

**IN THE HIGH COURT OF JAMMU AND KASHMIR
AT SRINAGAR**

Date of Decision:05.05.2020

WP(Crl) No.407/2019

Mohammad Ashraf SheikhPetitioner(s)

Through: - Mr. Wajid Haseeb, Advocate

V/s

State of J&K & Ors.Respondent(s)

Through: - Mr. Mir Suhail, AAG

**CORAM: HON'BLE MR. JUSTICE DHIRAJ SINGH THAKUR,
JUDGE**

JUDGMENT

1) The present Habeas Corpus Petition has been filed for quashing the order of detention dated 29th of August, 2019, issued by the District Magistrate, Pulwama, who, purportedly, in exercise of the power vested in him under Section 8(a) of the Jammu & Kashmir Public Safety Act, 1978, has ordered the detention of the petitioner with a view to prevent him from acting in any manner prejudicial to the maintenance of public order.

2) The basis of the order of detention issued by the District Magistrate, Pulwama, as is revealed from the records, purportedly, is that the petitioner had developed contacts with various mischievous and anti-social elements and participated in various processions and resorted to violence for enforcing bandhs and strike calls given by the separatists. It is alleged that in 2019 Parliamentary Elections, a mob resorted to violence and stopped and damaged

the government/private vehicles carrying polling staff who were deputed to conduct the Parliamentary Elections, causing damage to one SRTC bus bearing No.JK01Y-0610 and also caused injuries to driver of the said SRTC bus. Not only this, a Presiding Officer, who was deputed for a polling booth, also received injuries, in regard to which FIR No.35/2019 was registered under Sections 148, 149, 341, 336, 427 and 323 RPC with Police Station, Tral. During the course of investigation, it is alleged that the complicity and involvement of the petitioner in the aforementioned crime was established leading to the arrest of the petitioner. It is, however, stated that the petitioner was subsequently released on bail.

3) In yet another incident on 6th of August, 2019, the petitioner is alleged to have been part of a violent mob which resorted to heavy stone pelting on police/security forces at Tral, in regard to which FIR No.63/2019 was registered under Sections 148, 149 and 353 RPC at Police Station, Tral, in which, yet again, the involvement of the petitioner was established and the petitioner apprehended but subsequently released on bail..

4) It is further alleged that the petitioner was also involved in a case registered under FIR No.64/2019 under Sections 148, 149, 336 and 353 at Police Station, Tral, as the petitioner along with a violent mob was alleged to have resorted to heavy stone pelting on police personnel.

5) It appears that the petitioner was detained under the provisions of Public Safety Act as the petitioner was found provoking and instigating common masses, particularly the youth of the area, to resort to violence

against the decision of Union Government on scrapping of Article 370 of Constitution of India and bifurcation of the State of Jammu and Kashmir.

6) The main ground, on which the order of detention has been challenged, as urged by the learned counsel for the petitioner, is that the petitioner had not been furnished the requisite material which formed the basis of the order of detention. It was asserted that the petitioner had not been provided the copies of the FIRs, which found a mention in the grounds of detention.

7) Response has been filed, in which the respondents have taken a general stand that the petitioner was served with copies of order of detention as also the grounds of detention. This can be seen from paragraph 2 of the reply affidavit. Records have been produced which includes the report of the Executing Officer that he had served on the petitioner 05 leaves in all, which included the contents of the PSA warrant (01 leaf), notice (01 leaf), ground of detention (03 leaves) which were read over and explained to the detenu in Kashmiri and Urdu language. It is also reflected that what was handed over to the petitioner were only 05 leaves which, in any case, did not include the copies of the FIRs which find a mention in the grounds of detention. It is, thus, clear that not only was the response filed by the respondents general and vague in regard to the furnishing of the requisite documents to the petitioner but even the record does not justify and support the stand taken by the respondents that all the material was provided to the petitioner. It is clear that the copies of FIRs were not furnished to the petitioner, as can be seen from the report of the Executing Officer.

8) In **Sophia Gulam Mohd. Bham v. State of Maharashtra & Ors, AIR 1999 SC 3051**, the Apex Court clearly held that a person detained in pursuance of an order of preventive detention had to be provided the grounds on which the order was made and that he also is required to be afforded an earliest opportunity of making a representation against that order. It was held that the right to be communicated the grounds of detention flows from Article 22(5) while the right to be supplied all the material on which the grounds are based flows from the right given to the detenu to make a representation against the order of detention. It was further held that a representation could be made and the order of detention can be assailed only when all the grounds on which the order is based are communicated to the detenu and the material on which those grounds are based are also disclosed and copies thereof supplied to the person detained, in his own language.

9) In **Thahira Haris Vs. Government of Karnataka & Ors, AIR 2009 Supreme Court 2184**, the Apex Court after noticing various judgments on similar issue, held that it was imperative for valid continuance of detention that the detenu be supplied all the documents, statements and other materials relied upon in the grounds of the detention, failing which the right of the detenu of making a representative as enshrined in Article 22(5) of the Constitution would be violated.

10) In the present case, it is quite clear that the petitioner had not been provided the requisite documents, in particular various FIRs mentioned in the grounds of detention, thus preventing the petitioner from making an effective representation before the concerned authorities. The order of detention, in

those circumstances, cannot be sustained in law. The same is, accordingly, **quashed**. The petitioner be released forthwith, if not required in any other case. It is, however, made clear that since the order of detention has been quashed on technical grounds, it would be open to the respondents to pass a fresh order, if they deem it necessary, strictly in compliance with the mandate of law.

11) Records be returned to the learned counsel for the respondents against proper receipt.

SD/-
(DHIRAJ SINGH THAKUR)
JUDGE

Srinagar
05.05.2020
"Bhat Altaf, PS"

