

(2023) 03 J&K CK 0027

In the Jammu And Kashmir High Court

Case No : Writ Petition (Criminal) No. 517 Of 2022

Zahoor Ahmad Sheikh

APPELLANT

Vs

State Of J&K And Another

RESPONDENT

Date of Decision : 06-03-2023

Acts Referred:

Constitution Of India, 1950 — Article 22(5)

Citation : (2023) 03 J&K CK 0027

Hon'ble Judges : Vinod Chatterji Koul, J

Bench : Single Bench

Advocate : Mansoor Ahmad Mir, Faheem Nisar Shah

Final Decision : Disposed Of

Judgement

Vinod Chatterji Koul, J

1. Impugned in this petition is Order no. DMB/PSA/26 of 2022 dated 27.06.2022, passed by District Magistrate, Budgam, placing the detenu namely Zahoor Ahmad Sheikh S/o Late Ghulam Nabi Sheikh, R/o Kandoora Beerwah District Budgam (for brevity "detenu") under preventive detention and directing his lodgement in Central Jail Kot Bhalwal, Jammu, on the grounds made mention of 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. The case set up by petitioner, in the petition, is that detenu was earlier detained in the year 2019 vide detention Order No. DMB/PSA/23 of 2019 dated 22.05.2019 on the basis of FIR nos.176/2017, 107/2018, 27/2019 and 43/2019 and after completing the detention period, was released in the year 2021. The detenu again came to be apprehended by the police on 20.06.2022 and while being in custody, has been detained under preventive detention in terms of

impugned order of detention on the basis of previous FIRs. It is stated that detenu is neither involved in any fresh FIR nor in any fresh prejudicial activity, as such, impugned detention order is in violation of Article 22(5) of Constitution of India deserves to be quashed.

5. The next submission of the learned counsel for the petitioner is that detenu was already admitted to bail in cases, bearing FIR Nos. 176/2017, 107/2018, 27/2019 and 43/2019 and in this connection, he has invited attention of this Court to one of the bail orders dated 26.06.2021. While referring to the said Order, he has asserted that this imperative fact is not mentioned anywhere in grounds of detention which infers non-application of mind on the part of detaining authority. Learned counsel for petitioner has also made a submission that on the set of allegations and grounds those have been made use of by detaining authority, had already been used by detaining authority in earlier detention order. It is also averred that grounds of detention are replica of dossier and unequivocally reflects and shows non-application of mind on the part of detaining authority and as a consequence of which impugned order of detention is liable to be quashed.

6. 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.

7. Perusal of the file reveals that earlier, detenu was placed under preventive detention in terms of Order no.DMB/PSA/23 of 2019 dated 22.05.2019, passed by respondent no.2, in which on its expiry, detenu was released. Further perusal of impugned detention order and earlier detention order would unambiguously show that detaining authority has copied earlier detention order word by word, which reflects total non-application of mind on the part of detaining authority. Such a practice in law is impermissible and thus, vitiates the impugned order of detention.

The law in this regard is well settled. If an order of detention comes to an end either by revocation or by the expiry of the period of order of detention, there must be fresh facts to pass a subsequent order of detention. When the period of detention expires, the grounds of said detention order are not to be taken into consideration either as a whole or in part even along with the fresh grounds of detention in order to pass a fresh detention order and, if such previous grounds of detention are taken into consideration while passing a fresh detention order, the order of detention will be vitiated. My view is fortified by the law laid down by the Supreme Court in *Chhagan Bagwan Kahar v. N.L. Kalna*, 1989 (2) SCC 318; *Jahangir Khan Fazal Khan Pathan v. The Police Commissioner, Ahmedabad and another*, AIR 1989 SC 1812; and *Ramesh v. State of Gujarat*, AIR 1989 SC 1881. In such circumstances,, impugned detention order is liable to be quashed as grounds of detention made use of by respondent no.2 while passing earlier

detention order, have again been pressed into service while passing detention order in question. The impugned order of detention is, therefore, unsustainable in law on this ground alone.

10. In view of above, the petition on hand is disposed of and detention Order no. DMB/PSA/26 of 2022 dated 27.06.2022, passed by District Magistrate, Budgam is quashed. Respondents are directed to release the detenu forthwith, provided he is not required in any other case. Disposed of.

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