Jammu & Kashmir High Court - Srinagar Bench

Wp(Crl) No. 141/2022 vs Union Territory Of J&K And Ors on 11 January, 2023

HIGH COURT OF JAMMU & KASHMIR AND LADAKH
SRINAGAR
...
WP(Crl) No. 141/2022

Reserved on: 31.12.2022
Pronounced on: 11.01.2023

Arif Ahmad Sheikh. .....Petitioner(s)

Through: Mr. Solih Pirzada, Advocate

Versus

Union Territory of J&K and ors. Respondent(s)

Through: Mr. Sajad Ashraf, GA

CORAM
HON'BLE MS. JUSTICE MOKSHA KHAJURI KAZMI, JUDGE

JUDGEMENT

1. Through the medium of this writ petition, Order No. DMS/PSA/10/2022 dated 07.04.2022, passed by District Magistrate, Srinagar, (Detaining authority) whereby, Arif Ahmad Sheikh S/o Gh. Mohammad Sheikh R/o Parimpora, Srinagar (Detenue) has been placed under preventive detention with a view to prevent him from indulging in the activities, prejudicial to the security of the State is sought to be quashed and the detenue set at liberty on the grounds enumerated in the writ petition. The impugned order has been passed by the detaining authority on the basis of material supplied by the Senior Superintendent of Police, Srinagar, vide his communication No. LGL/Det-PSA/2022/6068-71 dated 06.04.2022.

2. The main grounds on which the detention is sought to be quashed are that the grounds of detention are vague, indefinite and cryptic, inasmuch as there is no specific allegation against the detenue, however, respondents make mention of FIR No. 47/2017, registered in Police Station, Zakura, Srinagar but the said FIR does not specify as to how the detenue is involved in the said FIR. The detenue stands already bailed out in the afore-stated FIR by the Court of Additional Sessions Judge TADA/POTA, Srinagar on 12.05.2021. Further, the allegations made in the grounds of detention have no nexus with detenue and detaining authority has not given any reasonable justification to pass impugned order of detention. It has been urged that the material relied upon including dossier have not been furnished to the detenue to enable him to make an effective representation against his detention, as a consequence of which impugned order of detention is liable to be quashed.

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

4. Heard learned counsel for the parties and considered the submissions made.

5. The detention record produced by the learned Government Advocate, contains "Confirmation of detention order" "Execution Report", "Dossier" and "Grounds of detention". It would be advantageous to reproduce relevant portion of "Execution Report " hereunder:

> "The detention order (01 Leaf), Notice of detention (01 leaf), grounds of detention (02 leaves), copies of FIR, statement of witnesses and other relevant documents (01 Leaf) have been handed over to the detenue in Central Jail, Jammu, Kotbalwal on 11.04.2022, (total 05 leaves). However, Dossier have not been handed over the detenue and accordingly he was informed about his right to make a representation to the Government as well as detaining Authority...."

6. From the perusal of "Execution Report" it is crystal clear that detenue has been provided only 05 leaves, i.e, detention order, notice, grounds of detention but has not been provided the dossier and the other relevant material.

7. Perusal of impugned detention order reveals that on the basis of dossier the detaining authority has drawn its satisfaction that with a view to prevent detenu from acting in any manner prejudicial to the security of the State, it was necessary to detain him under necessary provisions of law. So, it is on the basis of dossier and other connected material/documents that impugned detention order has been passed by the detaining authority. The grounds of detention, gives reference to various alleged activities of the detenue that appears to have weighed with detaining authority, while making detention order. The detention record also does not indicate that dossier and other connected material were ever supplied to detenue, on the basis whereof impugned detention order has been passed.

8. The aforesaid material, thus, assumes importance in the facts and circumstances of the case. It is only after all the said material was made available to the detenue that he could make an effort to convince detaining authority and thereafter the Government that their apprehensions vis-à-vis his activities are baseless and misplaced. If, however, the detenue is not supplied the material, on which the detention order is based, he will not be in a position to make an effective representation against his detention order. The failure on the part of the detaining authority to supply the material, relied at the time of making the detention order, to the detenue, renders the detention order illegal and unsustainable. In this regard support can be drawn from the law laid down in the cases of 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 of Maharashtra and others AIR 1999 SC 3051; and Syed Aasiya Indrabi v. State of J&K & ors, 2009 (I) S.L.J 219.

9. The Supreme Court in Abdul Latief Abdul Wahab Sheikh v. B.K. Jha, 1987 (2) SCC 22 has held that it is only the procedural requirements, which are the only safeguards available to the detenu, that is to be followed and complied with as the Court is not expected to go behind the subjective satisfaction of the detaining authority. In the present case, the procedural requirements, as

discussed above, have not been followed and complied by the respondents in letter and spirit and resultantly, the impugned detention needs to be quashed.

10. It may not be out of place to mention here that grounds of detention does not reflect the date and year of the activities alleged against the detenue for which he has been put under preventive detention, as such, are vague and unsustainable. 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].

11. Based on the above discussion, the petition is disposed of and Detention Order no. DMS/PSA/10/2022 dated 07.04.2022, issued against Arif Ahmad Sheikh S/o Gh. Mohammad Sheikh R/o Parimpora, Srinagar, is quashed and the respondents are directed to set the detenue at liberty forthwith provided he is not required in any other case.

12. Disposed of.

13. Detention record be returned to counsel for respondents against receipt.

Srinagar (MOKSHA KHAJURIA KAZMI)
11.01.2023 JUDGE
(Ab. Rashid, PS.)

Whether approved for reporting? Yes/No