
(2017) 05 J&K CK 0044
In the Jammu And Kashmir High Court
Case No : 465 of 2016

Abdul Majeed Malla

APPELLANT

Vs

State of J&K and ors.

RESPONDENT

Date of Decision : 09-05-2017

Acts Referred:

[Maharashtra Prevention of Dangerous Activities of Slumlords, Bootleggers, Drug Offenders and Dangerous Persons Act, 1981](#), [Section 3\(2\)](#), [Section 8\(1\)](#) - Power to make orders detaining certain person

Citation : (2017) 05 J&K CK 0044

Hon'ble Judges : Ramalingam Sudhakar

Bench : SINGLE BENCH

Advocate : M. Tufail, Asif Maqbool

Final Decision : Allowed

Judgement

1. The Instant Habeas Corpus petition has been filed by the petitioner, challenging the order of detention bearing No. 147/DMB/PSA/2016 dated 30.09.2016, passed by District Magistrate, Baramulla.
2. In the grounds of detention, it is stated that detainee is 40 years old, an illiterate working as labour in his native village, Palhallan Rajpora. It is stated that during the recent unrest of 2016, detainee got involved with anti-national elements and indulged in stone pelting incidents at various areas of Pattan including National Highway Palhallan, thereby causing serious disturbance to the law enforcement agencies. One such incident happened on 10.09.2018 for which FIR No. 232 of 2016 was registered in Police Station Pattan. It is further stated that again on 23.09.2016 detainee was part of unruly mob and caused damage to various Government and private vehicles plying on National Highway at Palhallan. In this regard, FIR

No. 247/2016 stands registered in Police Station, Pattan. It is stated that in order to deter the detainee from indulging in activities which are

prejudicial to the maintenance of public order, he was detained under the provisions of Jammu and Kashmir Public Safety Act, 1978.

3. Learned counsel for the detainee states that the detention of the detainee is bad on two main counts, firstly, the relied upon documents for

detaining the detainee have not been served on the detainee and, therefore, his right to make an effective representation has been affected. The

second ground of challenge to the detention order is that in terms of communication dated 30.09.2016, though the detainee has been informed of

his right to make a representation to the Government, however, no right has been given to the detainee to make a representation to the Detaining

Authority, thereby infringing his right guaranteed by the Constitution.

4. Per contra, counter has been filed by the respondents, stating that whatever material was required to be furnished to the detainee stands

furnished to him in the form of grounds of detention.

5. There is no material to show that relied upon documents were furnished except the statement as above.

6. With regard to the first issue i.e. non-supply of relied upon documents, the same was considered by this Court in HCP No.522/2016 dated

28th February, 2017, wherein this Court, at Paragraph No.5, has observed as under:

5. In this case, the right of the detainee to make a meaningful representation to the competent Authority against his detention order

has been affected because from the grounds of detention it is evident that two FIRs registered against the detainee are primarily the

reasons for which the respondents have detained the detainee under the provisions of the J&K Public Safety Act, 1978, and the said

relied upon documents for detaining the detainee have not been supplied to him, therefore, this Court has no hesitation to hold that the

detention is bad on this ground alone.

7. The Hon"ble Supreme Court in case titled ""Thahira Haris V. Government of Karnataka, reported in AIR 2009 SC, 2184"", held as follows:-

27. There were several grounds on which the detention of the detainee was challenged in these appeals but it is not necessary to refer

to all the grounds since on the ground of not supplying the relied upon documents, continued detention of the detainee becomes illegal

and detention order has to be quashed on that ground alone.

28. Our Constitution provides adequate safeguards under clauses (5) and (6) of Article 22 to the detainee who has been detained in

pursuance of the order made under any law providing for preventive detention. He has right to be supplied copies of all documents,

statements and other material relied upon in the grounds of detention without any delay. The predominant object of communicating

the grounds of detention is to enable the detainee at the earliest opportunity to make effective and meaningful representation against his

detention.

8. Hence, the detention order is bad for non-supply of relied upon documents.

9. The second contention i.e. denial of representation to the detaining Authority merits consideration in light of the decision of this Court rendered

in "HCP No.634/2016, in case titled Abdul Rehman Tantaray Vs. State of JK". Paragraph Nos. 5 to 7 whereof are reproduced as under:

5. It is pleaded that neither the detention order nor the aforesaid intimation in terms of Section 13 of the Jammu & Kashmir Public

Safety Act, makes it clear that detainee will be entitled to make a representation to the detaining authority. Prejudice to the detainee is

pleaded stating that his right to make effective representation to the detaining authority who has issued the detention order is denied.

To buttress this argument, learned counsel for the detainee relied upon the decisions of this Court in "Bashir Ahmad Sheikh v. State of

J&K & Ors., 2011 (1) JKJ HC 82" and "Shabir Ahmad Malik v. State of J&K & Ors. 2011 (1) JKJ HC 171". Further reliance is

also placed on the decision of the Hon"ble Supreme Court in the case of "State of Maharashtra & Ors. v. Santosh Shankar Acharya,

AIR 2000 SC 2504", where provisions of Sections 3(2), 8(1) of the Maharashtra Prevention of Dangerous Activities of Slumlords,

Bootleggers, Drugs Offenders and Dangerous Persons Act, 1981, were considered in the light of the plea that the detaining authority

did not provide an opportunity to the detainee to make a representation to the Detaining Authority and therefore, it was held to be

bad.

6. Considering the language used in Section 8(1) of the Maharashtra Act, the Hon"ble Supreme Court held that if the detention order

is passed by an Officer other than the State Government the right to make representation to the said detaining authority cannot be

taken away. The reliance was placed on the provisions of Section 21 of the Bombay General Clauses Act, 1904.

7. In this case also the detention order has been passed by the District Magistrate, however, right to make a representation to that

authority has not been granted, however, it is specifically mentioned that representation is to be made to the Government. Thereby

detenue has been put to great prejudice as he is unable to make a representation to the said authority.

10. There is no indication that detenue has a right to make a representation to the Detaining Authority.

11. In view of the above legal infirmity, the impugned detention order is liable to be set aside. Accordingly, the instant Habeas Corpus petition is

allowed, order of detention bearing No. 147/DMB/PSA/2016 dated 30.09.2016, is, hereby, quashed. The respondents are directed to release

the detenue, namely, Abdul Majeed Malla S/o Abdul Rehman Malla R/o Palhallan Raipora Pattan, District Baramulla, from preventive custody

forthwith, if not required in any other case.