

HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT SRINAGAR

WP(Crl) No.384/2022

Reserved on: 08.12.2023
Pronounced on : 28.12.2023

Adil Manzoor Mir

.... Petitioner(s)

Through:- Mr. Wajid Haseeb, Advocate

V/s

Union Territory of J&K & anr.

.....Respondent(s)

Through:- Mr. Alla-ud-Din Ganai, learned AAG

CORAM:

HON'BLE MS. JUSTICE SINDHU SHARMA, JUDGE

JUDGMENT

01. By way of this petition, the detenu has assailed the order of detention No.25/DMA/PSA/DET/2022 dated 03.06.2022 passed by the District Magistrate, Anantnag, vide which, the detenu has been detained under Section 8 of the Jammu & Kashmir Public Safety Act, 1978, to prevent him from acting in any manner prejudicial to security of the State. The said order has been assailed by the detenu through his father-Manzoor Ahmad Mir.

02. The impugned detention order has been assailed by the detenu on various grounds, that same has been passed in violation of the Constitutional and statutory safeguards provided to him under Article 22(5) of the Constitution of India and under the Public Safety Act. The detenu has been again detained by respondents on the same grounds on which the earlier detention order has been passed.

03. The detenu, in fact, was already admitted to bail in FIR No.09/2021, and this fact has not been reflected in the grounds of detention, as such, the order suffers from non-application of mind. It is submitted that the detenu was already placed under preventive custody on the same set of allegations

which was quashed by this Court in WP(Crl) No.24/2021 and passing of the fresh detention order on the same grounds which has been set aside by this Court, is not permissible under law and the detention order is liable to be quashed. All the relevant material, like copy of dossier, FIR and connected material have not been furnished by the Detaining Authority to the detenu to enable him to make an effective representation. The detaining authority has not prepared the grounds of detention itself which has vitiated the detention. The representation made by the detenu has not been considered by the respondents.

04. Mr. Alla-ud-Din Ganai, learned AAG appearing on behalf of the respondents, has filed the counter affidavit as well as produced the detention record.

05. Learned counsel for the respondents has controverted the grounds urged by the petitioner in the petition. It is submitted that the detenu was detained in pursuant to detention order No.25/DMA/PSA/DET/2022 dated 03.06.2022 passed by the District Magistrate, Anantnag, as the activities of the detenu were considered to be the prejudicial to the security of the State. The detenu was earlier detained under Public Safety Act vide Order No.07/DMA/PSA/DET/2021 dated 26.02.2021 but the said order of detention was quashed by this Court vide order dated 27.01.2022 and the detenu was released. The Detaining Authority was satisfied that the detenu's activities were prejudicial to the security of the State, as such, in the facts and circumstances, the preventive detention of the detenu was found necessitated and, accordingly, the order of detention was passed. The Government while examining the detention order and the material placed on record has approved the detention order dated 03.06.2022. The Advisory Board also examined the case and found sufficient grounds for detention of the detenu. All the procedural safeguards required under the provisions of the Public Safety Act have been fulfilled and the detenu has been provided with all the material necessary to make an effective representation.

06. Heard learned counsel for the parties and perused the record.

07. One of the most precious rights as guaranteed under the Constitution of India is personal liberty. No one can be denied of his right to

life and personal liberty except in accordance with the procedure established by law.

08. The grounds of detention reveals that the detenu was apprehended in FIR no.9/2021 under Section 7/25 Arms Act and lodged at police station Anantnag. Thereafter, the court of Special Mobile Magistrate enlarged the detenu on bail in FIR No.09/2021 vide order dated 07.02.2022. The Detaining Authority while noticing that the detenu was apprehended in FIR No. 09/2021, has not shown any awareness to the fact that the detenu was released on bail. 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.

09. 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. Receipt of the grounds of detention and other relevant record reveals that all the material was not furnished to the detenu. The respondents have ignored this vital aspect even when the earlier order of detention was quashed on the very ground.

10. 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.”

11. 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.

12. 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.

13. Record reveals that the detenu had made a representation through his father against his detention on 10.06.2022 to the District Magistrate Anantnag but the said representation has not been considered till date. The Hon'ble Apex Court in *Sarabjeet Singh Mokha vs. The District Magistrate, Jabalpur and others*, reported as SCC Online SC 1019, has held as under:-

“....Article 22(5) reflects a keen awareness of the framers of the Constitution that preventive detention leads to the detention of a person without trial and hence, it incorporates procedural safeguards which mandate an immediacy in terms of time. The significance of Article 22 is that the representation which has been submitted by the detenu must be disposed of at an early date. The communication of the grounds of detention, as soon as may be, and the affording of the earliest opportunity to submit a representation against the order of detention will have no constitutional significance unless the detaining authority deals with the representation and communicates its decision with expedition.”

14. This has resulted infraction of constitutional and statutory right of the detenu which has rendered the detention order sustainable.

15. In view of the aforementioned reasons, the detention of the detenu is unsustainable in the eyes of law. Accordingly, this petition is allowed and order of detention No.25/DMA/PSA/DET/2022 dated 03.06.2022 passed by the District Magistrate, Anantnag, is quashed. The detenu-Adil Manzoor Mir S/o Sh. Manzoor Ahmad Mir R/o Heaven Colony Anantnag, District Anantnag, is directed to be released from the custody forthwith if he is not otherwise required in any other case.

16. Detention record be handed over to learned counsel for the respondents by the Registry forthwith.

(Sindhu Sharma)
Judge

SRINAGAR
RAM MURTI/PS
28.12.2023

Whether the order is reportable? Yes/No

