

(2000) 05 J&K CK 0007
In the Jammu And Kashmir High Court
Case No : H.C. Petition No. 110 of 1999

Abdul Rashid Malla

APPELLANT

Vs

State and Another

RESPONDENT

Date of Decision : 16-05-2000

Acts Referred:

Arms Act, 1959 — Section 25, 7
Constitution of India, 1950 — Article 22, 22(5)
Criminal Procedure Code, 1973 (CrPC) — Section 161
Jammu and Kashmir Public Safety Act, 1978 — Section 6

Citation : (2000) CriLJ 4333

Hon'ble Judges : Syed Bashiruddin, J

Bench : Single Bench

Advocate : Shaffaqat Hussain, for the Appellant; R.A. Khan, Govt. Pleader, for the Respondent

Final Decision : Allowed

Judgement

Syed Bashiruddin, J.—Petitioner has been arrested on 22-10-97 in FIR No. 115/97 u/s 7/25, Indian Arms Act, registered at Police Station

Lalpura. Subsequently, he has been detained u/s 6 of the Jammu and Kashmir Public Safety Act, 1978 with a view to prevent him from acting in

any manner prejudicial to the security of the State, by District Magistrate, Kupwara under his Order DMK/PSA/260 of 1998 dated 23-7-1998

for a period of twenty four months. The detenu Abdul Rashid Malla, was taken in preventive detention on 1-8-1998. This order of detention is

under challenge in this habeas corpus petition.

2. The counsel for petitioner submits that the detenu is an illiterate person, Grounds supplied to him in English language are not understood by him.

The order of detention and grounds were not accompanied by any translation or

transcript in the language which he understood. He was not even supplied material and documents referred in grounds of detention. Petitioner has been prejudiced insofar as he could not make any representation.

The counsel further submits that the detention order suffers from non-application of mind. It has been passed in a mechanical manner by the

detaining authorities. It is based on vague grounds. Though the detenu was with the State authorities from 22-10-97 in punitive detention, the order

of preventive detention was ordered after about 9 months, when petitioner was not free to indulge in alleged prejudicial activities, the basis of detention order.

3. Mr. R. A. Khan, G.A. has submitted that the detention is in order. The detenu has been supplied the grounds as also the detention order in

order to make representation. He further submits that the order is based on subjective satisfaction of the detaining authority. In para 2 of the counter, it is stated:

...So consequently, after contents of detention warrant were explained and read over to the detenu in the language which he understood, the

detention warrant was executed and the detenu was taken into preventive custody only on 1-8-1998, which fact is evidenced by the executed

copy of detention warrant, whereupon the detenu has put his thumb impression. The grounds of detention were also handed over to the detenu,

contents thereof were also read over and explained to him in the language, he fully understood.

In para 4 of the counter, it is further averred :-

...The material in the shape of grounds of detention stand supplied to the detenu. No other material or record has been relied for detention of the

detenu. No doubt FIR has a passing reference in the grounds of detention, but same has also not been relied.

4. This statement when examined in the light of allegations in the petition and grounds of detention, it is more than made out that the petitioner has

not been supplied any material except the sheet stated to be grounds of detention (Annexure P-1) FIR; copies of statements recorded u/s 161,

Cr.P.C., recoveries memos; seizure of arms and ammunition memos etc., have not been supplied to petitioner. Even record produced by Mr.

Khan, GA, shows that the order of detention with grounds is served in English

language not accompanied by any transcript or translation thereof. It

is also seen from this record that the detenu has put thumb impression on the endorsement thereby fairly showing that the detenu is illiterate person,

which fact is not even denied by the respondents. The person or the authority who has actually read over the order to petitioner in English or some

other language which he alleges is understood by petitioner has not come forth to file an affidavit. Even, the particulars, like name, designation of

such officer is not discernible from record. In such circumstances, detenu cannot be said to have been supplied the grounds in the language which

he understood nor it can be said that the grounds were accompanied by transcription or translation in a language which the detenu understood.

5. Now coming face to face with such situation, it is apt to quote observations from *Sophia Gulam Mohd. Bham Vs. State of Maharashtra* and

Others, of the Apex Court, as under :-

...The right to be communicated the grounds of detention flow from Article 22(5) while the right to be supplied all the material on which the

grounds are based flows from the right given to the detenu to make a representation can be made and the order of detention can be assailed only

when all the grounds on which the order is based are communicated to the detenu and the material on which those grounds are based are also

disclosed and copies thereof are supplied to the person detained, in his own language. . .

6. In *Ghulam Mohd. Mir v. State of Jammu and Kashmir* and Anr. HC, Pet. No. 93/99 decided on 30-12-1999, it is recorded :-

...In the circumstances, the detenu cannot be said to have been provided an opportunity and the means to make meaningful and effective

representation against the detention as guaranteed apart from provisions of Public Safety Act, by Article 22 of the Constitution. So long the

material on which the facts or conclusions constituting the grounds and basis of subjective satisfaction of the detaining authority, is withheld from or

denied to the detenu, the detenu cannot be said to be communicated the grounds with material. If so, detenu is denied opportunity to make

representation.

7. In *Smt. Raziya Umar Bakshi Vs. Union of India* and *Others*, , it is pointed out:-

...Where the detaining authority is satisfied that the grounds are couched in a

language which is not known to the detenu, it must see to it that the grounds are explained to the detenu, a translated script is given to him and the grounds bear some sort of a certificate to show that the grounds have been explained to the detenu in the language which he understands. A bare denial at the stage when habeas corpus petition is filed in the Court by the detaining authority that these formalities were observed would be of no consequence particularly when it is not supported by any document or by any affidavit of the person who had done the job of explaining or translation.

The detenu in such circumstances is not communicated the basic facts and material, the foundation of detention order and source to draw conclusion and basis to arrive at subjective satisfaction of the detaining authority. Obviously, once the grounds with material are not communicated, the detenu cannot be said to have been given an opportunity to make meaningful and effective representation to the Government.

8. Examination of the grounds would fairly reveal that the petitioner is stated to have crossed over LOC in 1993 and taught use of fire arms and imparted learning to deal in weaponry to other militants. After crossing over back to this side of the LOC in 1997, he is stated to have engaged in some terrorist activities without specifying the acts with date, place, name and other required particulars. This statement does not even carry any example. He was caught on 22-10-97 and arms and ammunition were recovered at his instance. Regarding this crime, FIR 115/97 u/s 7/25 IAA was registered at Police Station Lalpora. Obviously, when out of the grounds, FIR and material and details connected therein are excluded, then there remains only the portion which speaks of detenu's indulgence in activities prejudicial to the security of the State, a too generalised and omnibus statement lacking reference to any particular incident (s) or example (s). The statement is not exemplified to show specific involvement of the detenu. Obviously, the grounds are vague, coupled with this aspect of the case, it cannot be lost sight of that the detenu was detained in the regular offence and was arrested on 22-10-97. After about 9 months he was detained when during this period he was althrough in custody. There is not even a mention either in reply or the grounds to show that the detenu is being either let off on bail or if released on bail would indulge in

activities prejudicial to the security of the State. The live and proximate link between the grounds and purpose of detention appears missing. It

appears to be a mechanical, casual and routine order, without application of mind. The subjective satisfaction is not drawn in legal sense by the

detaining authority. It speaks of non-application of mind on the part of detaining authority.

9. In result, for the aforesaid reason, the detention order is judged as invalid, there-fore, quashed. Respondents/authority or officer having custody

of the detenu, shall release him from custody and set him free forthwith, provided not required in any other substantive offence or case including

FIR115/97 u/s 7/25 IAA Registered at Police Station Lalpora. Communicate the order to the concerned and give copy of cost to the petitioner.