

(2021) 05 J&K CK 0013

In the Jammu And Kashmir High Court

Case No : Latters Patent Appeal No. 142 Of 2020, CM No. 5105 Of 2020

Abdul Hameed Mir

APPELLANT

Vs

Union Territory Of J&K And Others

RESPONDENT

Date of Decision : 14-05-2021

Acts Referred:

Jammu And Kashmir Public Safety Act, 1978 — Section 8(2)
Jammu And Kashmir State Ranbir Penal Code, 1989 — Section 188, 148, 149, 212, 307, 336, 332, 427
Arms Act, 1959 — Section 7, 27
Constitution Of India, 1950 — Article 22(5)

Citation : (2021) 05 J&K CK 0013

Hon'ble Judges : Sanjay Dhar, J;Dhiraj Singh Thakur, J

Bench : Division Bench

Advocate : Kaisar Ali, Sajjad Ashraf

Final Decision : Dismissed

Judgement

1. The present Lettersâ?? Patent Appeal has been preferred against the judgment and order dated 23.10.2020 passed in WP(Crl) No. 235/2019. By

virtue of the judgement and order impugned, the petition filed by the petitioner/appellant herein has been dismissed and the order of detention dated

17.07.2019 passed by the District Magistrate Kupwara has been upheld.

It can be seen that by virtue of order dated 17.07.2019, the District Magistrate, Kupwara, in exercise of powers conferred upon it under Section 8(1)

(a)(i) read with clause 2 of Sub-section 2 of Section 8 of the Jammu & Kashmir Public Safety Act, 1978 (in short â??the Act of 1978â?) had ordered

the detention of the petitioner with a view to prevent him from acting in any manner prejudicial to the security of the State.

2. Learned counsel for the appellant stated that the order of detention could not

have been upheld for the reasons firstly that the relevant material on which the order of detention had been based had not been supplied to the appellant and secondly that the detention order had been passed on the basis of incidents, which were shown to have occurred in the year 2017 and that there was no recent incident at all mentioned, neither in the order of detention nor in the grounds of detention, on which the order could be sustained.

3. It was also stated that there was no proximate cause between the alleged incidents and the passing of the order impugned. Reliance was placed upon (2006)11 SCC 339. It was, therefore, urged that the judgement and order impugned passed by the learned Single Judge was unsustainable in law.

4. On a perusal of the allegations against the appellant, as can be seen from the grounds of detention as also the response filed by the official

respondents on record, it can be seen that in the intervening night of 10/11th of December, 2017, upon receipt of a secret information about the

presence of the militants in the house of the appellant, a cordon and search operation was initiated with the help of the 22 RR Battalion and 92

Battalion of the CRPF. The house of the appellant was cordoned off, as the information received was that there were three foreign terrorists to whom

the appellant had provided shelter.

5. It further transpired that a fierce gun battle broke out between the forces and the terrorists hiding in the house of the appellant, in which all the three

terrorists were killed and a huge arsenal of arms and ammunition recovered from their possession inside the house of the appellant. A lady is also

stated to have been killed in the said cross-fire. An FIR bearing No. 393/2017 under Sections 307, 212 RPC, 7/27 of the Arms Act, 19 ULAP Act

was then registered at Police Station Handwara against the appellant including the deceased terrorists.

6. Another incident, which is highlighted, is that of 2016, when the appellant is stated to have been leading a large mob of people armed with lathis and

stones and resorted to stone-pelting on the vehicles playing on the national highway. Stones were pelted on the security forces resulting in injuries to

some. Finally, tear-gas shells had to be fired to disburse the mob and in this connection FIR No. 337/2016 was registered under Sections 188, 148, 149,

307, 336, 332, 427 RPC in Police Station Handwara.

7. The appellant is stated to be a local Imam (preacher) in a local Masjid and

therefore, commands a huge influence in the area and thus it is alleged that he misuses that status to influence and incite violence by provoking the local youth to rise against the State. Not only this, the appellant is stated to be providing logistic support to the militants. What is important to note is the fact that the allegation against the appellant is that he continues to provide logistic support to terrorists of Lashkar-e-Taiba (LeT). It is also stated that he was arrested in FIR No. 393/2017, in which he secured a default bail.

8. It is further alleged, based on the reliable inputs that the appellant would cause disturbances as also law and order problems, as he was still in contact with the militants and in those circumstances the Superintendent of Police, Handwara had strongly recommended the detention of the appellant under the provisions of the Act of 1978.

9. The dossier submitted by the police agencies appears to have been critically examined, whereafter the order of detention was passed.

10. With a view to verify as to whether the requisite material based upon which the order of detention was passed had been communicated to the appellant, in line with the mandate of Article 22(5) of the Constitution of India, the records were summoned. Notwithstanding the argument of the learned counsel for the appellant that the requisite material had not been furnished to the appellant along with the order of detention as also the grounds of detention, it can be seen from the record that the same was infact made available to the appellant. The argument that the requisite material had not been furnished to the appellant, which prevented him from making an effective representation against the order of detention is, therefore, without any basis.

11. The next argument of the learned counsel for the appellant was that the order of detention was far removed from the incident based upon which the order of detention had been passed. However, on a perusal of the grounds of detention as also the stand of the respondents, it can be seen that the grounds of detention had not only referred to the past conduct of the appellant, wherein it was alleged that he had provided shelter to the three foreign terrorists, who were ultimately eliminated in the appellant's house, but the allegation further is that he had continued to associate with the terrorist organization i.e. LeT and continued to provide logistic support etc to them. The assertion that there was no proximate cause between the incidents in

the past and order of detention, therefore, is also without any basis and thus untenable.

12. Reliance placed by the learned counsel for the appellant in (2006)11 SCC 339 is also inapt.

13. For the reasons mentioned above, we cannot persuade ourselves to take a view different from the one taken by the writ Court. The appeal is

found to be without any merit and is accordingly dismissed alongwith connected application.