

HIGH COURT OF JAMMU AND KASHMIR AND LADAKH
AT SRINAGAR

WP(Crl) No. 27/2021 (O&M)

Reserved on 14.03.2022

Pronounced on 10.05.2022

Adil Farooq Mir

...Petitioner(s)

Through: Mr. Shafqat Nazir, Advocate

v/s

State of J&K and others

.....Respondent

Through: Ms. Insha Haroon, GA

CORAM: HON'BLE MR. JUSTICE RAJNESH OSWAL, JUDGE

JUDGMENT

1. The detention order bearing No. 05/DMA/PSA/DET/2021 dated 25.02.2021, issued by respondent No. 2, has been impugned by the petitioner-detenué, through his father, *inter alia* on the grounds :

- a. That the detenué has not been furnished the material relied upon by the detaining authority like the grounds of detention and other connected documents and the detenué has been deprived of his right to represent against the order of detention.

- b. That the allegations levelled against the detenué are purely criminal in nature and the detaining authority has failed to show as to why the law of the land is not sufficient to restrain the detenué from indulging in the activities which are criminal in nature.

- c. That the petitioner was apprehended from his home on 06.09.2020 and then implicated in F.I.R. No. 99/2019 of Police Station, Pattan. The Charge Sheet against the detenué was filed on 05.12.2020 and the charges were framed against him on 06.02.2021 and he was bailed out by the Court on 13.02.2021. However, the detenué was not released from custody but implicated in F.I.R No. 159/2019. All the aforesaid facts, particularly with regard to the grant of bail to the detenué, find no mention in the grounds of detention.

2. Counter affidavit has been filed by the respondents wherein it has been stated that the safeguards guaranteed to the petitioner-detenu under Article 22(5) of the Constitution of India and section 13 of the J&K Public Safety Act, 1978 (hereinafter to be referred as the Act), have been fully complied with and the detenu was furnished with sufficient particulars so as to enable him to make an effective representation. The case of the detenu was examined by the Advisory Board constituted under section 15 of the Act and it was only after the opinion of the said Board that the order of detention was confirmed by the Government. It is further stated that the detenu was detained in pursuance of the detention order(supra) as he had remained in touch with two militants, namely Haider R/O Dialgam and Basharat @ Mawiya R/O Dehruna. The detenu was working as an overground worker and was keeping vigil on Security Forces besides passing information to the aforesaid militants. The detenu was apprehended on a naka at Akura, Mattan on 06.09.2020 and in this regard FIR No. 99/2020 under section 7/25 Arms Act and 3/4 Explosive Substance Act at Police Station, Mattan, stands registered against him. It has been stated that FIR No. 159/2019 under sections 307 and 427 RPC, 3/4 Explosive Substance Act has been registered against the detenu in Police Station, Anantnag. Accordingly, the Police prepared a dossier and while finding that the activities of the detenu are prejudicial to the security of the State, the detention order was passed and the same was executed on 28.02.2021 through Sub Inspector, Mohammad Ashraf of Police Station, Anantnag, who handed over the detenu to the Assistant Superintendent, District Jail, Kathua, against proper receipt. Further the detenu was informed about his detention and the grounds of detention vide communication dated 25.02.2021. He was also informed

about his right to make representation against the said order both before the Government as well as before the detaining authority. The Government has approved the order of detention vide communication dated 23.03.2021.

3. Mr. Shafaqat Nazir, learned counsel appearing for the petitioner, reiterated the submissions made in the petition and vehemently argued that the detinue was already in custody at the time of passing of impugned order of detention but the order is absolutely silent with regard to that aspect of the matter and as such, the impugned order is bad in law.
4. Ms. Insha, learned Government Advocate, vehemently argued that the detinue has been supplied with all the requisite documents and all the constitutional and statutory safeguards have been fully complied with while passing the order impugned and executing the same.
5. Heard and perused the record.
6. Before appreciating the rival contentions of the parties, it would be appropriate to note that the procedural requirements are the only safeguards available to the detinue since the Court cannot go behind the subjective satisfaction of the detaining authority. In **Abdul Latif Abdul Wahab Sheikh v. B. K. Jha** reported in (1987) 2 SCC 22, it has been held by the Apex Court that the procedural requirements are the only safeguards available to a detinue since the Court is not expected to go behind the subjective satisfaction of the detaining authority. The procedural requirements are, therefore, to be strictly complied with, if any, value is to be attached to the liberty of the subject and the constitutional rights guaranteed to him in that regard.
7. One of the contention raised by the petitioner is that he was not supplied with the record relied upon by the Respondent No. 2 while issuing the order

impugned. Perusal of the execution report dated 28.02.2021 reveals that at the time of execution of the order of detention, a copy of the detention letter addressed to the detenu and a copy of grounds of detention comprising of 02 leaves, were handed over to the detenu for making an effective representation against his detention. Perusal of the detention order further reveals that the respondent No. 2 has relied upon two FIRs, dossier and connecting documents but perusal of the execution report reveals that FIRs and so called connecting documents have not been furnished to the detenu which deprived him from making an effective representation before the authorities concerned. It is only after the petitioner is supplied all the material that he can make an effective representation to the Detaining Authority and also to the Government and if the same is not done, he is deprived of his valuable constitutional right. Failure on the part of the respondent No. 2 to supply material relied upon by him while passing the detention order renders it illegal. Reliance is placed upon the decision of Apex Court in **Thahira Haris v. Govt. of Karnataka**, reported in (2009) 11 SCC 438 and the relevant para is reproduced as under:

“30. 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 the right to be supplied with 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.”

8. The other grounds urged by the petitioner are that there is no mention in the order of detention that the detenu was admitted to bail by the Court. Perusal of the grounds of detention reveals that it has been mentioned that the

detenue was apprehended on 06.09.2020 but there is no whisper that the detenue was granted bail on 13.02.2021 in FIR No. 99/2020. The detention order was passed on 25.02.2021 pursuant to the letter dated 23.02.2021 of Senior Superintendent of Police, Anantnag accompanied with dossier and other connected documents. Neither in the dossier nor in the order of detention, it has been mentioned that the petitioner has been granted bail on 13.02.2021 before the issuance of detention order. Thus, it is evident that the whole of the material was not placed before the detaining authority so as to enable it to record its subjective satisfaction that the passing of detention order is necessary so as to prevent the petitioner from indulging in activities those are prejudicial to the security of the State. This too vitiates the order of detention.

9. For the reasons aforementioned, the present petition is allowed. The impugned order of detention bearing No. 05/DMA/PSA/DET/2021 dated 25.02.2021, issued by respondent No. 2, is quashed with further direction to the respondents to release the detenue-Adil Farooq Mir S/O Farooq Ahmad Mir R/O Pthbugh Dialgam, District Anantnag, forthwith, unless required in any other case.

(Rajnish Oswal)
Judge

Srinagar
10.05.2022
Rakesh

Whether the order is speaking:
Whether the order is reportable:

Yes/No
Yes/No