

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

WP(Crl) No. 150/2023

Reserved on: 22.12.2023

Pronounced on: 30.12.2023

Muneeb Rasool Sherwani

...Appellant/Petitioner(s)

Through: Mr. Rafiq Bhat, Advocate

Vs.

UT of J&K and Ors.

...Respondent(s)

Through: Mr. Jehangeer Ahmad Dar, GA

CORAM:

HON'BLE MS JUSTICE SINDHU SHARMA, JUDGE

JUDGEMENT

1. By way of this petition, the detenu, Muneeb Rasool Sherwani, has challenged detention order No.19/DMB/PSA/2023 dated 20.03.2023, passed by the District Magistrate, Baramulla, vide which he has been detained under Clause (a) of Section 8 of Jammu and Kashmir Public Safety Act, 1978, preventing him from acting in any manner prejudicial to the Security of State. The order of detention has been questioned by the detenu through his mother Hameeda Begum.
2. The order of detention has been assailed by the detenu on various grounds but the star ground is that the detenu was in custody in connection with FIR No. 218/2020, registered with Police Station, Baramulla, for offences under Section 7/25 of Arms Act and Sections 18, 19, 20 & 39 of ULA(P) Act. The detenu was acquitted from the said FIR vide order dated 15.03.2023, passed by the court of Additional Sessions Judge, Special NIA, Baramulla. However, the detaining authority while passing order of detention has relied upon FIR no.218/2020, without noticing the fact that detenu has already been acquitted in the said FIR, which vitiates the detention. It is next

submitted that the material relied upon by detaining authority has not been furnished to detenu.

3. Respondents have filed Counter affidavit, however, despite availing numerous opportunities, they have not produced the detention record.
4. Respondents in their counter affidavit have stated that the detenu was involved in case FIR No. 218/2020, registered with Police Station, Baramulla, for the commission of offences under Section 7/25 of Arms Act, 18, 19,20, 39, ULA(P) Act. The activities of the detenu are prejudicial to the Security of State, as such, the preventive detention of the detenu has been found necessitated. It is also submitted that all the statutory requirements and constitutional guarantees have been fulfilled and complied with by the Detaining Authority. The grounds of detention, order of detention as well as all the material relied upon by the Detaining Authority have been provided to the detenu within the statutory period. It is also submitted that the detenu was informed vide communication dated 20.03.2023, in pursuance of Section 13(1) of the J&K Public Safety Act, 1978, about his detention on the ground specified and he was also informed that he has a right to make an effective representation to the Detaining Authority or the Government
5. The first contention of learned counsel for the detenu that the detenu was discharged in FIR No. 218/2020, registered with Police Station, Baramulla, by the Court of Additional Sessions Judge, Baramulla, in terms of order dated 15.03.2023 and the respondents instead of releasing the detenu from the custody, have detained the him in terms of detention order dated 20.03.2023. Therefore, question arises for consideration whether an order of detention could be passed on the face of such an eventuality? The answer to this question is emphatically “No”, taking into consideration the law laid down by the Hon’ble Apex Court in ***Sushanta Kumar Banik v. The State of Tripura***, has held as under:-

“24. In Asha Devi v. Additional Chief Secretary to the Government of Gujarat and Anr., reported in 1979 CrL LJ 203, the Apex Court pointed out that:

“... if material or vital facts which would influence the minds of the detaining authority one way or the other on the question whether or not to make the detention order, are not placed before or are not considered by the detaining authority it would vitiate its subjective satisfaction rendering the detention order illegal.”

25. In *Sk. Nizamuddin* (supra) this Court observed as under:

"We should have thought that the fact that a criminal case is pending against the person who is sought to be proceeded against by way of preventive detention is a very material circumstance which ought to be placed before the District Magistrate. The circumstance might quite possibly have an impact on his decision whether or not to make an order of detention. It is not altogether unlikely that the District Magistrate may in a given case take the view that since a criminal case is pending against the person sought to be detained, no order of detention should be made for the present, but the criminal case should be allowed to run its full course and only if it fails to result in conviction, then preventive detention should be resorted to. It would be most unfair to the person sought to be detained not to disclose the pendency of a criminal case against him to the District Magistrate."

26. From the above decisions, it emerges that the requisite subjective satisfaction, the formation of which is a condition precedent to passing of a detention order will get vitiated if material or vital facts which would have bearing on the issue and weighed the satisfaction of the detaining authority one way or the other and influence his mind are either withheld or suppressed by the sponsoring authority or ignored and not considered by the detaining authority before issuing the detention order."

6. The grounds of detention reveal that the detenu was apprehended in FIR no.218/2020 and thereafter, the court of Additional Sessions Judge Special NIA, Baramualla, discharged him in the said FIR, vide order dated 15.03.2023. The Detaining Authority while noticing that the detenu was apprehended in FIR No.218/2020, has not shown any awareness to the fact that the detenu was discharged in the said FIR. This vital fact was not brought to the notice of Detaining Authority and has vitiated the detention. This reflects the total non-application of mind which has rendered the detention of the detenu unsustainable.

7. There is nothing on record to suggest that the detenu has been supplied all the material relied upon by the detaining authority, which has resulted in infringement of his rights under Article 22(5) of the Constitution. Reliance is also placed on ***Thahira Haris etc. etc. Vs. Government of Karnataka and others***, reported as ***AIR 2009 Supreme Court 2184***, has held as under:

“27. There were several grounds on which the detention of the detenu was challenged in these appeals but it is not necessary to refer to all the grounds since on the ground of not supplying the relied upon document, continued detention of the detenu becomes illegal and detention order has to be quashed on that ground alone.

28. Our Constitution provides adequate safeguards under clauses (5) and (6) of Article 22 to the detenu who has been detained in pursuance of the order made under any law providing for preventive detention. He has right to be supplied copies of all documents, statements and other materials relied upon in the grounds of detention without any delay. The predominant object of communicating the grounds of detention is to enable the detenu at the earliest opportunity to make effective and meaningful representation against his detention.”

8. Though, the personal liberty may be curtailed when person faces a criminal charge or is convicted of an offence sentenced to imprisonment. The Constitution, however, by adding Article 22(5) have incorporated detention of a person without any formal charge and trial and without such person being held guilty of an offence and sentenced by a competent court. This is to keep the society safe from such activities that are likely to deprive large people of their right to life and personal liberty. The justification of such detention is suspicion or reasonability which requires action to be taken to prevent apprehended objectionable activities, Article 22(5) of the Constitution provides for the same. The respondents while passing the detention order have to fulfill all the Constitutional requirements and procedural safeguards and infraction of the same vitiates the detention.
9. Thus, the Detaining Authority while passing the order of detention has arrived at subjective satisfaction on the basis of grounds on which the

earlier detention order has been quashed, therefore, the detention order without fresh material is not sustainable in the eyes of law.

10. The respondents have not produced the detention record, which suggests that whatever stated by detenu in the petition is based on facts and un rebuttable.
11. In the backdrop of what has been said above, without advertng to other grounds raised in this petition, the instant petition is allowed, as a consequence of which, the impugned order of detention bearing No. 19/DMB/PSA/40/2023 dated 20.03.2023, passed by the District Magistrate, Baramulla, is quashed. The respondents are directed to release the detenu forthwith provided he is not required in any other case.
12. The detention record, as produced, be returned to learned counsel for the respondents.

(SINDHU SHARMA)
JUDGE

SRINAGAR

30.12.2023

Manzoor

