is given as village Bharakh, Tehsil Reasi. Thereafter it is recited "The subject is an important member of"

Thereafter follow various allegations against Jai Singh, paragraph by paragraph. In the grounds of detention, all that the District Magistrate has done is to change the first three words "the subject is" into "you Jai Singh, S/o Ram Singh, resident of village Bharakh, Tehsil Reasi". Thereafter word for word the police dossier is repeated and the word "he" wherever it occurs referring to Jai Singh in the dossier is changed into "you" in the grounds of detention. We are afraid it is difficult to find proof of non-application of mind. The liberty of a subject is a serious matter and is not to be trifled with in this casual, indifferent and routine manner."

12. From perusal of above quoted observations of the Supreme Court, it is crystal clear that grounds of detention and dossier, if in similar language, go on to show that there has been non-application of mind on the part of detaining authority. As already noted, in the instant case, it is clear from the record that the dossier and the grounds of detention contain almost similar wording which shows that there has been non-application of mind on the part of the detaining authority. The impugned order of detention is, therefore, unsustainable in law on this ground alone.

13. Based on the above discussion, the petition is disposed of and Detention Order No. 08/DMP/PSA/2022 dated 07.04.2022, issued by the District Magistrate, Pulwama against the detenu is quashed. As a corollary, respondents are directed to set the detenu at liberty forthwith provided he is not required in any other case. Disposed of.

14. Detention record be returned to counsel for respondents.