

(2021) 12 J&K CK 0067

In the Jammu And Kashmir High Court

Case No : Writ Petition (Criminal) No. 256 Of 2021, Criminal Miscellaneous Cases No. 1288 Of 2018

Yasir Ahmad Rah

APPELLANT

Vs

Union Territory Of J&K And Others

RESPONDENT

Date of Decision : 29-12-2021

Acts Referred:

Constitution Of India, 1950 — Article 22(5)

Citation : (2021) 12 J&K CK 0067

Hon'ble Judges : Vinod Chatterji Koul, J

Bench : Single Bench

Advocate : M. Ashraf Wani

Final Decision : Disposed Of

Judgement

Vinod Chatterji Koul, J

1. The Order No.09/DMK/PSA/2021 dated 18.10.2021, issued by District Magistrate, Kulgam, placing detenu, namely, Yasir Fayaz Rah S/o Fayaz Ahmad Rah R/o Rahpora, Khudwani, Qaimoh, Tehsil Qaimoh Kulgam District Kulgam, under preventive detention in terms of J&K Public Safety Act, so as to prevent him from acting in any manner prejudicial to security, sovereignty and integrity of State and directing his lodgement in Central Jail, Srinagar, has been challenged in this petition on the following grounds:

- i) that detaining authority has not followed constitutional and statutory procedural safeguards as provided under Article 22 (5) of the Constitution of India;
- ii) that the material provided in support of order of detention of the FIRs registered against detenu way back in the year 2018 and 2019 and that grounds of detention are remote in time and nature and have no proximity and live nexus with the requirement for detention of detenu.

iii) that grounds of detention do not disclose any activity on the basis whereof order of detention can be passed and it appears that impugned detention order has been passed against detenu due to mistaken identity and misinformation;

iv) that detaining authority has not assigned any compelling and cogent reason for passing order of detention.

v) That detenu is suffering from 60% disability and in case of his detention, there is likelihood that his condition will worsen and can have disastrous consequences.

2. I have heard counsel for petitioner and considered the matter.

3. Though various submissions have been made by counsel for petitioner, yet an important aspect of the matter has been brought by him before this Court during the course of advancement of arguments. He has invited attention of this Court to impugned order of detention, particularly first line thereof and thus, it would be advantageous to reproduce the same hereunder:

"Whereas on the basis of grounds of detention placed before me by the Superintendent of Police Kulgam....."

4. From the above, it is interestingly evident that detaining authority has said that it is "on the basis of grounds of detention placed before" him "by the Superintendent of Police Kulgam" that detaining authority is satisfied to place detenu under preventive detention.

It is important to mention here that detaining authority may get inputs from different agencies, including Superintendent of Police concerned, but responsibility to formulate grounds of detention exclusively rests with detaining authority. It is the detaining authority, who has to go through reports and other inputs received by him from concerned police and other agencies and on such perusal arrive at a subjective satisfaction that a person is to be placed under preventive detention. It is, therefore, for detaining authority to formulate grounds of detention and satisfy itself that grounds of detention so formulated warrant passing of order of preventive detention. However, in the instant case, it is evident from impugned order of detention that grounds of detention have not been prepared by detaining authority and resultantly impugned detention order is vitiated.

5. Based on the above discussion, the instant petition is disposed of and Detention Order No.09/DMK/PSA/2021 dated 18.10.2021, passed by District Magistrate, Kulgam, is quashed. Respondents, including Jail Superintendent concerned, are directed to release the detenu forthwith, provided he is not required in any other case. Disposed of.