

HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT SRINAGAR

WP(Crl) no.13/2023

Reserved on: 20.12.2023
Pronounced on: 28.12.2023

Abdul Rouf Wagay

.....Petitioner

Through: Mr. Manzoor A Ganai, Advocate

V/s

UT of JK and others

..... Respondent(s)

Through: Mr. Rekha Wangnoo, GA

CORAM:

HON'BLE MS. JUSTICE SINDHU SHARMA, JUDGE

JUDGMENT

1. By way of this petition, the petitioner/detenu has assailed the Detention Order No. 171/DMS/PSA/2023 dated 17.07.2023, issued by District Magistrate, Shopian, in terms of which Abdul Rouf Wagay has been ordered to be taken into preventive detention to prevent him from acting in any manner prejudicial to the security of the State. The order of detention has been challenged by the detenu through his brother Bashir Ahmad Wagay.
2. The contention of the petitioner is that District Magistrate has passed the impugned order of detention in violation of the Constitutional and Statutory safeguards as provided to him under Article 22(5) of the Constitution of India and Section 13 of the Public Safety Act. All the material relied upon by the detaining authority has not been provided to the detenu resulting in infraction of rights guaranteed. The detaining authority has not prepared the grounds of detention itself as such the detention is unsustainable.
3. The respondents have filed their counter affidavit and have also produced the record.

4. The respondents submit that order of detention has been passed by the detaining authority as the activities of the detenu were highly prejudicial to the security of the State. The detaining authority has complied with all the statutory requirements and constitutional guarantees have been complied. The detaining authority has passed the order after deriving subjective satisfaction. The grounds of detention, order of detention as well as all the material relied upon by the detaining authority were furnished to the detenu within the statutory period.
5. Heard learned counsel for the parties and perused the record on file.
6. Learned counsel for the detenu has projected various grounds but has laid emphasis on the ground that; (i) grounds of detention are verbatim copy of the dossier which reflects non-application of mind (ii) the detenu was not furnished the entire material to enable him to make an effective representation.
7. The grounds of detention are verbatim copy of dossier, which reflects that the detaining authority has not applied its mind while formulating the grounds of detention. The perusal of the record reveals that the grounds of detention are a replica of the police dossier, which reflects total non-application of mind by the detaining authority. The Hon'ble Supreme Court In ***Jai Singh and ors Vs. State of J&K reported in AIR 1985 SC 764*** has held as under:

“...First taking up the case of Jai Singh, the first of the petitioners before us, a perusal of the grounds of detention shows that it is a verbatim reproduction of the dossier submitted by the Senior Superintendent of Police, Udhampur, to the District Magistrate requesting that a detention order may kindly be issued. At the top of the dossier, the name is mentioned as Sardar Jai Singh, father's name is mentioned as Sardar Ram Singh and the address is given as village Bharakh, Tehsil Reasi. Thereafter it is recited “The subject is an important member of...” Thereafter follow various allegations against Jai Singh, paragraph by paragraph. In the grounds of detention, all that the District Magistrate has done is to change the first three words “the subject is” into “you Jai Singh, S/o Ram Sigh, resident of village Bharakh, Tehsil Reasi . thereafter word for word the police dossier is repeated and the word “he” wherever it occurs referring to Jai

Singh in the dossier is changed into “you” in the grounds of detention. We are afraid it is difficult to find proof of non-application of mind. The liberty of a subject is a serious matter and is not to be trifled with in this casual, indifferent and routine manner.

In another case titled *‘Noor-ud-Din Shah v. State of J&K and Ors, reported in 1989 SLJ 1*, this Court quashed the detention order, which was only a reproduction of the Dossier supplied to the detaining authority on the ground that it amounted to non-application of mind. The Court observed as under:

“I have thoroughly by examined the dossier submitted by the Superintendent of Police, Anantnag, to District Magistrate, Anantnag as also the grounds of detention formulated by the latter for the detention of the detenu in the present case, and I find the said grounds of detention are nothing but the verbatim reproduction of the dossier as forwarded by the Police to the detaining authority. He has only changed the number of paragraphs, trying in vain to give it a different shape. This in fact a case of non-application of mind on the detaining authority. Without applying his own mind to the facts of the case, he has acted as an agent of the police. It was his legal duty to find out if the allegations leveled by the police against the detenu in the dossier were really going to effect the maintenance of public order, as a result of the activities, allegedly, committed by him. He had also to find out whether such activities were going to affect the public order in future also as a result of which it was necessary to detain the detenu, so as to prevent him from doing so. After all, the preventive detention envisaged under the Act is in fact only to prevent a person from activity in any manner which may be prejudicial to the maintenance of public order, and not to punish him for his past penal acts. The learned District Magistrate appears to have passed the impugned order in a routine manner being in different to the import of preventive detention as or detained in the Act, passing of an order without application of mind goes to the root of its validity and in that case, the question of going into the genuineness or otherwise of the grounds does not arise. Having found that the detaining authority has not applied his mind to the facts of the case while passing the impugned order, it is not necessary to go to the merits of the grounds of detention, as mandated by Section 10-A of the Act.”

8. Perusal of the record reveals that the detenu has not been furnished all the material to enable him to make an effective and purposeful representation. The receipt of grounds reveals that the detenu has received the grounds of detention consisting of (05) leaves only. The failure on the part of the detaining authority to supply the material rendered the detention order illegal and unsustainable in law.

9. In **Sophia Gulam Mohd. Bham vs. State of Maharashtra and others, 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.”

10. For the aforesaid reasons without adverting to the other grounds, this petition is allowed. Impugned Detention Order No 171/DMS/PSA/2023 dated 17.07.2023 is quashed. Respondents are directed to release forthwith the detenu, namely, Abdul Rouf Wagay S/o Gh. Mohammad Wagay R/o Kanipora Balpora, Tehsil Shopian District Shopian, from preventive custody, if he is not required in any other case.

11. Record be returned back.

(SINDHU SHARMA)
JUDGE

SRINAGAR

28.12.2023

“Imtiyaz”

Whether the order is reportable: Yes/No