

(2020) 08 J&K CK 0088
In the Jammu And Kashmir High Court
Case No : Writ Petition (C) No. 322 Of 2019

Yasir Hussain Malik

APPELLANT

Vs

State Of J&K And Others

RESPONDENT

Date of Decision : 11-08-2020

Acts Referred:

Jammu And Kashmir Public Safety Act, 1978 — Section 8(a)
Unlawful Activities (Prevention) Act, 1967 — Section 13(2), 17, 18, 19, 20, 38, 39
Constitution Of India, 1950 — Article 22(5)

Citation : (2020) 08 J&K CK 0088

Hon'ble Judges : Sindhu Sharma, J

Bench : Single Bench

Advocate : Wajid Haseeb, S. H. Naqashbandi

Judgement

Sindhu Sharma, J

1. The District Magistrate, Kulgam vide his order No. 58/DMK/PSA/19 dated 19.08.2019 under section 8, clause (a) of the J&K Public Safety Act, 1978 in the interest of security of State detained Yasir Hussain Malik S/o Gh. Hassan Malik R/o Hanger Yaripora, District Kulgam. This order of detention is assailed by the detenu in this petition through his father.

2. The detenu has challenged the order of detention on the ground that; the grounds of detention are vague and mere assertions of the detaining authority, as such, do not justify the passing of the detention order on such allegations. The detenu was not furnished all the relevant material relied upon for passing of order of detention to the detenu, thus, has prevented the detenu from making an effective representation which violates the Article 22(5) of the Constitution of India. The detenu was arrested in FIR No. 15/2019 under section 13(2), 17, 18, 19, 20, 38, 39 ULA(P) Act, but was subsequently granted bail by the competent court and the detaining authority has not shown any awareness to the fact that detenu was admitted to bail and, thus, detention order is required to be set aside.

3. Mr. S. H. Naqashbandi, learned AAG has filed counter affidavit as well as produced the detention record. He has submitted that the detenu was detained as a preventive act to prevent him from acting in any manner prejudicial to the security and interest of the State. It is contended that all statutory requirements and constitutional guarantees have been fulfilled and complied with by the detaining authority. The detaining authority has passed the order of detention after arriving at the subjective satisfaction. The entire material relied upon by the detaining authority was furnished to the detenu, and he was also informed about his right to make a representation to the detaining authority or to the Government against his detention. The grounds of detention sufficiently connect the detenu to the activities which are highly prejudicial to the maintenance of security of the State.

4. Heard learned counsel for the parties as well as perused the record also.

5. Perusal of the record reveals that the detenu was arrested in FIR No. 15/2019 which was registered on 16.08.2019 and thereafter he was enlarged on bail in the said FIR, however, the detaining authority has not shown any awareness on this fact while passing the impugned order of detention.

6. In *Anant Sakharam Raut and others V. State of Maharashtra and another*, AIR 1987 SC 137, the Apex court while considering the similar proposition held that:

"5..... the one contention strongly pressed before us by the petitioner's counsel is that the detaining authority was not made aware at the time the detention order was made that the detenu had moved applications for bail in the three pending cases and that he was enlarged on bail on 13-1-1986, 14-1-1986 & 15-1-1986. We have gone through the detention order carefully. There is absolutely no mention in the order about the fact that the petitioner was an under trial prisoner, that he was arrested in connection with the three cases, that applications for bail were pending and that he was released on three successive days in three cases. This indicates a total absence of application of mind on the part of the detaining authority while passing the order of detention.

"7..... that there was clear non-application of mind on the part of the detaining authority about the fact that the petitioner was granted bail when the order of detention was passed. In the result we set aside the Judgment of the Bombay High Court under appeal, quash the order of detention and direct that the petitioner be released forthwith....."

7. In *Mudasir Yousuf Bhat V. State and another*, 2009 (II) SLJ 584, this Court has held that:

"3.....While detaining a person under Public Safety Act, detaining authority is under legal obligation to analyze all the circumstances and material and then to gather conclusion about the requirement of depriving a person of his personal liberty. Liberty of a person is to be respected as is guaranteed, the same flows from the constitution itself. It is true that if a person is alleged to be involved in

anti-national activities, he has to be deterred with iron hand but for deterrence provisions of Public Safety Act are to be strictly adhered to otherwise safeguards both technical and substantial provided for by the Act will be rendered illusory. Non-mention of the grant of bail is serious lapse which in turn gives rise to the interference that there is non application of mind."

8. It has been submitted that the detenu has not been provided all the material relied upon by the detaining authority while passing order of detention order. This is also born out from the record that the FIR and other material have not been supplied to the detenu. This has rendered the detention illegal.

9. In *Sophia Ghulam Mohd. Bham V. State of Maharashtra and others*, AIR 1999 SC 3051, the Apex Court observed as under:-

"... The right to be communicated the grounds of detention flows from Article 22(5) while the right to be supplied all the material on which the grounds are based flows from the right given to the detenu to make a representation against the order of detention. A representation can be made and the order of detention can be assailed only when all the grounds on which the order is based are communicated the detenu and the material on which those grounds are based are also disclosed and copies thereof are supplied to the person detained, in his own language....."

10. Thus, the detention order passed by the detaining authority is without any application of mind and the same is found to be vitiated and does not survive which is liable to be quashed.

11. In view of the aforesaid discussions, the impugned detention order of *Yasir Hussain Malik S/o Gh. Hassan Malik R/o Hanger Yaripora, District Kulgam*, is quashed. Accordingly, the respondents are directed to release the detenu from the custody forthwith, if he is not required in any other case.

12. Let the detention record be handed over to learned counsel for the respondents.