

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

WP(Crl) No. 471/2022

Reserved on: 29.11.2023
Pronounced on: 18.12.2023

Basit Ahmad Laway

...Appellant/Petitioner(s)

Through: Mr. R. A. Khan, Advocate

Vs.

UT of J&K and Ors.

...Respondent(s)

Through: Mr. Mubeen Wani, Dy. AG

CORAM:

HON'BLE MS JUSTICE SINDHU SHARMA, JUDGE

JUDGEMENT

1. By way of this petition, the detenu, Basit Ahmad Laway, has challenged detention order No.63/DMK/ PSA/2022 dated 25.06.2022, passed by the District Magistrate, Kulgam, vide which he has been detained under Section 8(a) 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 Gulshana Bano.
2. The order of detention has been assailed by the detenu on the ground that (i) the allegations made in the grounds of detention are vague, non-existent and have been fabricated to justify his detention; (ii) the detenu, was already in custody when the detention order was passed and there is no compelling reason provided justifying his detention; (iii) the grounds on which the Detaining Authority has derived its satisfaction are vague, obscure and ambiguous; (iv) all the material relied upon by the Detaining Authority have not been supplied to the detenu, thus, the detenu has not been able to make an effective representation.

3. Mr. Mubeen Wani, learned Dy. AG, has filed counter affidavit as well as produced detention record.
4. Learned counsel for respondents submitted that the detenu was detained under the impugned detention order passed by the Detaining Authority vide order dated 25.06.2022, as the activities indulged by him are prejudicial to the Security of State. The grounds of detention are precise and the Detaining Authority has applied its mind before passing the order of detention. All the statutory requirements and constitutional guarantees have been fulfilled and complied with by the Detaining Authority. It is further submitted that the detenu has been detained keeping in view the fact that his activities remained threat to a public at large and law of land had failed to prevent him from indulging in such activities. It is further submitted that all material relied upon by the Detaining Authority was provided to him and there was sufficient cause for detention of the detenu.
5. Heard learned counsel for the parties and perused the record.
6. The first ground projected by the petitioner is that all the material which was relied upon by the Detaining Authority while passing the order of detention, has not been provided to him. Perusal of the record reveals that all material has not been provided to the detenu. The receipt of the grounds of detention, which is in the detention record produced by the learned counsel for the respondents reveals as under:-

“Received copies of detention order (01 leaf), Notice of detention (01 leaf), grounds of detention (02 leaves), Dossier of detention (Nil), Copies of FIR, Statements of Witnesses and other related documents (Nil) (Total 04 Leaves) through executing officer SI Ab. Rashid No.60/Kgm of DPL, Kulgam by reading over in English language and explained to me in Kashmiri/Urdu language which I understood fully. I have been also be informed that In can make representation to the government as well as detaining authority against this detention order if I so desire.”

7. It is evident from the receipt of grounds of detention that the petitioner has been provided only detention order, notice of detention, grounds of detention (Total 04 leaves). All other material on the basis of which the detention order has been passed including copy of FIR,

dossier and other connected material, has not been provided to the detenu, thus, precludes him for making an effective representation.

8. Article 22(5) of the Constitution of India provides that if any person is detained in pursuance of an order made under any law providing for preventive detention, the authority making the order shall, as soon as may be, communicate to such person the grounds on which the order has been made and shall afford him the earliest opportunity of making a representation against the order.
9. The requirement of law is that all the material, i.e., the record on which the detention is based is to be provided to detenu, the detenu must know what weighed with the Detaining Authority in order to make an effective representation against the detention order. The procedural requirements are to be strictly complied with and the respondents having failed to do so detention order is vitiated on this ground.
10. In ***Sophia Gulam Mohd Bham v. State of Maharashtra and Others***, reported in ***AIR 1999 SC 3051***, the Supreme Court has held as under:-

“The right to be communicated the grounds of detention flows from Article 22(5) while the right to be supplied all the material on which the grounds are based flows from the right given to the detenu to make a representation against the order of detention. A representation can be made and the order of detention can be assailed only when all the grounds on which the order is based are communicated the detenu and the material on which those grounds are based are also disclosed and copies thereof are supplied to the person detained, in his own language.”

11. The detenu has also made a representation to the respondents through his mother, which is on record, but the respondents have not considered the same within the statutory time period.
12. 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.”

13. The representation filed by the detenu has not been considered which has resulted infraction of the detenu’s statutory and constitutional rights and has rendered the detention unsustainable.
14. It is also submitted that the detenu was also in custody at the time of passing of detention order, therefore, the respondents had to show their satisfaction as to why the detention of the detenu was necessary. In **Saima Arun v. State of Telangana**, reported in **AIR 2017 SC 2662**, It has been held as under:-

“24. There is another reason why the detention order is unjustified. It was passed when the accused was in jail in Crime No. 221 of 2016. His custody in jail for the said offence was converted into custody under the impugned detention order. The incident involved in this offence is sometime in the year 2002-2003. The detenu could not have been detained preventively by taking this stale incident into account, more so when he was in jail. In Ramesh Yadav v. District Magistrate, Etah and Ors., this Court observed as follows:-

6. On a reading of the grounds, particularly the paragraph which we have extracted above, it is clear that the order of detention was passed as the detaining authority was apprehensive that in case the detenu was released on bail he would again carry on his criminal activities in the area. If the apprehension of the detaining authority was true, the bail application had to be opposed and in case bail was granted, challenge against that order in the higher forum had to be raised. Merely on the ground that an accused in detention as an under-trial prisoner was likely to get bail an order of detention under the National Security Act should not ordinarily be passed.”

15. The detention order for the aforementioned reasons is unsustainable as the representation, which has been filed by the detenu and has been placed on record along with receipt, has not been considered by the Detaining Authority within the statutory time period.

16. For the foregoing reasons, this petition is allowed. Impugned order of detention bearing No.63/DMK/PSA/2022 dated 25.06.2022, passed by the District Magistrate, Kulgam, is quashed. The respondents are directed to release the detenu forthwith provided he is not required in any other case.
17. Detention record be returned to learned counsel for the respondents.

(SINDHU SHARMA)
JUDGE

SRINAGAR

18.12.2023

Manzoor

Whether order is reportable: Yes/No

