

(2022) 07 J&K CK 0052

In the Jammu And Kashmir High Court

Case No : Writ Petition (Criminal) No. 1516 Of 2022

Yawar Ahmad Kundoo

APPELLANT

Vs

Ut Of J&K And Anr

RESPONDENT

Date of Decision : 26-07-2022

Acts Referred:

Constitution Of India, 1950 — Article 22(5)
Indian Penal Code, 1860 — Section 148, 188, 307, 336, 427
Disaster Management Act, 2005 — Section 51
Unlawful Activities (Prevention) Act, 1967 — Section 13
Code Of Criminal Procedure, 1973 — Section 161, 164

Citation : (2022) 07 J&K CK 0052

Hon'ble Judges : Sanjay Dhar, J

Bench : Single Bench

Advocate : Wajid Haseeb, Sajad Ashraf

Final Decision : Allowed

Judgement

Sanjay Dhar, J

1) Challenge in this petition is to the order No.DMS/PSA/30/2021 dated 02.07.2021, issued by District Magistrate, Srinagar-respondent No.2 herein, in terms whereof, Shri Yawar Ahmad Kundoo S/o Ab. Rashid Kundoo R/o Ganie Mohalla, Anchar Sour, Srinagar (hereinafter referred to as the detainee), has been placed under preventive custody and lodged in Central Jail, Srinagar.

2) The petitioner has contended that the Detaining Authority has passed the impugned detention order without application of mind. It has been further contended that the procedural safeguards have not been complied with in the instant case. It has also been urged that the allegations made against the detainee in the grounds of detention are vague and that the material forming the basis of the impugned order of detention has not been provided to the detainee who is a semi-literate person. The petitioner has further contended that the detaining authority has not spelt out the compelling reasons while passing the

impugned order.

3) The respondents, in their counter affidavit, have disputed the averments made in the petition and stated that they have followed the provisions of J&K Public Safety Act. It is contended that the detinue has been detained only after following due procedure; that the grounds of detention were read over to the detinue; that there has been proper application of mind on the part of the Detaining Authority while passing the impugned order and that the detinue has been provided all the material. The learned counsel for the respondents also produced the detention records to lend support to the stand taken in the counter affidavit.

4) Considered the rival submissions and perused the material available on the file as also the detention record as produced by the learned counsel for the respondents.

5) Learned counsel for the petitioner highlighted various grounds while seeking quashment of impugned order but the main ground that has been argued during the course of arguments is that the detinue was not furnished whole of the material which formed basis of the impugned order of detention thereby depriving him from making an effective representation against his detention.

6) A perusal of the material on record reveals that the petitioner has received five leaves comprising copy of warrant, notice, grounds of detention and dossier, in all five leaves, in token whereof, his signatures have been obtained. A perusal of the detention record shows that warrant of detention comprises one leaf, notice of detention comprises one leaf, grounds of detention comprises two leaves and dossier comprises three leaves making it a total of seven leaves. However, as per the record, only five leaves had been furnished to the detinue meaning thereby that not even the aforesaid four documents in full have been provided to the detinue. Thus, the record produced by the respondents corroborates the fact that whole of the material relied upon by the detaining authority and transmitted to him by the concerned sponsoring agency has not been furnished to the detinue.

7) Apart from the above, if we have a look at the grounds of detention, it bears reference to FIR No.54/2021 for offences under Section 148, 336, 427, 307, 188 of IPC, Section 51 DM Act and 13 UA(P) Act of P/S Soura. It was incumbent upon respondents to furnish not only the copy of the FIRs but also the statements of witnesses recorded under Section 161/164 of the Cr. P. C during investigation of the said FIR as well as the other material on the basis of which petitioner's involvement in the FIR is shown, particularly when the petitioner is not nominated in the FIR. 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. Obviously, the petitioner has been hampered by non-supply of these vital documents in making a representation before the Advisory Board, as a result whereof his case

has been considered by the Advisory Board in the absence of his representation, as is clear from the detention record. Thus, vital safeguards against arbitrary use of law of preventive detention have been observed in breach by the respondents in this case rendering the impugned order of detention unsustainable in law.

8) It needs no emphasis that the detainee cannot be expected to make an effective and purposeful representation which is his constitutional right guaranteed under Article 22(5) of the Constitution of India, unless and until the material, on which detention order is based, is supplied to the detainee. The failure on the part of detaining authority to supply the material renders detention order illegal and unsustainable. While holding so, I am fortified by the judgments rendered in *Sophia Ghulam Mohd. Bham V. State of Maharashtra and others* (AIR 1999 SC 3051) and, *Thahira Haris Etc. Etc. V. Government of Karnataka & Ors.* (AIR 2009 SC 2184).

9) For the afore-stated reasons, the petition is allowed and the impugned order of detention is quashed. The detainee is directed to be released from the preventive custody forthwith provided he is not required in connection with any other case.

10) The record, as produced, be returned to the learned counsel for the respondents.