

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

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**WP(CrI) No.234/2022**

*Reserved on: 18.10.2023  
Pronounced on: 07.12.2023*

**Asif Sultan Saida**

.....Petitioner(s)

Through: Mr. G. N. Shaheen, Advocate

**Versus**

**Union Territory of J&K and anr.**

.....Respondent(s)

Through: Mr. Sajad Ashraf, GA.

**CORAM:**

**HON'BLE MR JUSTICE VINOD CHATTERJI KOUL, JUDGE**

**JUDGEMENT**

1. Through the medium of this writ petition, Order No.DMS/PSA/ 30/ 2022 dated 09.04.2022, passed by District Magistrate, Srinagar (for short “*detaining authority*”) whereby detenu, namely, *Asif Sultan Saida S/o Mohammad Sultan Saida R/o Firdous Abad, Batamaloo, Srinagar*, has been placed under preventive detention with a view to prevent him from acting in any manner prejudicial to the maintenance of security of the State, is sought to be quashed and the detenu set at liberty on the grounds made mention of therein.

2. The main grounds on which the detention is sought to be quashed are that the grounds of detention are vague, indefinite, cryptic, inasmuch as the detaining authority has not attributed any specific allegation against the detenu; that the detaining authority has not furnished the material including dossier, relied upon by it, to detenu to enable him to make an effective representation by giving his version of facts attributed to him and make an attempt to dispel the apprehensions nurtured by detaining authority concerning involvement of detenu in alleged activities; that he has vehemently argued that representation was made by the father of detenu to the respondents for releasing the detenu, yet the same was neither considered and decided by respondents nor detenu was produced before the Advisory Board for providing him an opportunity of being heard so that he could

explain to the members of the Board that detenu is innocent and his order of detention deserves to be revoked and he be set at liberty.

3. Respondents have filed reply affidavit, insisting therein that the activities indulged in by detenu are highly prejudicial to the maintenance of security of the State and, therefore, his remaining at large is a threat to the security of the State. The activities narrated in the grounds of detention have been reiterated in the reply affidavit filed by respondents. The factual averments that detenu was not supplied with relevant material relied upon in the grounds of detention, have been refuted. It is insisted that all the relevant material, which has been relied upon by the detaining authority, was provided to the detenu at the time of execution of warrant.

4. I have heard learned counsel for the parties and considered the matter. I have gone through the detention record produced by counsel for respondents.

5. Taking into account the rival contentions of parties and submissions made by learned counsel for parties, it would be relevant to go through the detention record produced by counsel for respondents. The detention record, *inter alia*, contains "*Receipt of detention Papers*". It would be advantageous to reproduce relevant portion of "*Receipt of Grounds of Detention & other relevant record*" herein:

"Received copies of detention order (01 leaf), Notice of detention (01leaf) grounds of detention (02 leaves) Dossier of detention (Nil) Copies of FIR, Statements of witnesses and other related relevant documents (01 leaf) Total 05 leaves through executing officer ....."

Thus, it is unambiguously clear and evident from perusal of Receipt of grounds of detention & other relevant record that only five leaves have been given to detenu.

6. Perusal of impugned detention order reveals that on the basis of dossier placed before detaining authority by Senior Superintendent of Police, Srinagar vide no. LGL/Det-PSA/6351-54 dated 08.04.2022; detaining authority was satisfied that there are sufficient grounds to prevent detenu from acting in any manner prejudicial to the maintenance of security of the State, it was necessary to detain him under necessary provisions of law. So, it is on the basis of dossier and other connected material/documents that

impugned detention order has been passed by detaining authority. The grounds of detention, when looked into, give reference to case FIR No. 173/2018 U/S 307, 302 RPC, 7/27 I.A Act 16, 17, 18, 19, 20 ULAP Act to have been registered against detenu at Police Station Batamaloo, Srinagar . Involvement of detenu in the aforesaid case appears to have weighed with detaining authority, while making detention order. The detention record, as noted above, does not indicate that copies of aforesaid First Information Reports, Statements recorded under Section 161 Cr. PC and other material collected in connection with investigation of aforesaid case was ever supplied to the detenu, on the basis whereof impugned detention order has been passed. The aforesaid material, thus, assumes importance in the facts and circumstances of the case.

7. It needs no emphasis, that detenu cannot be expected to make a meaningful exercise of his Constitutional and Statutory rights guaranteed under Article 22(5) of the Constitution of India and Section 13 of the J&K Public Safety Act, 1978, unless and until the material on which detention order is based, is supplied to him. It is only after detenu has all the said material available that he can make an effort to convince detaining authority and thereafter the Government that their apprehensions vis-à-vis his activities are baseless and misplaced. If detenu is not supplied the material, on which the detention order is based, he will not be in a position to make an effective representation against his detention order. The failure on the part of the detaining authority to supply the material, relied at the time of making the detention order to the detenu, renders the detention order illegal and unsustainable. In this regard I may draw support from the law laid down in the cases of *Thahira Haris Etc. Etc. v. Government of Karnataka, AIR 2009 SC 2184*; *Union of India v. Ranu Bhandari, 2008, Cr. L. J. 4567*; *Dhannajoy Dass v. District Magistrate, AIR, 1982 SC 1315*; *Sofia Gulam Mohd Bham v. State of Maharashtra and others AIR 1999 SC 3051*; and *Syed Aasiya Indrabi v. State of J&K & ors, 2009 (I) S.L.J 219*.

8. The Supreme Court in *Abdul Latief Abdul Wahab Sheikh v. B.K. Jha, 1987 (2) SCC 22* has held that it is only the procedural requirements, which are the only safeguards available to the detenu, that is to be followed and complied with as the Court is not expected to go behind the subjective

