

**IN THE HIGH COURT OF JAMMU & KASHMIR AND
LADAKHAT SRINAGAR**

Reserved on: 14.03.2024

Pronounced on: 29.03.2024

WP(Crl) No.418/2022

ZAHID HAMEED BHAT

...PETITIONER(S)

*Through: - Mr. M. Ashraf Wani, Advocate, with
Mr. Sameer Qayoom, Advocate.*

Vs.

UT OF J&K & ORS

...RESPONDENT(S)

Through: - Mr. Zahid Q. Noor, GA.

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

JUDGMENT

1. Aggrieved of the order of detention bearing No.44/DMP/PSA/22 dated 18.06.2022 (herein after referred to as the 'impugned order'), the petitioner has assailed the same through the medium of present writ petition filed through his brother on the following grounds:

- i) That the grounds of detention prepared by the respondent No. 2 are vague and on such vague grounds, the petitioner could not have been detained.
- ii) That the detaining authority has recorded its satisfaction on the basis of police dossier and connected documents but the 'connected documents' is a vague term and the documents relied upon by the detaining authority have not been provided to the petitioner.
- iii) That the grounds of detention are verbatim reproduction of the police dossier.

- iv) That the representation submitted by the petitioner was not decided by the respondents.

2. Counter affidavit has been filed by the respondents stating therein that the grounds of detention are not vague and the detaining authority has passed the order of detention after recording its subjective satisfaction in the matter. The grounds of detention, order of detention and the entire material relied upon by the detaining authority were provided to the petitioner. In compliance to the order of District Magistrate, the warrant was executed on 20th June 2022 by Executing Officer namely Sub Inspector Tariq Ahmad. The petitioner was handed over to Superintendent Central Jail Kotbalwal Jammu for lodgment. The contents of the detention order/warrant and the grounds of detention were read over and explained to the petitioner in the language which he understood and in acknowledgment thereof he appended his signatures on the execution report/order. The detainee was informed of his right to make representation but he never chose to do so. Simultaneously, it is stated that the brother of the petitioner filed a representation against the impugned order but the same was rejected on 15th July 2022 and a copy of the same was forwarded to the Superintendent Central Jail, Kotbalwal, Jammu for handing over it to the detainee.

3. Learned counsel for the petitioner while arguing reiterated the grounds as noted above by this Court.

4. Per contra Mr. Zahid Q. Noor, learned GA submits that all the constitutional as well as procedural safeguards have been complied with

by the respondents not only at the time of issuance of order of detention but also at the time of execution of the same. He has further submitted that the relevant material relied upon by the detaining authority was provided to the petitioner against proper receipt. He laid much stress on the activities of the petitioner by stating that these activities were found prejudicial to the maintenance of security of Union Territory of J&K and taking into consideration the illegal activities of the petitioner, he was ordered to be detained under the Act (supra).

5. Heard and perused the record.

6. A perusal of the record reveals that the respondent No. 3 submitted a dossier to respondent No. 2, recommending the detention of the petitioner under the Public Safety Act. Perusal of the grounds of detention and the dossier reveals that the petitioner has been alleged to be the conduit of banned terrorist organization and he has been alleged to be aiding and abetting the terrorist activities carried out by the banned terrorist organization in and around Pulwama Town. The allegations have been leveled against the petitioner for harboring the terrorists of HM Outfit at different locations and motivating and instigating the youth of the area into anti-national activities. It is further urged that the petitioner is a hardcore fundamentalist and sympathizer of terrorists and has been providing logistic support to the terrorist as Over Ground Worker (OGW) of a banned terrorist organization. It is further alleged that he was close friend of two militants who got killed in separate encounters.

7. The contents of the dossier as well as grounds of detention are vague, bereft of specific details, as no date, month and year of any alleged illegal activity of the petitioner has been mentioned. The general allegations without mentioning the specific incidents and that too without date, month and year has in fact incapacitated the petitioner to make an effective representation. The vagueness of the grounds of detention in itself is a ground for quashing the order of detention. Reliance is placed upon the judgments of the Hon'ble Supreme Court of India in **Jahangir khan Fazal Khan Pathan vs. Police Commissioner, Ahmadabad, (1989) 3 SCC 590** and **Piyush Kantilal Mehta vs. The Commissioner of Police, Ahmedabad City and Ors. 1989 (1) Crimes 176 (SC)**.

8. Further this Court finds that in the order of detention, it has been mentioned that the detaining authority has relied upon the dossier and other "connected documents". The details of those "connected documents" are neither mentioned in the grounds of detention nor this Court has been able to find any such "connected documents" in the record produced by the respondents. It means that the petitioner No.2 has relied upon certain documents which were never supplied to the petitioner. It is settled law that the material relied upon by the detaining authority is required to be supplied to the detainee and absence of the other connected documents in the record produced by respondent demonstrates that respondent No. 2 has acted in a mechanical manner as once there were no connected documents before the detaining authority

i.e. respondent No. 2, the respondent No. 2 ought not to have mentioned the same in the order of detention. On this ground also the impugned order deserves to be quashed.

9. The order impugned is not sustainable on yet another ground that the petitioner was not communicated about the rejection of the representation submitted by his brother. The stand of the respondents is that the representation filed by the brother of the petitioner was rejected on 15.07.2022 and the rejection order was forwarded to the Superintendent of the concerned jail, for further handing over the same to the petitioner. There is nothing in the record submitted by the petitioner that the petitioner was served with the order of rejection of the representation. Reliance is placed upon the decision of the Hon'ble Supreme Court of India in **Sarabjeet Singh Mokha v. DM, Jabalpur, (2021) 20 SCC 98 (para-56)**.

10. In view of the above, this Court is of the considered view that the order of detention bearing No.44/DMP/PSA/22 dated 18.06.2022 is not sustainable in the eyes of law. Accordingly the same is quashed. The petitioner is directed to be released from the custody provided he is not involved in any other case.

(Rajnesh Oswal)
Judge

SRINAGAR
29.03.2024
Aasif

Whether the judgment is reportable: Yes/No