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(2024) 03 J&K CK 0034

In the Jammu And Kashmir High Court

Case No : ?Habeas Corpus Petition No. 68 Of 2023

Zeenat Habib — APPELLANT

Vs

UT Of J&K Through And Others — RESPONDENT

Date of Decision : 28-03-2024

Acts Referred:
Constitution Of India, 1950 — Article 21, 226
Code Of Criminal Procedure, 1973 — Section 107, 151
Jammu And Kashmir Public Safety Act, 1978 — Section 8

Citation : (2024) 03 J&K CK 0034

Hon'ble Judges : Rahul Bharti, J

Bench : Single Bench

Advocate : Mehraj ud Din Bhat, Ilyas Nazi

Final Decision : Dismissed

Judgement

Rahul Bharti, J

1. Heard learned counsel for the petitioner as well as for the respondents. Perused the writ pleadings and the documents annexed therewith.

2. The petitioner is 22 years aged woman, who has been subjected to preventive detention and is thus languishing in jail for getting freed of which the petitioner has invoked the writ jurisdiction of this court under article 226 of the Constitution of India seeking a writ of habeas corpus for quashing her detention and restoring her personal liberty which is her guaranteed fundamental right under article 21 of the Constitution of India.

3. The respondent no. 2 – District Magistrate, Bandipora came to be served by the Superintendent of Police (SP) Bandipora with a Dossier no. Lgl/ PSA-07/2023/29905 dated 18.08.2023 with respect to the petitioner adjectivizing her in every negative term literally meaning to say that the petitioner is an overt and covert aid and associate of the terrorists and the terrorist organisations who is exploiting her gender to indulge in objectionable

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activities and serving as an informer of the terrorists, supplier of arms and ammunition to the terrorists, using social media as a tool for the nefarious and anti-national activities thereby posing a threat to public peace, tranquility and public order.

4. With this profiling of the petitioner, the petitioner is said to have been booked and detained under section 107 and 151 of Cr.P.C. only to get released on bail and still not getting deterred from propagating terrorism and secessionism.

5. The respondent no. 2 – District Magistrate, Bandipora, came forward with an instant preventive detention order no. 16/DMB/PSA of 2023 dated 19.08.2023 holding that he was satisfied that the dossier placed by the SP Bandipora with respect to the petitioner was good enough to give satisfaction to respondent no. 2 – District Magistrate, Bandipora that there are sufficient grounds to subject the petitioner to preventive detention so as to check her from acting in any manner prejudicial to the Security of State on which ground the Jammu and Kashmir Public Safety Act, 1978 empowered the respondent no. 2 – District Magistrate, Bandipora in terms of its section 8(a) to order issuance of a preventive detention order..

6. The order of detention aforesaid is based upon the purported grounds of detention framed by the respondent no. 2 – District Magistrate, Bandipora. A reading of the grounds of detention in juxtaposition to the dossier submitted by SP Bandipora would show that both are mirror image of each other even following punctuation identically. Thus, the text and context of the grounds of detention is what is the text and context of the dossier.

7. Acting upon the detention order so passed against the petitioner, the detention came to be carried out against the petitioner when she came to be detained on 21.08.2023 to be lodged in the Central Jail, Srinagar and handed over with 15 pages detention order, warrant of detention, notice, grounds of detention and other allied documents.

8. Against her said detention, the petitioner, acting through her father, made a written representation dated 26.08.2023 received by the office of respondent no. 2 – District Magistrate, Bandipora, against a receipt No. 2162 dated 26.08.2023. In this representation, the petitioner through her father alleged that she has been framed in the case and against the tone and tenor of the grounds of detention no effective presentation could be made by any prudent person and further that she was not furnished any material or any other connected documents i.e. FIR, the communication received from SP Bandipora, the Dossier so much so that not even being informed the timeframe within which she could make the representation.

9. The detention order No. 16/DMB/PSA of 2023 dated 19.08.2023 passed by the respondent no. 2 – District Magistrate, Bandipora, came to be approved by the Home Department, Government of Jammu and Kashmir, vide Govt. Order No. Home/PB-V/1914 of 2023 dated 25.08.2023 but with respect to determination of

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the duration of detention the case was kept awaiting opinion of the Advisory Board.

10. The Advisory Board came forward with its opinion dated 31.08.2023. The Advisory Board opinion makes a very disappointing reading, on the ground that the Advisory Board was not even having due sensitivity to the gender of the petitioner being a woman as the petitioner has been ascribed opposite sex pronouns like him and his.

11. The Advisory Board is on record to say that there was no representation made by the petitioner as there was no representation on the file before the Advisory Board. The Advisory Board did not make an enquiry from the respondent no. 2 – District Magistrate, Bandipora or from the Government to check and verify as to whether the petitioner has actually made any representation against her detention or not.

12. Pursuant to the Advisory Board's opinion dated 31.08.2023, the detention order of the petitioner came to be confirmed for a duration of six months at the first instance and detainment of the petitioner in the Central Jail, Srinagar in terms of Government Order No. Home/PB-V/2078 of 2023 dated 08.09.2023.

13. On the other hand the respondent no. 2 – District Magistrate, Bandipora vide order no. DMB/PSA/2023/274-77 dated 25.09.2023 came to acknowledge the fact of representation dated 26.08.2023 made by the petitioner through her father Habibullah Sheikh against the detention and he referred the said representation to be without substance and rejected leaving the petitioner to represent before the competent authority that is the Home Department.

14. Passing of this order dated 25.09.2023 confirmed that the District Magistrate Bandipora, for the reasons undisclosed on record, did not forward the representation dated 26.08.2023 of the petitioner to the Government for the purpose of enabling it to be put up for the Advisory Board's consideration when the preventive detention case of the petitioner was subject to the opinion of the Advisory Board resulting in tendering of opinion dated 31.08.2023.

15. This singular fact vitiates the entire preventive detention against the petitioner and as such this court needs not to go into the rest of the grounds on the basis of which the preventive detention of the petitioner can be found faulty and illegality.

16. It does not lie in the domain of a District Magistrate acting under J&K Public Safety Act, 1978 to sit over the representation of a detenue submitted to him and then take time at his/her pleasure to deal with the representation to the extent of making it not reaching before the Advisory Board before whom the case is submitted for the sake of examining legality and validity of the process and purpose of preventive detention set into effect qua a particular detenue.

17. This court can observe it with full authority of understanding pertaining to preventive detention jurisdiction that in the event a detenue comes to make a

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representation against his/her preventive detention to the detention order making authority, then not only the representation is to be considered at the earliest by the detention order making authority but also to be ensured by the said authority that the said representation is forwarded by the authority concerned to the government for the purpose of enabling the representation to be tabled before the Advisory Board when with respect to preventive detention of the detenue the case is put up for the opinion of the Advisory Board for earning a confirmation with respect to the process and purpose of preventive detention in reference.

18. In fact, the onus is equally upon the Government to enquire from the Divisional Commissioner/District Magistrate passing the detention order as the case may, as to whether any representation has been submitted by a detenue against his/her detention before the officer passing the preventive detention order so as to enable the government to get the said representation accompanying the submission of case for the opinion of the Advisory Board. In case the Government fails to discharge the said onus and the representation made by the detenu to the preventive detention order making officer remains lying embedded as a piece of paper on the preventive detention file concerning the petitioner in the office of the Divisional Commissioner/District Magistrate concerned, then the omission is going to be very fatal to the very validity of the preventive order even if approved and/or confirmed by the Government and/or the Advisory Board as the said omission on the part of the detention making authority as well as the Government is incurable.

19. Accordingly, in view of the facts and circumstances, the preventive detention of the petitioner is held to be illegal per se which deserves to be quashed. Resultantly, the detention order no. 16/DMB/PSA of 2023 dated 19.08.2023 passed by respondent No. 2 – District Magistrate, Bandipora, read with consequent Government orders of the approval and confirmation of the preventive detention of the petitioner are also quashed, directing the petitioner to be set free. The District Magistrate, Bandipora and the Superintendent of Jail concerned are under joint and several responsibility to ensure the immediate release of the petitioner from the jail restoring her personal liberty.

20. Registry to return the detention record to the learned counsel for the respondents.

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