

IN THE HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT SRINAGAR

Reserved on: 28.10.2021

Pronounced on: 16.11.2021

WP(Crl.) No.184/2020

MUSADIQ GAFFAR LONE

...PETITIONER

Through: - Mr. Wajid Haseeb, Advocate.

Vs.

UNION TERRITORY OF J&K & ANR.

...RESPONDENT(S)

Through: - Mr. Asif Maqbool, Dy. AG vice Mr. Mir
Suhail, AAG.

CORAM: HON'BLE MR. JUSTICE SANJAY DHAR, JUDGE

JUDGMENT

1) By the instant petition, quashment of order No.37/DMP/PSA/20 dated 09.11.2020, issued by District Magistrate, Pulwama (for brevity "*Detaining Authority*") is sought. In terms of the aforesaid order, *Musadiq Gaffar Lone son of Abdul Gaffar Lone resident of Niloora Tehsil Litter District Pulwama* (for short "*detenué*") has been placed under preventive detention and lodged in Kotbhalwal Jail, Jammu.

2) Petitioner has contended that the Detaining Authority has passed the impugned detention order mechanically without application of mind. It has been further contended that the Constitutional and Statutory procedural safeguards have not been complied with in the instant case. It has also been urged that the allegations made against the

detenue in the grounds of detention are vague. Petitioner has gone on to contend that he has not been informed as to before which authority he had to make a representation.

3) The writ petition is opposed by the respondents who have filed reply affidavit on behalf of the detaining authority. The factual submissions made by the petitioner have not been refuted in the reply affidavit. The respondents have relied upon the judgment of the Supreme Court in the case of **Hardhan Saha v. State of W.B (1975) 3 SCC 198**, and submitted that the detention order is based on the subjective satisfaction of the detaining authority and the same cannot be gone into by this Court in exercise of its extraordinary writ jurisdiction. It is contended that the detenue has been detained only after following the due procedure; that there has been proper application of mind on the part of the Detaining Authority while passing the impugned order and that the detenue has been provided all the material. The learned counsel for the respondents also produced the detention records to lend support to the stand taken in the counter affidavit.

4) I have heard learned counsel for parties and perused the detention record.

5) Learned counsel for the petitioner, while seeking quashment of the impugned order, projected various grounds but his main thrust during the course of arguments was on the ground that the constitutional and statutory procedural safeguards have not been complied with in the case of the petitioner, inasmuch as whole of the

material forming basis of the grounds of detention has not been furnished to him.

6) A perusal of the detention record produced by learned counsel for the respondents reveals that the material is stated to have been received by the petitioner on 11.11.2020. Report of the Executing Officer in this regard forms part of the detention record, a perusal thereof reveals that it bears the signature of petitioner and according to it, copy of detention warrant (01 leaf), grounds of detention (02 leaves), copy of dossier (Nil), other related documents (Nil), in total 04 leaves, have been supplied to him.

7) It is clear from the execution report, which forms part of the detention record, that copies of detention order and the dossier have not at all been supplied to the detenu. Apart from this, if we have a look at the grounds of detention, it bears reference to two FIRs Viz. FIR No.35/2020 and 278/2016. It was incumbent upon respondents to furnish not only the copies of these FIRs but also the statements of witnesses recorded during investigation of these FIRs as well as the other material on the basis of which petitioner's involvement in these FIRs is shown. Thus, contention of the petitioner that whole of the material relied upon by the detaining authority, while framing the grounds of detention has not been supplied to him, appears to be well-founded. Obviously, the petitioner has been hampered by non-supply of these vital documents in making a representation before the Advisory Board, as a result whereof his case has been considered by the Advisory Board in the absence of his representation, as is clear from the detention record. Thus, vital

safeguards against arbitrary use of law of preventive detention have been observed in breach by the respondents in this case rendering the impugned order of detention unsustainable in law.

8) Viewed thus, the petition is allowed and the impugned order of detention bearing No. 37/DMP/PSA/20 dated 09.11.2020, issued by respondent No.2-District Magistrate, Pulwama, is quashed. The detenu is directed to be released from the preventive custody forthwith provided he is not required in connection with any other case.

9) The detention record be returned to the learned counsel for the respondents.

(Sanjay Dhar)
Judge

SRINAGAR
16.11.2021
"Bhat Altaf, PS"

Whether the order is speaking: Yes/No
Whether the order is reportable: Yes/No