

**HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT JAMMU**

...
**HCP No. 12/2023
CM No. 3726/2023**

Reserved on: 21.11.2023
Pronounced on: 28.12.2023

Mohd Farooq

.....Petitioner(s)

Through: Mr. Ajaz Chowdhary, Advocate, Advocate

Versus

Union Territory of J&K and anr.

.....Respondent(s)

Through: Mr. Bhanu Jasrotia, GA.

CORAM:

HON'BLE MR JUSTICE VINOD CHATTERJI KOUL, JUDGE

JUDGEMENT

1. Through the medium of this writ petition, Detention Order No.DMR/INDEX/08 of 2023 dated 04.05.2023, passed by District Magistrate, Rajouri (for short "*detaining authority*") whereby detenu, namely, *Mohd Farooq S/o Mohd Bashir R/o Villaghe Bhangai, Shahdra Sharief Tehsil Thannamandi, Distgrict Rajouri* has been placed under preventive detention with a view to prevent him from further indulging in terrorist activities is sought to be quashed and the detenu set at liberty on the grounds made mention of therein.

2. The main ground taken by the petitioner in this petition for challenging the order of detention is that he was not provided with the material on the basis of which detaining authority had recorded its satisfaction for passing the order of detention; that the detaining authority has not applied its mind while passing the detention order; that the detaining authority was not aware as to whether FIR, challan and the trial referred by the detaining authority in the order of detention was disposed of and thus,

there had been no proper application of mind; that he was not provided with the translated script of the language which was understood by him; that by not providing the required material he was prevented from making effective representation to the authority or to the Government.

4. Respondents have filed reply affidavit, insisting therein that the detenu has been found working as harbourer and guide of terrorist organization till his arrest. He has been providing food, shelter and basis information about security forces to the terrorists outfits. It has been stated that the detenu has indulged in the activities which are highly prejudicial, antisocial and desperate in character. The activities narrated in the grounds of detention have been reiterated in the reply affidavit filed by respondents. It is insisted that all the relevant material, which has been relied upon by the detaining authority, was provided to the detenu and he was also informed that he can make a representation to the Government.

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

6. I have gone through the detention record produced by counsel for respondents.

7. 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 "Receipt of detention warrant". It would be advantageous to reproduce relevant portion of "*Receipt of Grounds of Detention and other relevant record*:-

"Received total (3) leaves copy of detention warrant (01) leaf Ground of detention (02) leaves of grounds/other relevant documents through executing officer today on 06.05.2023 PSI Wasim Ahmed ARP No.205808 of P/S Thanmandi by reading over in English language and explained to

me in Urdu language which I understood fully I have been also informed that I can make representation to the Government against detention order if so desire.”

8. Thus, it is unambiguously clear and evident from perusal of Receipt of grounds of detention and other relevant record that only six leaves have been given to detenu.

9. Perusal of impugned detention order reveals that on the basis of dossier placed before detaining authority by Senior Superintendent of Police, Rajouri vide his office letter no. PA/Det/2023/4437-40/C dated 02.05.2023 detaining authority was satisfied that there are sufficient grounds to prevent detenu from acting in any manner prejudicial to the maintenance of security of the State and public order, 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, give reference to case FIR No. 223/2021 U/S 307/120-B/121/122/216/IPC 7/27, 1AA 13 ULA to have been registered against detenu at Police Station Thanamandi. Involvement of detenu in the aforesaid case appears to have weighed with detaining authority, while making detention order. The detaining authority while recording his satisfaction on the basis of the aforesaid FIRs ought to have made aware or should have also taken into account the result of aforesaid FIR, however, it appears that the detaining authority was not aware about the result of the FIR.

10. The detention 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, on the basis whereof

impugned detention order has been passed. The aforesaid material, thus, assumes importance in the facts and circumstances of the case.

11. 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.

It will be relevant and advantageous herein to refer to a case titled *Banka Sneha Sheela vs. The State of Telangana*, (2021) 9SCC 415, wherein the Hon'ble Supreme Court has laid down as under:-

“ A close reading of the Detention Order would make it clear that the reason for the said Order is not any apprehension of widespread public harm, danger or alarm but is only because the Detenu was successful in obtaining anticipatory bail/bail from the Courts in each of the five FIRs. If

a person is granted anticipatory bail/bail wrongly, there are well-known remedies in the ordinary law to take care of the situation. The State can always appeal against the bail order granted and/or apply for cancellation of bail. The mere successful obtaining of anticipatory bail/bail orders being the real ground for detaining the Detenu, there can be no doubt that the harm, danger or alarm or feeling of security among the general public spoken of in Section 2(a) of the Telangana Prevention of Dangerous Activities Act is make believe and totally absent in the facts of the present case.”

12. 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.

13. Based on the above discussion, the petition is disposed of and, Detention Order No.DMR/INDEX/08 of 2023 dated 04.05.2023, passed by District Magistrate, Rajouri issued against the detenu is quashed. As a corollary, respondents are directed to set the detenu- *Mohd Farooq* at liberty forthwith provided he is not required in any other case.

14. Writ petition is, accordingly, disposed of in the above said terms.

15. Detention record be returned to counsel for respondents.

(Vinod Chatterji Koul)
Judge

Jammu
28.12.2023
Bir

Whether approved for reporting? Yes/No

