
(2020) 07 J&K CK 0050
In the Jammu And Kashmir High Court
Case No : Writ Petition (C) No. 398 Of 2019

Zahid Farooq Khan

APPELLANT

Vs

State Of J&K And Others

RESPONDENT

Date of Decision : 22-07-2020

Acts Referred:

Citation : (2020) 07 J&K CK 0050

Hon'ble Judges : Tashi Rabstan, J

Bench : Single Bench

Advocate : Wajid Haseeb

Final Decision : Disposed Off

Judgement

Tashi Rabstan, J

1. District Magistrate, Srinagar - respondent no.2 herein, has, vide Order no.DMS/PSA/60/2019 dated 09.08.2019, placed Zahid Farooq Khan son of Farooq Ahmad Khan resident of Shampora Nowhatta Srinagar (for brevity "detenu") under preventive detention to prevent him from acting in any manner prejudicial to the maintenance of public order. It is this order of which petitioner is aggrieved and seeks its quashment.

2. Reply Affidavit has been filed by respondents, vehemently resisting the petition.

3. I have heard learned counsel for parties and considered the matter.

4. A strenuous submission of learned counsel for petitioner is that while detenu has been shown arrested in connection with four cases - FIRs, viz. 96/2016; 110/2016; 115/2016; and 120/2016, it is not coming WP (Crl) no.398/2019 forth from grounds of detention that detenu has been released in all four cases FIRs, by court of competent jurisdiction, which per se depicts and reflects non-application of mind on the part of detaining authority. He has also stated that a representation was filed by detenu but same has not been considered by

respondents and even the Reply Affidavit does not make any mention as regards filing or consideration of representation of detenu by respondents, which also depicts non-application of mind on the part of respondents. In support of his submissions, learned counsel for petitioner has placed reliance on *Vijay Narian Singh v. State of Bihar*, 1984 (3) SCC 14; *Abdul Rashid Lone v. State of J&K*, 2010 (4) JKJ554; *Mustakmiya Jabbarmiya Shaikh v. M. M. Mehta* 1995 (3) SCC 237; *Lalookhan Haideralikhan v. M. M. Kamble*, 1996 Cr. L.J.801; *Adishwar Jain v. Union of India and ors*, 2006 (11) SCC 339; *Rahmatullah v. State of Bihar*, 1981 (4) SCC 559.

5. Though a number of grounds have been taken by petitioner in writ petition, yet one ground, which has been vehemently pressed by learned counsel for petitioner, is that detaining authority has made use of four cases FIRs to have been registered against detenu, without mentioning the fact that detenu has already been released on bail in these FIRs, by court of competent jurisdiction, which reflects non-application of mind on the part of detaining authority.

6. It may not be out of place to mention here that whether a person, who is in jail, can be detained under preventive detention law has been a subject matter of consideration before the Supreme Court very often. In *Dharmendra Suganchand Chelawat&anr v. Union of India*, AIR 1990 SC 1196, the Supreme Court while considering the same issue has reconsidered its earlier judgments on the point in *Rameshwar Shaw v. District Magistrate, Burdwan*, AIR 1964 SC 334; *Masood Alam v. Union of India*, AIR 1973 SC 897; *Dulal Roy v. District Magistrate, Burdwan*, AIR 1975 SC 1508; *Alijan Mian v. District Magistrate, Dhanbad*, AIR 1983 SC 1130; *Ramesh Yadav v. District Magistrate, Etah*, AIR 1986 SC 315; *Suraj Pal Sahu v. State of Maharashtra*, AIR 1986 SC 2177; *Binod Singh v. District Magistrate, Dhanbad*, AIR 1986 SC 2090; *Smt Shashi Aggarwal v. State of U.P.*, AIR 1988 SC 596, and came to the conclusion that an order for detention can be validly passed against a person in custody and for that purpose, it is necessary that grounds of detention must show that (i) detaining authority was aware of the fact that detenu is already in detention; and (ii) there were compelling reasons justifying such detention despite the fact that detenu is already in detention. The expression "compelling reasons" in the context of making an order for detention of a person already in custody implies that there must be cogent material before detaining authority on the basis of which it may be satisfied that (a) detenu is likely to be released from custody in near future, and (b) taking into account the nature of antecedent activities of detenu, it is likely that after his release from custody he would indulge in prejudicial activities and it is necessary to detain him in order to prevent him from engaging in such activities.

7. When aforesaid principles are applied to the facts of instant case, there is no denial that impugned order cannot be sustained. Grounds of detention do not mention that detaining authority is aware of the fact that detenu had already been released on bail by court of competent jurisdiction at the time of making

detention order. In the present case detaining authority has not drawn any subjective satisfaction vis-à-vis detention of detenu. There is no mention of the fact that detenu has applied for bail in criminal case(s) nor is there any satisfaction that detenu has been enlarged on bail before issuance of impugned order of detention. This clearly indicates and shows total absence of application of mind on the part of detaining authority while passing impugned order of detention. In that view of matter, impugned detention order is vitiated.

8. For the foregoing reasons, this petition is disposed of and detention Order no.DMS/PSA/60/2019 dated 09.08.2019, passed by District Magistrate, Srinagar, is quashed. Respondents, including Jail Superintendent concerned, are directed to release the detenu forthwith, provided he is not required in any other case.

9. Disposed of as above.