

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

...
WP (Crl) no.418/2019

Reserved on: 18.03.2020

Pronounced on: .04.2020

Umar Ahmad Dar

..... Petitioner(s)

Through: MrG. N. Shaheen, Advocate

Versus

State of J&K and another

.....Respondent(s)

Through: Mr S.H. Naqashbandi, AAG

CORAM: HON'BLE MR JUSTICE TASHI RABSTAN, JUDGE

JUDGEMENT

1. District Magistrate, Kulgam, has, vide Order no.53/DMK/PSA/19 dated 14.08.2019, placed *Umar Ahmad Dar* son of *Mohd Ashraf Wan* resident of *D.H.Pora District Kulgam* (for succinctness "*detenu*"), under preventive detention and directed his lodgement in Central Jail, Srinagar. It is this order, petitioner has challenged in this petition and seeks quashment thereof on grounds averred therein.

2. Respondents have filed Reply Affidavit in opposition to the petition.

3. I have heard learned counsel for parties.

4. Learned counsel for petitioner has, to augment the case set up by petitioner in writ petition on hand, contended that *detenu* was already admitted to bail in the cases reflected in grounds of detention, but this important fact has not been mentioned by detaining authority. He has also stated that grounds of detention have not been prepared by detaining authority as is discernible from impugned detention order, in which detaining authority has clearly mentioned that it is on the basis of grounds of detention placed before him by Superintendent of Police, Kulgam, that he has placed *detenu* under preventive detention. His another submission is that last alleged activity mentioned in grounds of detention, took place on 19.08.2018, whereas impugned order has been passed after one year, that is, on 14.08.2019. Unexplained delay between alleged activity and passing of detention order has rendered impugned detention

unjustified. In support of his submissions he has placed reliance on *Mohammad Ashraf Khan v. State and others, 2010 (I) SLJ 365*.

5. *Per contra*, learned counsel for respondents insists that detention order has been passed on subjective satisfaction by detaining authority and detention order is in accordance with law and there is no violation or infringement of rights guaranteed under the Constitution of India. Hence, he exhorts dismissal of petition.

6. An important facet of the matter has been unmasked by learned counsel for petitioner that in impugned order of detention it is intriguingly mentioned that it is “*on the basis of grounds of detention placed before*” detaining authority “*by the Superintendent of Police Kulgam*” that detaining authority is satisfied to place detenu under preventive detention. It is made clear here that detaining authority may get inputs from different agencies, including Superintendent of Police of concerned District, but responsibility to formulate grounds of detention, however, exclusively rests with detaining authority. It is detaining authority, who has to go through reports and other inputs received by him from concerned police and other agencies and on such perusal arrive at a subjective satisfaction that a person is to be placed under preventive detention. It is, thus, for detaining authority to formulate grounds of detention and satisfy itself that grounds of detention so formulated warrant passing of the order of preventive detention. However, in the present case, it is apparent and evident from impugned order of detention that grounds of detention have not been prepared by detaining authority and as a corollary thereof impugned detention order is vitiated.

7. For the foregoing reasons, the petition is disposed of and detention Order no.53/DMK/PSA/19 dated 14.08.2019, passed by District Magistrate, Kulgam, is quashed. Respondents, including Jail Superintendent concerned, are directed to release the detenu forthwith, provided he is not required in any other case.

Disposed of.

**(TashiRabstan)
Judge**

Srinagar

.04.2020

Ajaz Ahmad, PS

Whether the order is reportable: No.