

IN THE HIGH COURT OF JAMMU & KASHMIR AND LADAKH  
AT SRINAGAR

Reserved on: 16.03.2023

Pronounced on: 31.03.2023

WP(Crl) No.184/2021

MOHAMMAD KHUMANI DAR

...PETITIONER(S)

Through: - Mr. S. A. Hussain, Advocate.

Vs.

UNION TERRITORY OF J&K & ANR.

...RESPONDENT(S)

Through: - Mr. Furqan Sofi, GA

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

JUDGMENT

1) By the instant petition, veracity and legality of the detention order No.46/DMP/PSA/21 dated 18.10.2021, issued by District Magistrate, Pulwama (for brevity "*detaining authority*") has been challenged. In terms of the aforesaid order, *Mohammad Khumani Dar alias Gabbar son of Farooq Ahmad Dar resident of Kawni Tehsil Awantipora District Pulwama* (for short "*detenue*") has been placed under preventive detention and lodged in Central Jail, Kothbalwal, Jammu.

2) The petitioner has contended that the Detaining Authority has passed the impugned detention order mechanically without application of mind, inasmuch 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 detainee. It has been contended that the grounds of detention are vague, non-existent on which no prudent man can make a representation against such allegations. It has been further contended that the procedural safeguards have not been complied with in the instant case, inasmuch as whole of the material which formed basis of the impugned detention order has not been supplied to the petitioner.

3) Upon being put to notice, the respondents appeared through their counsel and filed their reply affidavit, wherein they have disputed the averments made in the petition and insisted that the activities of detainee are highly prejudicial to the security of the State. It is pleaded that the detention order and grounds of detention along with the material relied upon by the detaining authority were handed over to the detainee and the same were read over and explained to him. That the grounds urged by the petitioner are legally misconceived, factually untenable and without any merit. It has been further contended 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 claimed in the reply affidavit that all statutory requirements and constitutional guarantees have been fulfilled and complied with by the detaining authority. That the order has been issued validly and legally. The respondents have placed reliance on the judgment of the Supreme Court in **Hardhan Saha v. State of W.B (1975) 3 SCC 198**. 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 following grounds:

(I) *That the detainee was not furnished the whole of the material to enable him to make an effective representation against his detention.*

(II) *That the detainee was not furnished the translated version of the material which formed the basis of the grounds of detention to enable him to make an effective representation against his detention*

6) So far as the first ground of challenge is concerned, 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 19.10.2021. 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 (Nil), total 04 leaves, have been supplied to him.

7) It is clear from the execution report, which forms part of the detention record, that copy of the police dossier has not at all been supplied to the detainee. 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 whereof 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.

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

9) The next ground projected by the learned counsel for the petitioner is that the detenue has been disabled from making an effective representation as he has not been supplied the translated copies of the grounds of detention which are in English language besides being in a hyper technical language which the detenue is not in a position to understand being a semi-literate person.

10) As per the record produced by the learned counsel for the respondents, the detainee is a semi-literate person. Thus, he would not be in a position to understand the contents of the grounds of detention. The record also suggests that the translated copies of grounds of detention have not been supplied to the detainee. Therefore, right of making an effective representation against the detention order has been rendered nugatory in this case, resulting in infringement of Constitutional right of the petitioner guaranteed under Article 22(5) of the Constitution.

11) The service of the grounds of detention on the detainee is a very precious constitutional right and the object behind the same is to enable the detainee to file an effective representation. It will be an empty formality to supply the grounds of detention to the detainee unless he is in a position to understand the same. In my aforesaid view I am fortified by the judgments rendered by the Supreme Court in the case of *Chaju Ram vs. The State of Jammu & Kashmir*, AIR 1971 SC 263 and *Smt. Raziya Umar Bakshi Vs. Union of India*, AIR 1980 SC1751.

12) The detention record produced by the learned counsel for the respondents contains a copy of Execution Report, perusal of which shows that the grounds of detention have been read over and explained to the detainee by one Inspector Adil Ashraf of DPL, Awantipora. It is the case of the respondents that the said executing official has read over and explained the grounds of detention to the detainee. For supporting this contention, it was incumbent on the respondents to place on record

a duly sworn affidavit of the said official, but no such affidavit has been filed. To eradicate all the doubts, it was incumbent on the part of the person, who did the exercise of handing over the documents and conveying the contents thereof to the detinue, to file an affidavit in order to attach a semblance of fairness to his actions. Support, in this behalf, can be taken from the law laid down by the Supreme Court in the cases of *State Legal Aid Committee, J&K Vs. State of J&K & others*, AIR 2005 SC 1270, *Lallubhai Jogibhai Patel vs. Union Of India & Ors*, AIR 1981 SC 728 and the law laid down by this Court in the case of *Mohammad Shaban Chopan Vs. State and another*, 2003 (II) S.L.J 455.

13) Viewed thus, the petition is allowed and the impugned order of detention is quashed. The detinue is directed to be released from the preventive custody forthwith provided he is not required in connection with any other case.

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

(Sanjay Dhar)  
Judge

SRINAGAR

31.03.2023

"Bhat Altaf, PS"

Whether the order is speaking:

Yes/No

Whether the order is reportable:

Yes/No