

HIGH COURT OF JAMMU & KASHMIR AND LADAKH AT
SRINAGAR

Reserved on: 27.12.2022

Pronounced on: 31.12.2023

WP(Crl.) No.115/2022

MOHAMMAD RAMZAN SOFI

...PETITIONER(S)

Through: - Mr. Shafqat Nazir, Advocate.

Vs.

UNION TERRITORY OF J&K & ORS.

...RESPONDENT(S)

Through: - Mr. Sajad Ashraf, GA.

CORAM: HON'BLE MR. JUSTICE SANJAY DHAR, JUDGE

JUDGMENT(ORAL)

30.12.2022

1) The Divisional Commissioner, Kashmir, in exercise of powers conferred under Section 3 of the Jammu and Kashmir Prevention of Illicit Traffic in Narcotic Drugs and Psychotropic Substances Act, 1988 (hereinafter referred to as "Act of 1988"), has, vide order No.DIVCOM-"K"/184/2022 dated 11.01.2022, ordered detention of *Mohammad Ramzan Sofi S/o Abdul Khaliq Sofi R/o Kaloosa Bandipora* (hereinafter referred to as the detainee).

2) The petitioner has contended that the Detaining Authority has passed the impugned detention order mechanically, inasmuch as there has been total non-application of mind while passing the impugned order. It has been further contended that the statutory safeguards have

not been complied with in the instant case. It has been further urged that whole of the material which formed basis of the grounds of detention and the consequent order of detention has not been provided to the detenue. It has also been contended that the grounds of detention are vague, non-existent and stale and that there has been non-application of mind on the part of the detaining authority while passing the impugned order of detention.;

3) Upon being put on notice, the respondents appeared and filed their counter affidavit wherein they have refuted the contentions raised in the petition. It is contended by the respondents that they have followed the provisions of the Act of 1988. It is contended that the detenue has been detained only after following due procedure; that the grounds of detention were read over to the detenue; that there has been proper application of mind for detaining the detenue and that the detenue has been provided all the material. The learned counsel for the respondents also produced the detention records to lend support to the stand taken in the counter affidavit.

4) I have heard learned counsel for parties and perused the detention on 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 petitioner's right of making an effective representation against his detention has been

violated as whole of the material, on the basis of which the grounds of detention have been formulated, has not been supplied to him.

6) So far as the ground projected by learned counsel for the petitioner is concerned, a perusal of the detention record reveals that the petitioner has been provided copies of detention order (01 leaf), Notice of detention (01 leaf), grounds of detention (02), dossier of detention (Nil) and other related documents (Nil), (total 04 leaves). Thus, the petitioner has not been provided the copy of the police dossier. Apart from this, if we have a look at the grounds of detention, it bears reference to FIR No.159/2017 for offences under Section 8/20, 8/22 of NDPS Act registered with Police Station, Bandipora. It was incumbent upon 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 in the FIR is shown. 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. 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.

7) It needs no emphasis that the detenu cannot be expected to make an effective and purposeful representation which is his constitutional and statutory right guaranteed under Article 22(5) of the Constitution of India, unless and until the material, on which detention is based, is

supplied to the detainee. The failure on the part of detaining authority to supply the material renders detention order illegal and unsustainable. 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)** and, **Haris Etc. Etc Thahira. V. Government of Karnataka & Ors. (AIR 2009 SC 2184)**.

8) For the foregoing discussion, 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.

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

(Sanjay Dhar)
Judge

SRINAGAR
31.12.2022
"Bhat Altaf, PS"

Whether the judgment is speaking:
Whether the judgment is reportable:

Yes/No
Yes/No