
(2004) 09 J&K CK 0004
In the Jammu And Kashmir High Court
Case No : HCP No. 534 of 2003

Abdul Latif

APPELLANT

Vs

State of Jammu and Kashmir

RESPONDENT

Date of Decision : 09-09-2004

Acts Referred:

Constitution of India, 1950 — Article 22(5)
Jammu and Kashmir Public Safety Act, 1978 — Section 13, 17, 8, 8(4)
Prevention of Terrorism Act, 2002 — Section 3(1), 4

Citation : (2005) 3 JKJ 205

Hon'ble Judges : S.K. Gupta, J

Bench : Single Bench

Advocate : J.S. Kotwal and F. S. Bhat, for the Appellant; B.S. Salathia, Addl. Advocate, for the Respondent

Final Decision : Dismissed

Judgement

S.K. Gupta, J.—Detenue, Abdul Latif, S/o Mohd. Ibrahim R/o Bassan, Tehsil Mahore, District Udhampur, has been detained u/s 8 of the

Jammu and Kashmir Public Safety Act, 1978 (hereinafter for short referred to as the Act), vide order dated 31-03-2003 passed by District

Magistrate, Udhampur. The detention of the detenue was confirmed by the Government for a period of 24 months in exercise of powers conferred

by section 17 of the Act, vide Government Order No.Home/PB-V/688 of 2003 dated 26-05-2003. The detenue was taken in custody on 01-04-

2003 and the grounds of detention were served upon him and an opportunity was afforded to the detenue to make a representation to the

Government against the detention order, if he so desired.

2. The detention of Abdul Latif (detenue hereafter) has been challenged on the following grounds:

That the detenue was arrested on 03-09-2002, whereas detention order has been passed on 31-03-2003 by respondent-2 and served upon him

on 01-04-2003 while in custody. That the detention order has been passed after delay of more than six months of the arrest of the detenue and is,

therefore, violative of the procedure laid down under the Public Safety Act;

That the copies of the FIR No.56/2002, disclosure statement, statements of the witnesses, seizure memo of arms and ammunition allegedly

recovered in pursuance of the disclosure of the detenue and other incriminating documents have not been supplied to the detenue and, thus, he was

deprived of his right to make an effective representation against his detention order to the Government/Competent Authority;

That the detention order having not been approved by the Government within 12 days as required u/s 8(4) of the Public Safety Act, 1978, it is

rendered illegal and bad in law;

That the detenue was neither summoned by the Advisory Board nor provided an opportunity of being heard before submitting the report to the

Government and on this count also, the detention order is rendered invalid;

That at the time of passing the detention order, the detaining authority did not consider that the detenue is already in custody, thereby ruled out the

chance of his indulgence in similar prejudicial activities, which shows lack of awareness of the detaining authority and, thus, vitiates the order of

detention for non-application of mind.

3. In repudiating the above contentions, respondents have filed their reply and contended that the petitioner, as a matter of fact, was arrested on

22-03-2003 in FIR No.56/2002 u/s 3(1) 4 POTA of Police Station, Reasi. The arrest of the petitioner on 10-03-2003 at the gate of the District

Judge, Jammu has been emphatically denied by the respondents. The detention order was executed on the detenue and detenue taken into custody

on 1st April, 2003, and the copy of the grounds of detention along with copies of the relevant documents was provided to the petitioner and a

receipt bearing his signatures was obtained from him. It is further stated that the order of detention was passed by the respondents on the basis of

subjective satisfaction recorded from the material placed before it by the Sponsoring Authority. The satisfaction recorded was after proper

application of mind. It was further denied that the detenue has been deprived of

his right of making effective representation for non-furnishing of the copies of the FIR, disclosure statements, and seizure memo, a material on which the detaining authority recorded its subjective satisfaction at the time of passing the detention order. It was also denied by the respondents that grounds of detention were served after more than six months in custody. The petitioner was not granted bail in FIR No.56/2002, in which he was arrested on 22-03-2003. However, the petitioner was arrested in FIR No.159/2002 on 3rd September, 2002, but was already released on bail in the said FIR. He was found later on involved in FIR No.56/2002, in which his arrest was made on 22-03-2003 and the authorities found a direct nexus between the preventive action and the past activities of the detainee, which necessitated the passing of the order of detention on 31-03-2003 to prevent and dissuade him from subversive or desperate activities. The order of detention passed by the detaining authority was submitted to the Government along with all the relevant material, which formed the basis of detention order. The detention order dated 31-03-2003 along with all relevant material was placed before the Government for approval and served on 01-04-2003 upon the detainee. After obtaining approval, the case of detainee was further submitted to the State Advisory Board for confirmation, along with entire material documents provided by the Sponsoring Authority on the basis of which, the detaining authority recorded its satisfaction. The Government had approved the detention vide Government Order No. Home-PB-V/440 of 2003 dated 08-04-2003. So, this ground is neither available to the petitioner nor would advance the cause of the petitioner, in any manner, whatsoever.

4. The grounds of detention disclose that the detainee is a hardcore locally trained upper ground militant of JEM outfit, involved in anti-national activities on the motivation of Area Commander, Nayeem Khan. He joined JEM outfit and underwent arms training locally to handle AK-47 rifles, grenades, etc. While posted as teacher in Middle School, Bassan, he developed links with militants of different outfits who had been frequently visiting his house. That the detainee had been providing shelter to the militants of JEM outfit, named in the detention order, and making arrangement for their food as well. In the event of search operations by the security forces, the safe passage towards Ganjana, Harriwalla, and Darsha Gali was

provided by the detainee. It is further disclosed in the grounds of detention that the detainee had motivated Jamal Din, Ghulam Ahmed, Abdul

Rashid, Farooq Ahmed, Rehmat Ullaha, Mohd. Mansha and Abdul Rehman, to provide timely information about the movements of the security

forces, besides to make available the safe hideouts to the foreign militants in the jungle of Chakrass and Hariwalla areas. The foreign mercenaries

also constructed an underground hideout in the house of the detainee in the cowshed to be used as a store for the arms and ammunition. The

subject has also been receiving money from outside to be handed over to ! another JEM outfit's militant, Nayeem Khan. The detainee became a

man of confidence of Area Commander, Nayeem Khan. That he had been keeping money with him to be made available at the time of need. He

was also given an amount of Rs.30,000/- along with a covered letter to be handed over to one Abdul Qasim. In a joint operation of Police and

Army, the detainee along with other associates was arrested and interrogated and six IEDs and UMG ammunition were recovered on his disclosure

statement to the Police. The subject further disclosed to the Police the names of the militants involved in killing of two BSF Jawans at Thuroo

Kund. A case u/s 3 (1) 4 POTA was registered with Police Station, Mahore. The detainee, however, was arrested by the Police in FIR

No.56/2002 u/s 3(1)4 POTA of Police Station, Reasi on 22-03-2003 and was on Police remand; whereas the order of his detention came to be

passed by the detaining authority on 31-03-2002 and served upon him on 01-04-2003, when taken into preventive custody. It was on the basis of

aforesaid grounds/allegations against the detainee that the detaining authority considered and concluded that the activities of the detainee are a

serious threat to the maintenance of public peace, tranquility, security and integrity of the State and his release on bail at that juncture will enable

him to join militant ranks once again, thereby posing a serious threat to the security of the State, and passed an order for his detention in preventive

custody in the Central Jail, Kot Bhalwal, Jammu, so as to obviate his indulgence in further subversive activities.

5. Heard the learned counsel for the parties and also perused the record.

6. As regards the first contention raised by Mr. Kotwal, learned counsel for the petitioner, that the petitioner came to be arrested on 3rd

September, 2002 and detention order was passed on 31-03-2003 and served upon him on 01-04-2003, when taken in custody, after a delay of

more than six months, it is significant to point out that as per the record made available by the detaining authority and the reply filed to the petition,

it is indisputably gatherable that the petitioner, as a matter of fact, was arrested in FIR No.56/2002 of Police Station, Reasi, u/s 8 of the Act, on

22-03-2003 and detention order came to be passed against the detainee on 31-03-2003 and served upon him on 1st April, 2003, when taken in

preventive custody. Endorsement at the back of the detention order dated 01-04-2003 is under the signatures of the Executing Officer, which

clearly demonstrates that the detainee was taken in custody from Police Station, Reasi in execution of the detention warrant. The grounds of

detention were read over and explained to the detainee in languages Urdu/Kashmir, which he understood fully. The signatures of the detainee on the

endorsement have also been obtained in its acknowledgement. The endorsement further reveals that the detainee has been handed over to the

Superintendent, Central Jail, Kot Bhalwal, Jammu along with detention warrant and grounds of detention on 01-04-2003. There is also a receipt

of the grounds of detention duly signed by the detainee, Abdul Latif, by virtue of which he has acknowledged the receipt of grounds of detention

consisting of three leaves through Deputy Superintendent, Central Jail, Jammu Kot Bhalwal, on 01-04-2003 along with copies of FIR, Dossiers,

interrogation report and letter No.PSA/2003/4 dated 31.3.03. So is also affirmed from the Dossier provided by the Sponsoring Authority and

grounds of detention prepared by the detaining authority before passing the detention order. The contention of Mr. Kotwal that the detainee was

arrested on 03-09-2002 instead of 22-03-2003 stands controverted from the record of the detaining authority, therefore, the detention order

against the detainee passed on 31-03-2003 and served on 01-04-2003 cannot, by any stretch of reasoning, be said to be delayed by six months.

This further clearly shows that the detaining authority was fully aware that the petitioner has been detained and taken in Police custody in FIR

No.56/2002 on 22-03-2003, while passing the detention order on 31-03-2003, and there was a complete application of mind. The detaining

authority was legitimately satisfied on the basis of his antecedents that he is likely to indulge in similar prejudicial activities after his release, as there

was a chance of the petitioner being released on bail. It was in the knowledge of the detaining authority and fully reflected in the grounds of

detention based on the Dossier, FIR, interrogation report provided by the Sponsoring Authority that the activities of the petitioner before his arrest

were so desperate that the Authority had sufficient reasons to deter the petitioner from indulging in desperate activities, if released, when the order

of detention was made. It could not, in any manner, make the detention order mala fide or colourable. It brings a clear proximate nexus between

the preventive action and the past activities of the detainee. This was a sufficient explanation provided by the detaining authority in the grounds of

detention and counter affidavit.

7. It was next contended by Mr. Kotwal, learned senior counsel for the petitioner, that the detention order is invalid, as the detaining authority has

not provided the relevant material relied upon by the detaining authority for recording satisfaction and passing the detention order. His further

submission is that copy of the FIR No.56/2002, disclosure statement of Arshad Ali, and seizure memo have not been supplied to the detainee and

thereby deprived him of his valuable right of making an effective representation to the Government/Competent Authority against the said detention

order. In this context, on going through the record provided by the detaining authority, it is indisputably gatherable that the detaining authority after

having found the activities of the detainee, detailed in the grounds of detention, prejudicial to the security of the State and it was imperative to detain

him under the provisions of the PSA, ! ordered his detention on 31-03-2003. The detainee was also informed of his right of making representation

to the Government against his detention, as envisaged u/s 13 of the Act and Article 22(5) of the Constitution of India. The detention order of

detainee was approved by the Government well within a period of 12 days from the date of issuance of detention order. The order of detention

came to be executed and the detainee was taken in preventive custody on 01-04-2003. Endorsement at the back of the detention order by the

Executing Officer and duly acknowledged and authenticated by the detainee under his signatures clearly reveals that the contents of the detention

order were read over and explained to the detainee in languages Urdu/Kashmiri understood by him. This fact stands sustained from the record,

which bears the signatures of the detainee on the copy of the detention order. The detainee, after being taken in custody from Police Station, Reasi, where he was in custody in FIR No.56/2002, was, on the same day, handed over to the Superintendent, Central Jail, Jammu, Kot Bhawal along with copies of detention warrant and grounds of detention. Grounds of detention were served upon the detainee by Deputy Superintendent, Central Jail, Jammu, Kot Bhawal, on the same day, i.e., 01-04-2003, along with detention order, copy of the FIR, Dossier, interrogation report, Letter No.PSA/2003/4 dated 31-03-2003 and a receipt of which, bearing signatures of the detainee, is found on the record of the detaining authority produced in the Court. The case of the detainee was referred to the State Advisory Board for its opinion. The Advisory Board, after going through the material placed before it and giving a hearing to the detainee in person in the premises of the Kot Bhawal Jail, Jammu, on 22-05-2003, wherein the detainee though denied his involvement in the activities projected by the District Magistrate, Udhampur in the grounds of detention, but he failed to render any explanation about his innocence, opined in favour of continued detention of the detainee on 22-05-2003 and confirmed the action of the Government. It was after receiving the opinion of the Advisory Board and there being sufficient material and good grounds for detention of the detainee, the Government confirmed the detention and directed the detainee to be detained for a period of 24 months from the date of his detention vide Government Order No.Home/PB-V/688 of 2003 dated 26-05-2003. According to the respondents, there had been no non-compliance of the procedural safeguards in passing the order of detention by the detaining authority against the detainee, as such, the order passed is legally valid. The record produced by the detaining authority, the acknowledgement on the endorsement of the Officer executing the detention warrant and the receipt bearing the signatures of the detainee, reveal that the detention order, the grounds of detention, copy of the FIR, disclosure statement, seizure memo of arms and ammunition, have been provided to the detainee. The record of the detaining authority further reveals that the detainee was informed of his right to make a representation, if he so desired, to the Government/Competent Authority against the order of detention. Mr. Kotwal, learned senior counsel appearing for the petitioner, therefore, further has not succeeded in substantiating his contention that there was non-

supply of the documents mentioned in the grounds of detention and on account of which, the petitioner was prevented to make an effective representation against the detention order. Assuming that some of the documents had not been supplied to the detenu, though referred in the grounds of detention, the question arises whether those documents referred in the grounds of detention, formed the basis of passing the order of detention or whether the non-supply of any document has caused prejudice to the rights of the detenu and vitiates the detention order. In order to succeed in his plea, the petitioner has to make out that non-supply of documents has prejudiced his right in any particular manner, which has been protected by law or statute. While dealing with such a situation, the Apex Court in case of *Kamarunissa and Others Vs. Union of India* and another, , has held as under:

It is not sufficient to say that the detenus were not supplied the copies of the documents in time on demand but it must further be shown that the non-supply has impaired the detenu's right to make an effective and purposeful representation. Demand of any or every document, however, irrelevant it may be for the concerned detenu, merely on the ground that there is a reference thereto, in the grounds of detention cannot vitiate an otherwise legal detention order. No hard and fast rule can be laid down in this behalf but what is essential is that the detenu must show that the failure to supply the documents before the meeting of the Advisory Board had impaired or prejudiced his right, however, slight or insignificant it may be. In the present case, except stating that the documents were not supplied before the meeting of the Advisory Board, there is no pleading that it had resulted in the impairment of his right nor could counsel for the petitioner point out any such prejudice.

8. Relying on the ratio of the aforesaid decision of the Apex Court, the plea put across by Mr. Kotwal does not deserve consideration.

9. That apart, there is a distinction between a document, which has been relied upon by the detaining authority in the grounds of detention and a document, which finds a mere reference in the grounds of detention. Whereas the non-supply of the copy of a document relied upon in the grounds of detention is held to be fatal to the continued detention. This is because the non-supply of such a document would amount to denial of the right of

being communicated the grounds and of being afforded the opportunity of making an effective representation against the order. But it would not be

so where the document merely finds a reference in the detention order or among the grounds thereof. In such a case, detenu's complaint of non-

supply of document has to be supported by prejudice caused to him in making an effective representation.

10. The grounds of detention show that the detaining authority was aware that the detenu was on remand and that he was likely to be released on

bail and that bail is usually granted by courts in such cases and on his release on bail, he was likely to indulge in the prejudicial activities again. It is

not that the order of remand was the basis on which the order of detention of the detenu has been passed. From the record, it is apparent that the

order of detention has been passed on his past activities, detailed explicitly in the grounds of detention. All the obligations under Article 22(5) of

the Constitution of India have been discharged by the detaining authority by communicating the grounds to the person detained and the order of

detention has been made available and supplied the copies of the documents in order to afford him the earliest opportunity of making a

representation against the order of detention, as is held by the Apex Court in case entitled State of Tamil Nadu Vs. Senthil Kumar and Anr, . On

this count also, the submissions made by Mr. Kotwal do not merit acceptance.

11. Another ground taken in the petition was that the detention order is rendered invalid, as it was not approved by the Government within a

period of 12 days, as provided u/s 8(4) of the PSA. On going through the record produced by the respondents, it is clearly emanated that the

order of detention came to be passed by the detaining authority in respect of preventive detention of the detenu on 31-03-2003 and the approval

was given by the Financial Commissioner (Home) on 07-04-2003, though wrongly indicated as 09-04-2003 in the reply affidavit by the

respondent-detaining authority. This order was subsequently confirmed by the Government on the receipt of the opinion of the State Advisory

Board based on the material provided to the Board and after affording personal hearing to the detenu, on 26-05-2003 for a period of 24

months. So, this ground is also not available to the petitioner in challenge to the detention order detailed in this petition.

12. Lastly, Mr. Kotwal contended that detaining authority did not consider that the petitioner is already in custody, which ruled out the possibility of his indulgence in desperate activities prejudicial to the maintenance of the security of the State, and yet passed the detention order without application of mind. In this context, it is significant to point out that where the petitioner is on remand having been arrested in FIR No.56/2002, as in this case, and that his activities before the arrest were so subversive and desperate and there is a chance of the petitioner being released on bail, it provides a sufficient reason for the detaining authority to prevent the petitioner from indulging in his desperate activities, if released, by passing the detention order. In the present case, before the detaining authority, there existed material with regard not only in respect of FIR No.56/2002, but also release of the petitioner on bail in the earlier FIR No.159 and subsequent desperate and subversive activities that led to his arrest in FIR No.56/2002. The recital in the grounds of detention based on the material provided by the Sponsoring Authority is relevant material on which subjective satisfaction could legitimately be drawn. Merely because there was no bail application pending in this case with regard to the arrest of the petitioner in FIR No.56/2002, is no premise to hold that there was no likelihood of the detainee being released on bail. The words likely to be released connote chances to be bailed out, in case there be pending bail application or in case if it is moved in future and decided favourably. The conclusion of the detaining authority, therefore, on the facts of the present case that there is a chance of the petitioner being released on bail cannot be said to be based on no relevant material. Reliance is ! placed on the decision of the Apex Court in case Ahamed Nassar Vs. The State of Tamil Nadu and Others, .

13. Undoubtedly, even for judging the question as to what should be the measure to test the legality of the subjective satisfaction of the detaining authority when it records that there is a chance of the detainee being released on bail, the court has to keep in mind the aforesaid conspectus of the Constitution, Preamble, Objects and Reasons of the Act. When one's liberty is to be curtailed on the subjective satisfaction of the detaining authority with the area of interference by the court being limited, then within this limitation, the court has to see, in this authority's privileged area

that the detaining authority does not stretch itself legitimately in the exercise of its jurisdiction. The fact of the petitioner being in custody was considered by the detaining authority, as is evident in the grounds of detention, before arriving at a satisfaction, a prerequisite for passing the detention order. So, the detention order can never be said to be colourable or without application of mind, as vouched by Mr. Kotwal, in his debate.

14. On a careful consideration of the facts and circumstances discussed above, the inevitable conclusion reached is that none of the contentions canvassed by the petitioner's counsel were found sound and substantial. There has neither been any non-compliance of statutory rules nor any procedural safeguards, as provided u/s 13 of the PSA, have been violated, so as to render the order of detention invalid. Thus, the order of detention impugned in this petition, passed against the detainee keeping him in preventive detention for a period of 24 months from the date of the order, does not suffer from any infirmity, legal or constitutional.

15. In the result, the writ petition, in my opinion, does not possess any merit and, thus, fails. It is, accordingly, dismissed