

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

LPA No.184/2022

RAYEES AHMAD SOFI

...APPELLANT(S)

Through:- Mr. B. A. Tak Advocate

Vs.

UT OF J&K AND OTHERS

...RESPONDENT(S)

Through:- Mr. Bikramdeep Singh, Advocate.

CORAM:-

HON'BLE MR. JUSTICE SANJAY DHAR, JUDGE.

HON'BLE MR. JUSTICE M. A. CHOWDHAR, JUDGE

(JUDGMENT)(ORAL)

31.12.2022

Per Sanjay Dhar 'J'

1) The instant intra-court appeal under Clause 12 of the Letters Patent is directed against the judgment dated 31.08.2022 passed by learned Single Judge, whereby writ petition of the appellant impugning detention order bearing No.95/DMS/PSA/2022 dated 24.01.2022, issued by respondent No.2, has been dismissed.

2) It appears that appellant had challenged the aforesaid detention order whereby he was placed under preventive detention on the ground that his activities were found to be prejudicial to the maintenance of public order. The appellant, it seems, challenged the detention order on a number of grounds and one of the grounds urged by the

appellant was that was not supplied the entire material on the basis of which the grounds of detention were formulated.

3) It is contended in the appeal that the learned Writ Court, while dismissing the writ petition, has not dealt with the aforesaid ground urged by the appellant.

4) We have heard learned counsel for the appellants and perused the detention record and the impugned judgment passed by the learned Writ Court.

5) A perusal of the record shows that vide grounds (i) of the petition the appellant had urged that the entire material has not been supplied to him, as a result of which he has been denied the precious constitutional right. The learned Writ Court, it seems, has not taken note of the aforesaid ground and instead dismissed the writ petition by dealing with other grounds urged in the petition. It appears that though the learned Writ Court has gone through the execution report but it has not addressed the question whether any material has been supplied to the detainee and if so, what material has been supplied to him.

6) A perusal of the detention record reveals that as per the document 'Receipt of grounds of detention and other relevant record', a total of seven leaves comprising copy of

detention warrant (01 leaf), grounds of detention (03 leaves), copy of dossier (03 leaves) and other related documents (**Nil**) have been supplied to the detinue. The grounds of detention bear reference to FIR No.296/2021. It seems that a copy of the said FIR as also the statements of witnesses and the other material showing involvement of the detune, that may have been collected during investigation of the said FIR, have not been supplied to the appellant.

7) In view of the above, the contention of the appellant 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 appellant has been hampered by non-supply of these vital documents in making an effective representation. 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.

8) It needs no emphasis that the detinue 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 detainee. The failure on the part of detaining authority to supply the material renders the detention order illegal and unsustainable. The learned Writ Court, however, has failed to address the aforesaid aspect of matter while passing the impugned judgment. In this view of the matter, the impugned judgment has been rendered unsustainable in law and the same deserves to be set aside.

9) For the foregoing reasons, the instant appeal is allowed. The impugned judgment dated 31.08.2022 passed by the learned Writ Court is set aside and the writ petition is allowed. Accordingly, the order of detention bearing No.95/DMS/PSA/2022 dated 24.01.2022 is quashed and the detainee is directed to be released from the preventive custody forthwith, unless he is required in connection with any other case.

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

(M. A. CHOWDHARY)
JUDGE

(SANJAY DHAR)
JUDGE

SRINAGAR

31.12.2022

“Bhat Altaf, PS”

Whether the order is speaking:

Yes/No

Whether the order is reportable:

Yes/No