

(2022) 05 J&K CK 0032

Jammu And Kashmir High Court (Srinagar Bench)

Case No: Writ Petition (Criminal) No. 282 Of 2021

Murtaza Rashid

APPELLANT

Vs

UT Of J&K And Anr

RESPONDENT

Date of Decision: May 12, 2022

Acts Referred:

- Constitution Of India, 1950 - Article 22, 22(5)
- Jammu And Kashmir Safety Act, 1978 - Section 8

Hon'ble Judges: Dhiraj Singh Thakur, J

Bench: Single Bench

Advocate: G.N. Shaheen, Asif Maqbool

Final Decision: Dismissed

Judgement

Dhiraj Singh Thakur, J

1. The present Habeas Corpus petition has been filed for quashing the order of detention dated 30.10.2021 passed by the District Magistrate,

Pulwama, who, in purported exercise of its powers vested in it under Section 8 of the Jammu and Kashmir Public Safety Act, 1978 (for short, Act of

1978), has ordered the detention of the petitioner with a view to prevent him from acting in any manner prejudicial to the security of the State.

2. The order of detention was challenged on the following grounds:

(a) That the same was vague which rendered it difficult for the petitioner to make an effective representation to the concerned authority and further

that the grounds of detention were non-existent.

(b) That the grounds of detention were replica of the police dossier and therefore the order of detention must be held to be suffering from non-

application of mind and resultantly making it unsustainable in law.

(c) That the detaining authority had failed to supply the entire material based upon which the order of detention was passed which make it difficult for the petitioner to make an effective representation to the concerned authority.

(d) That the detainee being an illiterate person could only understand the Kashmiri language but the order of detention was in English and no translated script in kashmiri was furnished nor were the grounds read over and explained to him in the language which he understood, which resulted in depriving the petitioner in exercise of his fundamental right in making his effective representation.

(e) That there is no affidavit of the officer, executing the detention order on record, in the absence whereof, the averments made in the petition that the petition was not supplied the relevant material gets substantiated and further that the requirement of filing affidavit by the executing officer was mandatory as per the ratio of the Apex Court judgment on the point.

3. A detailed reply has been filed by the official respondents rebutting the allegations and contentions of the petitioner. The relevant record has also been produced.

FIRST GROUND

4. The first ground urged by the learned counsel for the petitioner was that the grounds of detention were vague, which rendered it difficult for the petitioner to make an effective representation to the concerned authority and further that the grounds of detention were non-existent.

5. With a view to test this argument, a reference is required to be made to the grounds of detention. The grounds of detention reflect that the petitioner was affiliated with The Resistance Front (TRF), the aim and object of which was to secede the Union Territory of J&K from the Union of India and annex it with Pakistan. It is stated that the petitioner came in contact with various terrorists under whose influence he developed separatist ideology and agreed to carry out subversive activities prejudicial to the security of the State.

It is also stated that the Resistance Front (TRF) was responsible for civilian killings in District Srinagar and other parts of the valley. It is further stated

that as per the inputs received from various agencies and blogs on social media platform, it got substantiated that TRF was acting at the behest of agencies from across the border. The petitioner was at the behest of terrorists of TRF across the border providing logistic support including transportation of arms of terrorists from one place to another through unconventional and safe passages.

It is urged that the petitioner being an over ground worker of TRF had been under the instructions of the terrorists for carrying out the subversive activities clandestinely and for killing innocent people. It is also urged that the instructions were being received through a variety of advanced technologies and that it had become possible to identify the petitioner and unearth his linkages with terrorists outfit after using profound analytics.

6. Reliance placed upon the judgment of the Apex Court in Mohd. Yousuf Rather vs. State of Jammu and Kashmir & ors as reported in (1979) 4 SCC

370 is also inapt in the facts and circumstances of the present case. The Apex Court in the judgement (supra) held that the grounds of detention were

so vague that it was not possible to make an effective representation and that it impinged upon the fundamental right of the detenu under Article

22(5) of the Constitution. The Apex Court in the judgment (supra) analyzed the grounds of detention in paragraph 1 whereof, it was stated that the

petitioner was reported to have "recently" started a campaign in villages, asking the inhabitants not to sell their extra paddy crop to the

Government and to manhandle the Govt. Officials in case they were compelled to do so.

The Apex Court held that the allegations were vague in several respects as it did not state the places where the petitioner was said to have organised

the meetings, or the nature of lawlessness instigated by him. The Apex Court further held that the grounds also did not mention the names of the

villages where the petitioner was said to be in the habit of going for compelling the shopkeepers to close down their shops and to participate in the

meetings and further that the same also did not mention the villages where the petitioner was reported to have "recently" started the campaign asking

the inhabitants not to sell their extra paddy, or to manhandle the government officials. It was in those circumstances held that the said was very vague.

Similarly, in regard to para 6 of the grounds of detention, the Apex court held that while the same stated that the petitioner was found leading the unruly mobs in different villages and instigating them to set fire to the houses of the worker of Jamaiat-e-Islami, the names of those villages and the names of the owner of burnt house had not been stated.

On a reading of the aforementioned grounds of detention, it is difficult to hold that the grounds were in any manner vague which would have otherwise make it difficult for the petitioner to make an effective representation before the Government or the detaining authority. It can also not be said that the grounds are in any manner irrelevant inasmuch as there is a basis laid in the grounds of detention which has a direct connection with the order of detention which is impugned in the present petition.

The argument that the grounds of detention are vague is, therefore, untenable in law and is accordingly, rejected.

SECOND GROUND

7. The second ground urged by the learned counsel for the petitioner was that the order of detention suffered from non-application of mind inasmuch as the grounds of detention would reflect that it was nothing but a replica of the police dossier and therefore the order impugned was bad.

8. I have gone through the police dossier as also the grounds of detention and I am satisfied that the assertion of the petitioner that the grounds of detention were nothing but a replica of the police dossier is without any legal basis. In fact, the grounds of detention highlight all the material allegations and facts which otherwise had formed a part of the police dossier which was necessary to be reproduced in the grounds of detention with a view to lay a sound basis for passing of the order of detention and for informing the petitioner of the allegations based upon which the order of detention had been passed. The argument that the order impugned suffered from non-application of mind on this ground is thus untenable and is accordingly rejected.

THIRD GROUND

9. The next ground on which the order impugned has been challenged is that the detaining authority had failed to supply the entire material to the

petitioner thus depriving him of making an effective representation. On a perusal of the record, it can be seen the petitioner was supplied a copy of the detention order (one leaf), notice of detention (one leaf) and grounds of detention (2 leafs) i.e., total 4 leafs. Therefore, it cannot be said that all the documents were not supplied and to that extent the argument that petitioner was prevented from making an effective representation is, therefore, without any basis.

FOURTH and FIFTH GROUNDS

10. In regard to these grounds, learned counsel for the petitioner has placed reliance upon a judgment titled Smt. Raziya Umar Bakshi vs. Union of India & ors reported in (1980) Supp SCC 195. Since a reference has been made to the said judgment, it becomes necessary to refer to the same briefly. In that case, the grounds of detention were in English language which the detainee claimed he did not understand at all and further that the grounds were not explained. The Apex Court had referred to the ground (XIII) of the petition in that regard. In the objections filed, the allegations were denied and was stated that the grounds were explained to the detainee in the language known to him. It was also stated that the Police Inspector, Mr. A.K. Sharma from the Crime Branch had personally explained the detenu the order of detention and the grounds communicated to him.

11. The Apex court in the judgment (supra) held that the reply affidavit filed by the State was inadmissible in evidence. It was held that if it was a fact that the said Inspector had personally explained the grounds to the detainee then the respondents should have filed his affidavit to show that he had actually explained the contents of the grounds to the detenu by translating the same in the language which he understood. It was further observed that no contemporaneous record had been produced to show that the police inspector had actually explained or translated the grounds to the detenu. What was stated by the Apex Court in paragraph 5 of the judgment (supra) is reproduced hereunder:

“5. In this view of the matter, the detention becomes invalid on this ground alone. I would however like to observe that in cases where the detaining authority satisfied that the grounds are couched in a language which is not known to the detenu, it must see to it

that the grounds are explained to the detenu, a translated script is given to him and the grounds bear some sort of a certificate to show

that the grounds have been explained to the detenu in the language which he understands. A bare denial at the stage when Habeas

Corpus petition is filed in the court by the detaining authority that these formalities were observed would be of no consequence

particularly when it is not supported by any document or by any affidavit of the person who had done the job of explaining or

translation.

12. In the light of what was held by the Apex Court reproduced hereinabove, it can be seen that the obligation to supply a copy of the translated

version of the grounds of detention arises only in a case where the detainee claims that he does not know the language in which the order of detention

or the grounds of detention are reflected.

In the present case, what has been stated by the petitioner in paragraph 10 is as under:-

“That the detainee is an illiterate person and understands only Kashmiri language but the order of detention is in English that too in

hypertechnical words and no translated script in Kashmiri was furnished to the detainee nor was the grounds read over and explained

to him in the language which he understands so that he can make an effective representation. Non-supply of the translated script as

well as non-explanation of the grounds of detention has prevented the detainee from making an effective representation which violates

his fundamental right under Article 22 of the Constitution. On this ground, the impugned order of detention is bad in law and deserves

to be quashed.”

13. In response to this ground, what has been stated by the official respondents in the reply affidavit is that while supplying the documents, which

included the order of detention to the petitioner, the contents of the detention order in the grounds of detention were read over and explained to the

petitioner in the language which he fully understood and further that he was also informed that he had a right to make representation to the detaining

authority or to the Government against his detention.

14. On a perusal of the execution report, it can be seen that the same has been prepared by SI Sameer Ahmed which report also contains the signatures purported to have been executed by the petitioner, which are in English.

15. Two issues arise for consideration:

(i) Firstly, is it necessary in every case that the officer executing the order of detention must also file an affidavit in court proceedings to substantiate the fact not only that the orders and the documents were supplied but they were also read over and explained to the detenue in the language which he understood.

(ii) Secondly, is it necessary for the detaining authority to supply to the detenue in every case a copy of the translated version of the order of detention and the grounds of detention notwithstanding the fact that the language in which the grounds of detention and the order of detention are written are understood by the detenue and

16. Insofar as the filing of the affidavit of the executing officer is concerned, in my opinion, it is not necessary in every case that such an affidavit be filed as on a reading of the judgment in Umar Bakshi's case, particularly in para 5, it can be seen that even if there is some sort of a certificate on record to show that the grounds had been explained to the detenu in the language which he understood, it would be a sufficient compliance. In the present case, there is on record a certificate of the Executing Officer, SI Sameer Ahmed, which clearly reflects that not only was the relevant material supplied to the petitioner but also the contents were read over to the petitioner in the language which he understood. Reliance can also be placed on judgment titled Fazal Hussain and Arshad Ahmad vs. The State of Jammu and Kashmir, 1969(2) SCC 356 in which the Apex Court in para 9 held as under:-

“The learned counsel for the petitioner contends that the Deputy Superintendent Central Jail, who is alleged to have served the order of detention on the petitioner, should have filed the affidavit. The State has annexed to the affidavit a copy of the Government Detention Order and below the detention order the following endorsement exists:

The notice of this order has been served upon Shri Fazal Hussain s/o Ayub Khan detenu by reading over the same to him.

Sd/-Dy.

Superintendent Central Jail, Jammu

In view of this endorsement' the order of detention we do not consider that it was necessary that the Deputy Superintendent, Central Jail, should have

filed an affidavit to the effect that he had served the order of detention on the detenu Fazal Hussain.â€

17. In my opinion, in view of the presence of an execution report, signed by the SI Sameer Ahmed, it was not at all necessary that the said officer

should also have filed an affidavit in the court proceedings as was suggested and vehemently argued by the learned counsel for the petitioner.

18. The next question which arises for consideration is whether it was necessary for the detaining authority to at all supply the translated version of

the order of detention, grounds of detention and the other connected documents. In my opinion, there is no necessity in every case to supply to a

detenue the translated version of the order of detention, grounds of detention and the other connected documents as was sought to be suggested by

the learned counsel for the petitioner. In my opinion, the argument raised is again untenable for the simple reason that the translated version of the

grounds of detention, order of detention and the other documents needs to be supplied to the detenue only in a case where the detaining authority is

satisfied that the grounds of detention were couched in a language, which is not known to the detenue.

19. The connected issue that arises for consideration is whether in the present case, it can be said that the petitioner was unable to understand the

English language, which was a language in which the order of detention and the grounds of detention were reflected. In this regard, while the

petitioner claims that he is totally illiterate and unable to understand the English language and that he understood only Kashmiri language, the grounds

of detention would reflect that the petitioner had studied upto 7th which belies the theory as propounded by the petitioner that he was totally illiterate.

Secondly, it is difficult to comprehend that the petitioner, who claims to be totally illiterate, would be signing the execution report, which is on record, in

English. Interestingly the petitioner has not denied specifically that he had not studied upto class 7 as was reflected in the grounds of detention which he had placed on record nor has he rebutted the factum of the presence of the execution report, which was specifically mentioned in the objections filed by the official respondents. The execution report has not been specifically denied and since the petitioner has not specifically rebutted, in rejoinder, the averments made in ground 5 of the reply affidavit wherein it was specifically stated that the grounds of detention were also read over and explained to the detainee in the language which he fully understood and in lieu thereof, the detainee had scribed his signatures on the execution report, it is difficult to hold that the petitioner, who has signed the execution report in English, was totally illiterate or that he did not understand the language of the impugned order.

20. Having considered the entire matter, in my opinion, no ground for interference is made out. The impugned order of detention is perfectly legal and valid. The petition is found to be without any merit and is accordingly dismissed.