
(2009) 02 J&K CK 0039

In the Jammu And Kashmir High Court

Case No : Habeas Corpus Petition No. 244 Of 2008

Ab.Ahad Parra

APPELLANT

Vs

State & Ors.

RESPONDENT

Date of Decision : 04-02-2009

Acts Referred:

Jammu and Kashmir Public Safety Act, 1978 — Section 13, 8

Citation : (2009) 3 JKJ 641

Hon'ble Judges : Mohammad Yaqoob Mir, J

Bench : Single Bench

Advocate : M.A.Qayoom, Advocates appearing for the Parties

Judgement

1. Quashment of detention order No. DMS/PSA/28/2008 dated 29.9.2008 is prayed for. Detenu stated to have been a Police Constable stand

dismissed in the year 1990. In the grounds of detention detenu is shown to have been arrested in the year 1994, had remained in detention till

1999. Thereafter got affiliated with hard line Secessionist Group having discrete links with the terrorists, is an important functionary of 'Muslim

League' and indirectly of APHC (GGroup), has been receiving money to run the affairs of outfit, has played a key role for arranging and managing

the violent protests, so as to execute the programmes sponsored by the coordination committee of APHC. The rallies resulted in large scale of

human loss and property. Coordination Committee has given a programme for holding unlawful administration, whereas petitioner has been

assigned role for ensuring maximum participation of people in these rallies, had to arrange transport, more particularly from Kupwara and

Handwara belt. In case of permitted to perform the job assigned, there is likelihood of disturbances of peace and the terrorists will get the free

hand. For maintenance of security of the State, invoking of normal laws shall not be enough, as the petitioner may get bail from the Court, so the order of detention under PSA is imperative.

2. First it is contended by the Learned counsel appearing for the petitioner, that in fact acts attributable to the detenu presumably related to the

period of 'Amar Nath Land Row', the grounds of detention are vague, nothing specific is reflected in the grounds of detention, which would

indicate that the petitioner in any way is required to be detained. The detenu has not been provided any material which forms the base for grounds

of detention, so as to enable him to make the effective representation against the detention. Detenu has not been informed to make any

representation. Learned counsel further added that detention order smacks non application of mind, has been passed on ambiguous, vague,

uncertain and indefinite grounds. Further more order of detention is based on stale and outdated grounds. In support of the contention learned

counsel placed much reliance on the Judgment, Union of India v. Ramu Bhandari, Cr. Law Journal 2008 page 4567.

3. Respondents have not chosen to file Counter affidavit and have also chosen to remain absent. However, during course of arguments perusal of

the record was found imperative, same on direction has been furnished by the District Magistrate Srinagar.

4. The right to personal liberty is guaranteed, to curtail the freedom there must be cogent cause followed by adherence to the safeguards

prescribed. Safeguards to human right more particularly the personal liberty cannot be permitted to be observed in breach. Value of the right to

personal liberty and individual freedom has been emphasized. In this connection it is quite apt to quote para 23 and 24 of the referred Judgment:

23. Keeping in mind the fact that of all human rights the right to personal liberty and individual freedom is probably the most cherished, we can

now proceed to examine the contention advanced on behalf of the parties in the facts and circumstances of this case. But before we proceed to do

so, it would be opposite to reproduce herein below a verse from a song which was introduced in the cinematographic version of Joy Adamson's

memorable classic 'Born Free', which in a few simple words encapsulate the essence of personal liberty and individual freedom and runs as

follows:

'Born free, as free as the wind blows, As free as the grass grows, Born free to follow your heart, Born free and beauty surrounds you, The world still astounds you, Each time you look at a star, Stay free, with no walls to hide you, You 're as free as the roving tide, So there's no need to hide, Born free and life is worth living, It's only worth living, if you 're born free.'

24. The aforesaid words aptly describe, the concept of personal liberty and individual freedom which may, however, be curtailed by preventive

detention laws, which could be used to consign an individual to the confines of jail without any trial, on the basis of the satisfaction arrived at by the

Detaining Authority on the basis of material placed before him. The Courts which are empowered to issue prerogative writs have, therefore, to be

extremely cautious in examining the manner in which a detention order is passed in respect of an individual so that his right to personal liberty and

individual freedom is not arbitrarily taken away from him even temporarily without following the procedure prescribed by law.

5. The contention of the Learned counsel that the order of detention is based upon stale and outdated grounds, appears to be attractive because in

the grounds of detention reference is made to the recent agitation at the relevant point of time, perhaps related to the land row dispute which

engulfed both the divisions of the State into agitations, but those agitations no more survived on 29.9.2008 when the order of detention has been

passed, therefore, the grounds of detention are outdated.

6. The detention record as produced by the District Magistrate would indicate that the dossier as prepared by SSP with small modification has

been styled as ""grounds of detention"". No material is available which has formed base for dossier, the detaining authority has adopted the baseless

dossier as grounds of detention. There is no material to indicate as to what role has been played by the detenu, nothing to show as to how and

when he has managed the violent protests. In an arbitrary manner it has been recorded that in case petitioner is apprehended under normal laws, he

may get bail. Had the petitioner been involved in any type unwanted activities right from the date of his release i.e. from the year 1999, then there

would have been any case registered against him or in alternative there should

have been some material to show as to how and when the petitioner has remained connected with the activities prejudicial to the maintenance of the security of the State.

7. The contention of the Learned counsel that detenu has not been furnished the material, so as to enable him to make an effective representation,

is found correct, as in the records furnished there is no material to form base for the dossier which would indicate that petitioner has been deprived

of making any effective representation. There is nothing on the record to show that the detenu has been supplied the material forming base for

detention, so violation of the right guaranteed under Article 22(5) of the Constitution is quite clear. In this connection it shall be quite apt to quote

para25 of the Judgment above referred:

25. We have indicated hereinbefore that the consistent view expressed by this court in matters relating to preventive detention is that while issuing

an order of detention, the Detaining Authority must be provided with all the materials available against the individual concerned, both against him

and in his favour, to enable it to reach a just conclusion that the detention of such individual is necessary in the interest of the State and the general

public. It has also been the consistent view that when a detention order is passed all the material relied upon by the Detaining Authority in making

such an order, must be supplied to the detenu to enable him to make an effective representation against the detention order in compliance with

Article 22(5) of the Constitution, irrespective of whether he had knowledge of the same or not. These have been recognized by this Court as the

minimum safeguards to ensure that preventive detention laws, which are an evil necessity, do not become instruments of oppression in the hands of

the concerned authorities or to avoid criminal proceedings which would entail a proper investigation.

8. The grounds of detention are not only stale, outdated but are also vague. Further more there is no material to form the base for the grounds of

detention. In the most mechanical manner allegations contained in the dossier prepared by SSP without any material, has been adopted and styled

grounds of detention, with small deviations in words here and there.

9. The detention order for the reasons stated above is unsustainable, hence quashed. Detenu namely Abdul Ahad Parra s/o Mohammad Sultan

Parra R/o Deedar Pora, Handwara at present Kursoo Rajbagh Srinagar, shall be released forthwith, provided he is not required in connection with any other case. Disposed of as above.