
(2020) 03 J&K CK 0063
In the Jammu And Kashmir High Court
Case No : Writ Petition (C) No. 473 Of 2019

Zahoor Ahmad Dar

APPELLANT

Vs

State Of J&K And Others

RESPONDENT

Date of Decision : 18-03-2020

Acts Referred:

Citation : (2020) 03 J&K CK 0063

Hon'ble Judges : Tashi Rabstan, J

Bench : Single Bench

Advocate : M. A. Makroo, S.H. Naqashbandi

Final Decision : Disposed Off

Judgement

Tashi Rabstan, J

1. District Magistrate, Kulgam (for brevity "detaining authority"), has, vide Order no.36/DMK/PSA/19 dated 07.08.2019, placed Shri Zahoor Ahmad Dar son of Gh Mohd Dar resident of Hawoora Qaimoh District Kulgam (for succinctness "detenu"), under preventive detention and directed his lodgement in Central Jail Srinagar. The above detention order is challenged in petition on hand on the grounds averred therein.

2. Respondents have filed Reply Affidavit in opposition to the petition.

3. I have heard learned counsel for parties. I have perused the detention record produced by learned counsel for respondents and considered the matter.

4. Learned counsel for petitioner, to cement the case set up by petitioner in writ petition on hand, contends that detenu was arrested on 21.06.2018 in connection with case FIR no.37/2018. Detenu was enlarged on bail on 23.01.2019 by the court of Principal Sessions Judge, Kulgam. Instead of releasing him, detenu was placed under preventive detention vide Detention Order no.04/DMK/PSA/2019 dated 06.02.2019, which, on its challenge in HCP no.59/2019, was quashed by a Bench of this Court vide judgement dated

31.07.2019, directing release of detenu. Nonetheless, detenu has again been placed under preventive detention in terms of impugned detention order dated 07.08.2019, that too, on the same grounds, made use of in the earlier detention order. His next limb of argument is that detenu was admitted to bail in case FIR no.37/2018, but detaining authority has not mentioned this fact in grounds of detention that implies non-application of mind on the part of detaining authority. His another, but important, submission is that impugned detention order on its plain reading reflects that grounds of detention have been prepared by Senior Superintendent of Police and not by detaining authority, in that it is mentioned in impugned detention order that it has been issued on the basis of ground of detention placed before detained authority by Senior Superintendent of Police, Kulgam, which also implies non-application of mind on the part of detaining authority. In addition to this, learned counsel has also stated that grounds of detention is ditto copy of dossier and therefore again impugned order is liable to be quashed.

5. Per contra, learned counsel for respondents insists that detention order has been passed on subjective satisfaction by detaining authority and detention order is in accordance with law and there is no violation or infringement of rights guaranteed under the Constitution of India. Hence, he pleads that petition be dismissed.

6. It may be noticed that a Bench this Court, in earlier writ petition, viz. HCP no.95/2019, has quashed detention order, bearing no.04/DMK/ PSA of 2016 dated 10.08.2016, while dealing with grounds of detention made use of in support of said detention order. The same grounds could not have been relied upon for making a fresh detention order. The authoritative judicial pronouncements on the subject are that even if order of detention comes to an end either by revocation or by expiry of the period of detention, there must be fresh facts for passing a subsequent detention order. When a detention order is quashed by the Court, issuing a high prerogative writ, like habeas corpus or certiorari, the grounds of said detention order should not be taken into consideration either as a whole or in part even along with fresh grounds of detention for drawing requisite subjective satisfaction to pass a fresh detention order because once the Court strikes down an earlier order by issuing rule, it nullifies the entire order. It is, therefore, clear that an order of detention cannot be made after considering previous grounds of detention when the same had been quashed by the Court, and if such previous grounds of detention are taken into consideration while forming subjective satisfaction by detaining authority in making a detention order, the order of detention will be vitiated. It is of no consequence if further fresh facts, disclosed in the grounds of impugned detention order, have been considered. Reference in this regard may be made to judgements rendered in the cases of Chhagan Bhagwan Kahar v. N. L. Kalna and others, AIR 1989 SC 1234 and Ramesh v. State of Gujarat AIR 1989 SC 1881. Detention order, impugned herein, is, thus, liable to be quashed as the grounds of detention made use of by respondent no.2, while passing earlier detention

orders, subsequently quashed by this Court, have been pressed into service while passing detention order in question.

7. For the foregoing reasons, the petition is disposed of and detention Order no.36/DMK/PSA/19 dated 07.08.2019, passed by District Magistrate, Kulgam, quashed. Respondents, including Jail Superintendent concerned, are directed to release the detenu forthwith, provided he is not required in any other case. Disposed of.

8. Registry to return detention record to learned counsel for respondents.