

(2022) 08 J&K CK 0041

In the Jammu And Kashmir High Court

Case No : Writ Petition (Criminal) No. 88 Of 2021

Yameen Altaf Dar

APPELLANT

Vs

Ut Of J&K & Ors

RESPONDENT

Date of Decision : 24-08-2022

Acts Referred:

Constitution Of India, 1950 — Article 22(5)

Citation : (2022) 08 J&K CK 0041

Hon'ble Judges : Sanjay Dhar, J

Bench : Single Bench

Advocate : G. N. Shaheen, Asif, Asifa Padroo

Final Decision : Allowed

Judgement

Sanjay Dhar, J

1) By the instant petition, quashment of order No.2/DMK/PSA/2021 dated 19.04.2021, issued by District Magistrate, Kulgam (for brevity "Detaining Authority") is sought. In terms of the aforesaid order, Yameen Altaf Dar son of Mohd. Altaf Dar resident of Redwani Bala Qaimoh District Kulgam (for short "detenu") has been placed under preventive detention and lodged in Kotbhalwal Jail, Jammu.

2) The petitioner has contended that the Detaining Authority has passed the impugned detention order mechanically without application of mind, inasmuch as the procedural safeguards have not been complied with in the instant case. It has been further urged that the material which formed basis of the grounds of detention and the consequent order of detention has not been provided to the detenu and that the grounds of detention are vague.

3) The respondents, in their counter affidavit, have disputed the averments made in the petition and insisted that the activities of detenu are highly prejudicial to security, sovereignty and integrity of the UT. It is pleaded that the detention order and grounds of detention were handed over to the detenu and same were

read over and explained to him. That the grounds urged by the petitioner are legally misconceived, factually untenable and without any merit and that all the procedures were followed strictly while passing the impugned detention order.

4) Despite several opportunities, the respondents have not produced the detention records in order to buttress the contentions raised in the counter affidavit.

5) I have heard learned counsel for parties and perused the material on record.

6) Learned counsel for the petitioner, while seeking quashment of the impugned order, projected various grounds but his main thrust during the course of arguments was on the following grounds:

(I) That the whole of the material, on the basis of which the grounds of detention have been formulated, has not been supplied to the detainee.

(II) That the impugned order of detention is based upon stale incidents having no proximate link to the activities alleged to be prejudicial to the maintenance of public order.

7) The first ground projected by the learned counsel for the petitioner that the detainee has been disabled from making an effective representation against the order of detention as whole of the material, which formed the basis of the grounds of detention and the consequent order of detention, has not been furnished to him, appears to have substance. The respondents have not brought anything on record to negate the submission that whole of the material has not been furnished to the detainee. Thus, contention of the petitioner that whole of the material relied upon by the detaining authority, while framing the grounds of detention has not been supplied to him, appears to be well-founded.

8) In the cases of preventive detention, a detainee has the right under Article 22(5) of the Constitution to be furnished with particulars of the grounds of his detention. The Supreme Court has in *Ram Krishan Bhardwaj v. State of Delhi*, AIR 1953 SC 318, while interpreting Article 22(5) of the Constitution, observed that furnishing of grounds of detention means material sufficient to enable the petitioner to make an effective representation. In the instant case, the respondents have failed to produce the detention record or any other document to show that the relevant material has been furnished to the detainee. Thus, his constitutional and statutory right to file a representation against the order of detention has been violated in the instant case, thereby rendering the impugned detention order unsustainable in law.

9) It has been further contended by learned counsel for the petitioner that the impugned order of detention has been passed on the basis of stale incidents having no proximate link with the activities alleged to be prejudicial to the security of the state.

10) A perusal of the grounds of detention reveals that the incidents referred

therein pertain to the years 2016, 2018 and 2019, that is more than three to six years prior to the passing of impugned order of detention. There is no reference to any recent incident involving the petitioner in the grounds of detention. Thus, it is clear that the order of detention has been based on past and stale incidents.

11) The Supreme Court in the case of *Sama Aruna v. State of Telengana and & anr*, (2018) 12 SCC 150, while holding that the incidents which are said to have taken place long back, cannot form basis for being satisfied that the detenue is going to engage in similar activities, observed as under:

“17. We are, therefore, satisfied that the aforesaid detention order was passed on grounds which are stale and which could not have been considered as relevant for arriving at the subjective satisfaction that the detenu must be detained. The detention order must be based on a reasonable prognosis of the future behavior of a person based on his past conduct in light of the surrounding circumstances. The live and proximate link that must exist between the past conduct of a person and the imperative need to detain him must be taken to have been snapped in this case. A detention order which is founded on stale incidents, must be regarded as an order of punishment for a crime, passed without a trial, though purporting to be an order of preventive detention. The essential concept of preventive detention is that the detention of a person is not to punish him for something he has done but to prevent him from doing it.”

From the aforesaid enunciation of the law on the subject, it is clear that there has to be a live and proximate link between the past conduct of the detenue and the activities alleged to be prejudicial to the maintenance of security of the state. In the instant case, the said link is completely missing as the time between the order of detention and the incidents referred to in the grounds of detention is far too large to presume such a link. The impugned order of detention, therefore, cannot be sustained.

12) Viewed thus, the petition is allowed and the impugned order of detention is quashed. The detenue is directed to be released from the preventive custody forthwith provided he is not required in connection with any other case.