

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

Reserved on: 12.12.2024

Pronounced on: 27.12.2024

HCP No.4/2023

JAVAID HUSSAIN YATOO

...PETITIONER(S)

Through: - Mr. Wajid Haseeb, Advocate.

Vs.

U T OF J&K & ANR.

...RESPONDENT(S)

Through: - Mr. Mubashir Majid Malik, Dy. AG.

JUDGMENT

1) The petitioner, through the medium of present petition, has challenged detention order No.40/DMB/PSA/2023 dated 22.05.2023, issued by District Magistrate, Baramulla (for brevity “*detaining authority*”). In terms of the aforesaid order, ***Shri Javaid Hussain Yatoo*** (for short “*detenue*”) has been placed under preventive detention and lodged in Central Jail, Kotbhalwal, Jammu, in order to prevent him from indulging in the activities which are prejudicial to the security of the State.

2) The petitioner has contended that the impugned order has been issued without application of mind as the allegations mentioned in the grounds of detention have no nexus with the detenue and that the same have been fabricated by the police in order to justify its illegal action of detaining the detenue. It has been contended that the grounds of detention are vague, non-existent, on the basis of which no prudent man can make a representation against such allegations. It has been further contended

that the safeguards provided under law have not been complied with in the instant case, inasmuch as whole of the material which formed basis of the impugned detention order and translated version thereof has not been supplied to the petitioner. It has been further contended that the representation filed by the detainee against his detention has not been considered.

3) Upon being put to notice, the respondents appeared through their counsel and filed their reply affidavit, wherein they have contended that the activities of the detainee are highly prejudicial to the security of the State. It is pleaded that whole of the material relied upon by the detaining authority has been furnished to the detainee and the same was read over and explained to him and that the detainee was informed that he can make a representation to the government as well as to the detaining authority against his detention. It is further contented in the reply affidavit that all statutory requirements and constitutional guarantees have been fulfilled and complied with by the detaining authority and that the impugned order has been issued validly and legally. The respondents have produced the detention record to lend support to the stand taken in the counter affidavit.

4) I have heard learned counsel for parties and perused the record.

5) Learned counsel for the petitioner, while seeking quashment of the impugned order, projected various grounds but his main thrust during the course of arguments was on the ground that the detainee has not been

provided the whole of the material, which prevented him from making an effective representation against his detention.

6) The ground projected by the learned counsel for the petitioner that the detainee has been disabled from making an effective representation against the order of detention as whole of the material, that formed basis of the grounds of detention, has not been furnished to him, appears to have substance. A perusal of the detention record produced by learned counsel for the respondents reveals that the material is stated to have been received by the petitioner on 26.05.2023. Report of the Executing Officer in this regard forms part of the detention record, a perusal whereof reveals that it bears the signature of the petitioner and according to it, copy 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 relevant documents (**03 leaves**), total **07 leaves**, have been supplied to him.

7) If we have a look at the grounds of detention, it bears reference to FIR No.234/2020 of P/S Pattan. It was incumbent upon the respondents to furnish not only the copy of the FIR but also the statements of witnesses recorded during investigation of the said FIR and other material on the basis of which petitioner's involvement therein is shown, which has not been done. All this material would run in dozens of pages and it is impossible that all this material would be covered in only three leaves. Even the copy of the dossier of detention has not been supplied to the petitioner. Besides this, the grounds of detention bear reference to

proceedings under Section 107/151 of Cr. P. C. No material in this regard appears to have been supplied to the petitioner.

8) Thus, contention of the petitioner that whole of the material relied upon by the detaining authority, while framing the grounds of detention, has not been supplied to him, appears to be well-founded. Obviously, the petitioner has been hampered by non-supply of these vital documents in making an effective representation before the Advisory Board, as a result of which his case has been considered by the Advisory Board in the absence of his representation, as is clear from the detention record. Thus, vital safeguards against arbitrary use of law of preventive detention have been observed in breach by the respondents in this case rendering the impugned order of detention unsustainable in law.

9) It needs no emphasis that the detenue cannot be expected to make an effective and purposeful representation which is his constitutional right guaranteed under Article 22(5) of the Constitution of India, unless and until the material, on which the detention is based, is supplied to the detenue. The failure on the part of detaining authority to supply the material renders the detention order illegal and unsustainable in law. While holding so, I am fortified by the judgments rendered in **Sophia Ghulam Mohd. Bham V. State of Maharashtra and others (AIR 1999 SC 3051)** **Ram Krishan Bhardwaj v. State of Delhi, AIR 1953 SC 318**, **Shalini Soni v. Union of India, (1980) 4 SC 544**, **Nazeer Ahmad Sheikh vs. Additional Chief Secretary Home, 1999 SLJ 241**, and,

Thahira Haris Etc. Etc. V. Government of Karnataka & Ors. (AIR 2009 SC 2184).

10) For the foregoing reasons, the petition is allowed and the impugned order of detention is quashed. The detainee is directed to be released from the preventive custody forthwith provided he is not required in connection with any other case.

11) The detention record be returned to the learned counsel for the respondents.

**(Sanjay Dhar)
Judge**

SRINAGAR
27 .12.2024
"Bhat Altaf-Secy"

Whether the order is reportable: **Yes/No**

