
(2019) 07 J&K CK 0048

In the Jammu And Kashmir High Court

Case No : Habeas Corpus Petition (HCP) No. 93 Of 2019, Writ Petition (Cr) No. 2298 Of 2019

Waseem Raja

APPELLANT

Vs

State Of Jammu & Kashmir And & Ors

RESPONDENT

Date of Decision : 22-07-2019

Acts Referred:

Jammu And Kashmir Public Safety Act, 1978 — Section 15
Constitution Of India, 1950 — Article 22(3)

Citation : (2019) 07 J&K CK 0048

Hon'ble Judges : Ali Mohammad Magrey, J

Bench : Single Bench

Advocate : Shafaqat, Asif Maqbool

Final Decision : Dismissed

Judgement

Ali Mohammad Magrey, J

1. Impugned in this Habeas Corpus petition with a prayer for quashment thereof is the detention order no. 159/DMS/PSA/2019 dated 26.12.2019, purporting to have been passed by District Magistrate, Shopian, whereunder detenu namely Waseem Raja s/o Abdul Rehman Tantray R/o Haddipora, Shopian, District Shopian, is under detention.

2. The detenu, through his brother, challenges the aforesaid detention order through the medium of aforesaid petition, inter alia, on the grounds that the order of detention suffers from non-application of mind;

"a) that no compelling reason or circumstance was disclosed in the order or grounds of detention to take the detenu in preventive detention, moreso in view of the fact that as on the date of passing of the aforesaid order of detention, the detenu was already in custody under FIR no. 30/2018, even after granting the bail by the competent court of jurisdiction; what compelled the detaining authority to frame other FIRs. Such as FIR no. 238/2018, FIR No. 281/2018., FIR

no. 318/2018, FIR no.366/2018, FIR no. 378/2018.

b) that there is total non application of mind while passing the detention order without reflecting any plausible ground.

c) that the detenu has not been provided the material forming basis of the detention order, to make an effective representation against his detention order;

d) that the detaining authority has not prepared the grounds itself, which is a pre-requisite for him before passing any detention order."

e) that the detaining authority has not spelt out as to what were the "other connected documents".

f) that while passing the order of detention against the detenu, the respondent no.2 has violated all the procedural safeguards enshrined in Art. 22 (5) of the Constitution of India."

g) that the allegations made in the grounds of detention are vague, non-existent and no prudent man can make a representation against such allegations and passing of detention order on such grounds is unjustified and unreasonable."

3. Notice was issued to respondents. They appeared through their learned counsel and filed counter affidavit wherein they submitted that the detention order is well founded in fact and seeks dismissal of the Habeas Corpus petition.

4. The learned counsel for the petitioner has raised primarily four issues before the Court questioning the validity of the detention. The first point taken by the learned counsel for the petitioner is that the detention order was passed while the detenu was already in custody in respect of the criminal case under FIR No.30/2018. In these circumstances, it was submitted by the learned counsel for the petitioner, the detaining authority ought to have satisfied himself with the fact that there was imminent likelihood of release of the detenu in that case and that it was necessary to detain the detenu in order to prevent him from indulging in prejudicial activities. According to the learned counsel for the petitioner-detenu, there is no such satisfaction recorded in the grounds of detention. He placed reliance on the decision of the Supreme Court in the case titled, "Anant v. State of Maharashtra reported as AIR 1987 Supreme Court, 137; Surya Prakash Sharma v. State of U.P. and others: 2017 (II) SLJ 650; AIR 1999 Supreme Court 3051; 1994 SCC (Cri) 1691; 2007 (I) SLJ 136, to submit that since the said satisfaction was not recorded, the detention order was vitiated.

5. The second point taken by the learned counsel for the petitioner was that non-supply of relevant material/ documents also vitiated the detention order. In this context, it was the case of the petitioner- detenu that no documents at all were supplied to the petitioner-detenu. The non-supply of relevant documents seriously undermines the capacity of a detenu to make an effective representation against the detention order and that itself would be a ground to declare the detention void.

6. The third point raised by the learned counsel for the petitioner was based on non-application of mind of the detaining authority with reference to having mentioning in the order of detention and grounds of detention that the activities of the detenu are prejudicial to the security of the State, while as in the counter affidavit, it is mentioned that the activities of the detenu are prejudicial to the security and sovereignty of the State.

7. The fourth point raised by the learned counsel for the petitioner-detenu was based on vagueness in grounds of detention.

8. The learned counsel for petitioner (detenu) further submits that the detenu has not been provided the material referred to in the grounds of detention resultantly the right of making effective representation against the impugned order of detention, as enshrined under Article 22 (3) of the Constitution, has been violated.

9. On the other hand, Mr. Asif Maqboo, learned GA, defended the order of detention, and he responded to each of the points. With regard to the first point he submitted that there is a mention in the grounds of detention about the arrest of the detenu with reference to the FIR No.30/2018. Therefore, according to him, the detaining authority was aware of the fact that the detenu was already in custody when the detention order was passed. He, therefore, submitted that the point raised by the learned counsel for the petitioner on this score was untenable.

10. With regard to the plea of non-supply of material/ documents, Mr. Asif Maqbool, learned GA, placed before me the record pertaining to the detention. On going through the same, I find that there is a signed document said to have been signed by the detenu, Waseem Raja, in English. The said document is titled "Receipt of Grounds of Detention".

The text of the said document is set out herein below:

"RECEIPT OF GROUNDS OF DETENTION

Received the detention order (01) leaf, Notice of detention to the detenu(01 leaf), Grounds grounds of detention (05 leaves), copies of FIR (06 leaves) Total 13 leaves) through executing officer SI Mohd Yousuf No. 236-A of P/S Zainpora at Central Jail Jammu Kot Balwal today on 08.03.2019, by reading over in English language and explained to me in Kashmiri language which I understood fully. I have been also informed that I can make representation to the Government against this detention order if I so desire.

Handed over by
Attested

Taken over by

Sd:-

Sd:-

Sd:-

S.I Mohd Yousuf

Waseem Raja

No. 236-A

s/o
Rehman Tantray

Abdul

PS Zainpora

R/o
Habdipora Shopian"

11. Based upon the said receipt, Mr. Asif Maqbool, learned GA submits that the grounds of detention had been supplied along with other relevant documents and, therefore, the petitioner-detenu cannot make any grievance on this ground.

12. With regard to the non-application of mind, detaining authority having mentioned the reason for detaining the detenu activities are prejudicial to the security of the State and in the grounds of detention as security and sovereignty of the State. It is submitted that there is no non-application of mind, the security of the State or sovereignty of the State is almost the same. With regard to plea of vagueness of the grounds is concerned, Mr. Asif Maqbool, learned GA submits that the grounds are clear and without any ambiguity.

13. Mr. Asif Maqbool, learned GA, submits that insufficiency of supply of material shall not form a ground for vitiating the detention of the detenu. He further submits that the detenu was required to file representation on the material whatever supplied and could have projected the grounds of non-supply of the material before the detaining authority, which he has failed, therefore, non-supply of material vitiates the detention, has no substance. He further averred that there is no non-application of mind or vagueness in grounds. He has referred to and relied upon the Judgment reported as AIR 2001 Supreme Court 301 titled R. Keshava Vs. M. B. Prakash and Ors.

14. Mr. Asif Maqbool, GA further, submits that the impugned order of detention is well founded and there is nothing bad about it. He submits that the detenu has been provided the material relied upon by the detaining authority while detaining him. He further submits that the detenu has also been informed about his right of making representation against his detention. He submitted that the detaining authority has fully applied its mind while issuing the detention order and there is nothing on record to controvert it. Learned State Counsel referred to and relied upon the law laid down in 1981 (4) SCC 216; AIR (SC) 1975 1143; 2002 (6) SCC 735 ; AIR 2000 SC 301.

15. Heard learned counsel for the parties. Perused the record and considered the

matter. Photo copy of detention record has been produced by the learned counsel for respondents.

16. Perusal of the records would reveal that the detenu has been furnished the grounds of detention along with the requisite material. He has also been informed about his right of making representation against his detention, but the detenu has chosen not to make the representation, therefore, the fault, if any, is attributable to the detenu and not to the detaining authority. Thus, the ground raised vis-à-vis non-furnishing of material to the detenu is rejected.

17. The perusal of the record would further reveal that the grounds of detention have been explained to the detenu in the language he understands and the copy has been handed over to him along with the records and the detenu has been informed about his right of making representation against his detention. This would mean that the requirement of Section 15 of the Public Safety Act has been fulfilled.

18. The next contention of the learned counsel for petitioner that the impugned order is an outcome of non-application of mind is also belied by the records produced by the learned State Counsel. The detailed grounds of detention and the records referred to by the detaining authority were sufficient to derive satisfaction as regards the detention of detenu under the provisions of the Act. Thus the order does not appear to be suffering from non-application of mind.

19. As per the settled position of law if a detention order is issued on more than one ground independent of each other, the detention order will survive even if one of the grounds is found to be unfound or legally unsustainable. In the present case the detention order is issued on more than one ground independent of each other, therefore, the detention order does not get vitiated even if one of the grounds taken in support of the petition is turns affirmative. My this view is fortified by a law laid down by the Supreme Court in case titled "Gautam Jain v. Union of India and anr.", reported as 2017 (1) Jammu Kashmir Law Times, Vol. 1 (SC) p. 1.

20. The next ground taken by the detenu that the detaining authority did not record as to under which compelling reasons the detenu is required to be kept in custody under preventive laws when he was already in jail and was not released even granted bail.

21. Since the court has already held that the detention survives even if one of the grounds taken in support of the petition remains unexplained or proves to be bad in law, therefore, the detention order can be maintained in absence of any explanation on this count by the respondents.

22. In view of the above fact situation and having regard to the law laid down by the Hon'ble Supreme Court, this petition fails and is dismissed as such. The impugned detention order challenged in this petition, accordingly, sustains and is maintained. Photo copy of record is returned to the learned State Counsel in the

open court.