
(2022) 05 J&K CK 0025

Jammu And Kashmir High Court (Srinagar Bench)

Case No: Writ Petition (Criminal) No. 156 Of 2021 (O&M)

Mohammad Rafeeq Dar

APPELLANT

Vs

Union Territory Of J&K And Anr

RESPONDENT

Date of Decision: May 10, 2022

Acts Referred:

- Constitution Of India, 1950 - Article 22(5)
- Jammu And Kashmir Public Safety Act, 1978 - Section 13

Hon'ble Judges: Vinod Chatterji Koul, J

Bench: Single Bench

Advocate: Wajid Haseeb, Sajjad Ashraf

Final Decision: Dismissed

Judgement

Vinod Chatterji Koul, J

1. Through the medium of this writ petition, the petitioner prays for quashment of Order no.DMS/PSA/55/2021 dated 18.10.2021, passed by District

Magistrate, Srinagar, whereby detenu, namely, Mohammad Rafiq Dar S/o Abdul Ahad Dar R/o Bunpora, Batamaloo, Srinagar has been placed under

preventive detention with a view to prevent him from indulging in the activities which are prejudicial to the security of the Union Territory, on the

grounds made mention of therein. The impugned order has been passed by the detaining authority on the basis of material supplied by Senior

Superintendent of Police, Srinagar, vide his communication No. LGL/Det/2021/17838-41 dated 17.10.2021.

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

3. Learned counsel for the petitioner has stated that the allegations made in the grounds of detention are vague and indefinite and no prudent man can make an effective representation against these allegations inasmuch as case mentioned in grounds of detention has no nexus with detenu and detaining authority has not given any reasonable justification to pass impugned order of detention. He has vehemently argued 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.

4. Respondents have filed counter affidavit, insisting therein that the activities indulged in by detenu are highly prejudicial to the security of the Union Territory and, therefore, his remaining at large is a threat to the security of Union Territory of J&K. The activities narrated in the grounds of detention have been reiterated in the reply affidavit filed by respondents. The factual averments that detenu was not supplied with relevant material relied upon in the grounds of detention have been refuted. It is insisted that all the relevant material, which has been relied upon by the detaining authority, was provided to the detenu at the time of execution of warrant.

5. Taking into account the rival contentions of parties and submissions made by learned counsel for parties, it would be relevant to go through the detention record. Perusal of grounds of detention reveals that grounds of detention are vague and ambiguous, and do not refer to any date, month or year of the activities, which have been attributed to detenu. Detention in preventive custody on the basis of such vague and ambiguous grounds of detention cannot be justified. It may not be out of place to mention here that preventive detention is largely precautionary and is based on suspicion.

The Court is ill-equipped to investigate into circumstances of suspicion on which such anticipatory action must be largely based. The nature of the proceeding is incapable of objective assessment. The matters to be considered by the detaining authority are whether the person concerned, having regard to his past conduct judged in the light of surrounding circumstances and other relevant material, is likely to act in a prejudicial manner as contemplated by the provisions of the law and, if so, whether it is necessary to detain him with a view to preventing him from so acting. These are not

the matters susceptible of objective determination, and they could not have been intended to be judged by objective standards. They are essentially the matters which have to be administratively determined for the purpose of taking administrative action. Their determination is, therefore, deliberately and advisedly left by the Legislature to the subjective satisfaction of detaining authority which, by reason of its special position, experience and expertise, would be best suited to decide them. Thus, the Constitutional imperatives of Article 22(5) and the dual obligation imposed on the authority making the order of preventive detention, are twofold: (1) The detaining authority must, as soon as may be, i.e. as soon as practicable, after the detention order is passed, communicate to the detenu the grounds on which the order of detention has been made, and (2) the detaining authority must afford the detenu the earliest opportunity of making the representation against the order of detention, i.e. to be furnished with sufficient particulars to enable him to make a representation which, on being considered, may obtain relief to him. The inclusion of an irrelevant or non-existent ground, among other relevant grounds, is an infringement of the first of the rights and the inclusion of an obscure or vague ground, among other clear and definite grounds, is an infringement of the second of the rights. In either case there is an invasion of the constitutional rights of the detenu entitling him to approach the Court for relief. The reason why the inclusion of even a simple irrelevant or obscure ground, among several relevant and clear grounds, is an invasion of the detenus constitutional right is that the Court is precluded from adjudicating upon the sufficiency of the grounds, and it cannot substitute its objective decision for the subjective satisfaction of the detaining authority. Even if one of the grounds or reasons, which led to the subjective satisfaction of the detaining authority, is non-existent or misconceived or irrelevant, the order of detention would be invalid. Where the order of detention is founded on distinct and separate grounds, if any one of the grounds is vague or irrelevant the entire order must fall. The satisfaction of detaining authority being subjective, it is impossible to predicate whether the order would have been passed in the absence of vague or irrelevant data. A ground is said to be irrelevant when it has no connection with the satisfaction of the authority making the order of detention. Irrelevant grounds, being taken into

consideration for making the order of detention, are sufficient to vitiate it. One irrelevant ground is sufficient to vitiate the order as it is not possible to assess, in what manner and to what extent, that irrelevant ground operated on the mind of the appropriate authority, and contributed to his satisfaction that it was necessary to detain the detenu in order to prevent him from acting in any manner prejudicial to the maintenance of the public order.

Reference in this regard is made to Mohd. Yousuf Rather v. State of J&K and others, AIR 1979 SC 1925; and Mohd. Yaqoob v. State of J&K &ors, 2008 (2) JKJ 255 [HC].

6. It is pertinent to mention here that perusal of grounds of detention reveals that the same are replica of dossier with interplay of some words here and there. This, thus, portrays non-application of mind and in the process of deriving of subjective satisfaction, has become causality. While formulating grounds of detention, detaining authority has to apply its own mind. It cannot simply reiterate whatever is written in the dossier. Here it will be apt to notice the observations of the Supreme Court in the case of *Jai Singh and ors vs. State of J&K* (AIR 1985 SC 764), which are reproduced hereunder:

“First taking up the case of Jai Singh, the first of the petitioners before us, a perusal of the grounds of detention shows that it is a verbatim reproduction of the dossier submitted by the Senior Superintendent of Police, Udhampur, to the District Magistrate requesting that a detention order may kindly be issued. At the top of the dossier, the name is mentioned as Sardar Jai Singh, father’s name is mentioned as Sardar Ram Singh and the address is given as village Bharakh, Tehsil Reasi. Thereafter it is recited “The subject is an important member of

Thereafter follow various allegations against Jai Singh, paragraph by paragraph. In the grounds of detention, all that the District

Magistrate has done is to change the first three words “the subject is” into “you Jai Singh, S/o Ram Singh, resident of village

Bharakh, Tehsil Reasi”. Thereafter word for word the police dossier is repeated and the word “he” wherever it occurs referring to Jai

Singh in the dossier is changed into "you" in the grounds of detention. We are afraid it is difficult to find proof of non-application of mind. The liberty of a subject is a serious matter and is not to be trifled with in this casual, indifferent and routine manner."

7. From perusal of above quoted observations of the Supreme Court, it is crystal clear that grounds of detention and dossier, if in similar language, go

on to show that there has been non-application of mind on the part of detaining authority. As already noted, in the instant case, it is clear from the

record that the dossier and the grounds of detention contain almost similar wording which shows that there has been non-application of mind on the

part of the detaining authority. The impugned order of detention is, therefore, unsustainable in law on this ground alone.

8. I have also gone through the detention record produced by counsel for respondents. The detention record, inter alia, contains "Execution

Report" of detention order. Perusal whereof divulges that only four leaves have been given to detenu.

9. Perusal of impugned detention order reveals that Senior Superintendent of Police, Srinagar, vide his communication No. LGL/Det/2021/ 17838-41

dated 17.10.2021, produced material record, such as dossier and other connecting documents, in respect of detenu and after going through the same,

impugned order of detention has been passed. So, it is on the basis of dossier and other connected material / documents that impugned detention order

has been passed by detaining authority. Grounds of detention, when looked into, gives reference of four cases/FIRs, alleged to have been registered

against the detenu that weighed detaining authority to issue detention order. Involvement of detenu in aforesaid cases appears to have weighed with

detaining authority, while making detention order. The record, as noted above, does not indicate that copies of FIRs, dossier and other material

collected in connection with investigation of aforesaid cases, was ever supplied to detenu. Aforesaid material, thus, assumes importance in the facts

and circumstances of the case. It needs no emphasis, that detenu cannot be expected to make a meaningful exercise of his Constitutional and

Statutory rights guaranteed under Article 22(5) of the Constitution of India and Section 13 of the J&K Public Safety Act, 1978, unless and until the

material on which detention order is based, is supplied to him. It is only after detenu has all the said material available that he can make an effort to

convince detaining authority and thereafter the Government that their apprehensions vis-À-vis his activities are baseless and misplaced. If detenu is

not supplied the material, on which detention order is based, he will not be in a position to make an effective representation against his detention order.

Failure on part of detaining authority to supply material, relied at the time of making detention order to detenu, renders detention order illegal and

unsustainable. While saying so, I draw the support from the law laid down in Thahira Haris Etc. Etc. v. Government of Karnataka, AIR 2009 SC

2184; Union of India v. Ranu Bhandari, 2008, Cr. L. J. 4567; Dhannajoy Dass v. District Magistrate, AIR, 1982 SC 1315; Sofia Gulam Mohd Bham v.

State WP (Crl) no.156/2021 of Maharashtra and others AIR 1999 SC 3051; and Syed Aasiya Indrabi v. State of J&K & ors, 2009 (I) S.L.J 219.

10. The Supreme Court in Abdul Latief Abdul Wahab Sheikh v. B.K. Jha, 1987 (2) SCC 22 has made it clear that it is only the procedural

requirements, which are the only safeguards available to detenu, that is to be followed and complied with as the Court is not expected to go behind the

subjective satisfaction of detaining authority. In the present case, procedural requirements, as discoursed and noted above, have not been followed and

complied with by respondents in letter and spirit and as a corollary thereof, impugned detention needs to be quashed.

11. For the foregoing reasons, the petition is disposed of and detention Order no.DMS/PSA/55/2021 dated 18.10.2021, passed by District Magistrate,

Srinagar, is quashed. Respondents are directed to release the detenu from the preventive custody forthwith, provided he is not required in any other

case.

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