

Jammu & Kashmir High Court - Srinagar Bench

Wp(Crl) No.224/2022 vs Union Territory Of J&K And Ors on 30 December, 2022

HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT SRINAGAR

WP(Crl) No.224/2022

Reserved on: 20.12.2022

Pronounced on: 30 .12.2022

Reyaz Ahmad Sofi

.....Petitioner(s)

Through: Mr. Shah Ashiq Hussain, Advocate.

Versus

Union Territory of J&K and ors.

.....Respondent(s)

Through: Mr. Usman Gani, GA

CORAM:

HON'BLE MR JUSTICE VINOD CHATTERJI KOUL, JUDGE

JUDGEMENT

1. Through the medium of this writ petition, Order No.27/DMK/ PSA/ 2022 dated 10.04.2022, passed by District Magistrate, Kulgam, whereby detenu, namely, Reyaz Ahmad Sofi S/o Mushtaq Ahmad Sofi, R/o Khudwani Jamal Road District Kulgam, has been placed under preventive detention with a view to prevent him from indulging in the activities which are prejudicial to the security, sovereignty and integrity of the State, is sought to be quashed and the detenu set at liberty on the grounds made mention of therein.

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

3. The main grounds, on which the detention is sought to be quashed, are that the grounds of detention are vague, 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; that the material relied upon including dossier by the detaining authority to pass detention order has not been furnished to the detenu 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.

4. Respondents have filed reply/counter affidavit, insisting therein that there are very serious allegations against detenu as he has always been in the lead role in anti-social and anti-national activities, which are detrimental to the sovereignty and integrity of the country 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/counter 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 produced by counsel for respondents. The detention record, inter alia, contains "Execution Report" and Receipt of 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 (04 leaves), Dossier of detention (Nil) Copies of FIR, Statements of witnesses and other related relevant documents (Nil) (Total 04 Leaves) have been handed over to the above said detenu..."

6. It would also be appropriate to reproduce relevant portion of "Receipt of Grounds of Detention" herein:

"Receives copies of detention order (01 leaf), Notice of detention (01 leaf), grounds of detention (02 leaves), Dossier of detention (Nil) and Copies of FIR, Statements of witnesses and other related documents (Nil) Total 04 Leaves,"

Thus, it is unambiguously clear and evident from perusal of Execution Report and Receipt of grounds of detention that only four leaves have been given to detenu.

7. Perusal of impugned detention order reveals that on the basis of dossier and other connected material placed before detaining authority by Senior Superintendent of Police, Kulgam, vide no. Legal/PSA-30/2022/ 4581-84 dated 07.04.2022, detaining authority was satisfied that with a view to prevent detenu from acting in any manner prejudicial to the security, sovereignty and integrity 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 detaining authority. The grounds of detention, when looked into, gives reference to cases FIRs No. 73/2018 U/S 13(2), 18, 19, 38, 39 ULA(P) Act and No. 193/2016 U/S 147, 148, 332, 336 RPC to have been registered against detenu at Police Stations Qaimoh and Kulgam. Involvement of detenu in the aforesaid cases appears to have weighed with detaining authority, while making detention order. The record, as noted above, does not indicate that copies of aforesaid First Information Reports, statements recorded under Section 161 Cr. PC and other material collected in connection with investigation of aforesaid case, was ever supplied to the detenu. The above material, thus, assumes significance in the facts and circumstances of the case.

8. 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 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 detenu, renders the detention order illegal and unsustainable. In this regard, I may draw support 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. Based on the above discussion, the petition is disposed of and Detention Order no.27/DMK/PSA/2022 dated 10.04.2022, issued against Reyaz Ahmad Sofi S/o Mushtaq Ahmad Sofi, R/o Khudwani Jamal Road District Kulgam is quashed. As a corollary, respondents are directed to set the detenu at liberty forthwith provided he is not required in any other case. Disposed of.

11. Detention record be returned to counsel for respondents (Vinod Chatterji Koul) Judge Srinagar 30.12.2022 (Qazi Amjad Secy.) Whether approved for reporting? Yes/No