

(2021) 07 J&K CK 0020
In the Jammu And Kashmir High Court
Case No : Writ Petition (Crl) No. 13 Of 2020

Amir Majeed Wani

APPELLANT

Vs

UT Of J&K And Another

RESPONDENT

Date of Decision : 26-07-2021

Acts Referred:

Jammu And Kashmir Public Safety Act, 1978 — Section 8(a)
Jammu And Kashmir State Ranbir Penal Code, 1989 — Section 147, 148, 149, 307, 332, 336, 341, 353
Unlawful Activities (Prevention) Act, 1967 — Section 16, 18, 38, 39
Code Of Criminal Procedure, 1973 — Section 161

Citation : (2021) 07 J&K CK 0020

Hon'ble Judges : Sanjeev Kumar, J

Bench : Single Bench

Advocate : R. A. Khan, Asif Maqbool

Final Decision : Allowed

Judgement

Sanjeev Kumar, J

1) Amir Majeed Wani (the detenué) has filed this petition through his father seeking to quash his detention ordered by the District Magistrate,

Shopian (the Detaining Authority) vide its order No.55/DMS/PSA/2019 dated 23.08.2019.

2) By virtue of the impugned detention order passed by the Detaining Authority in exercise of the powers conferred under Clause (a) of Section 8 of

the J&K Public Safety Act, 1978 (hereinafter the Act), the petitioner has been taken in preventive custody with a view to prevent him from

acting in any manner prejudicial to the security of the State/Country. The impugned detention has been ordered on the basis of material supplied by the

Senior Superintendent of Police, Shopian vide his communication dated

01.08.2019. As per the grounds of detention, claimed to have been served upon the detainee, the detainee after getting initial education from Govt. Primary School, Durpora up to 5th Class took admission in Govt. Middle School, Zainapora from where he passed eighth class examination. In the year 2005, the detainee appeared in matriculation examination through Govt. Higher Secondary School, Zainapora but could not clear the same and left the studies midway. In the year 2010, he again appeared in matriculation examination and was declared pass. In the year 2017, he got job in a private company known as Maxi Multi Service. He left the job and started a Kiriyana shop at Durpora. The detainee along with other Over Ground Worker (OWG) was actively involved in propagation of secessionist ideology, as espoused by the militant organizations like HM and LeT to inculcate hatred, animosity, reactionary ideas towards Union of India, police and security forces in the minds of vulnerable youth of the district. In association with other OGWs, detainee ensured success of the bandh calls given by militants/separatists, instigated stone pelting on police and security forces and caused damage to the public and private property. He also ensured closure of roads, enforcing the shutdown of shop/markets. The detainee along with his other associates had been shouldering the responsibility of targeting and grooming the minds of vulnerable youth and transform them into future militants and stone pelters.

3) The detainee was found actively involved in garnering support and instigating/provoking the masses against the cordon and search operations carried by police/security forces. He would assemble mobs at the encounter sites and created obstructions in the way of security forces to effectively discharge their official duties. The detainee used to lure the youth to join militant ranks of HM and LeT organizations. The detainee has also been found instrumental in providing logistic support to militants, like arranging safe shelter, hide outs and clothing. The detainee along with active militants were planning to detonate an IED targeting the security forces vehicle, however, due to timely action by the security forces, he along associates was arrested and an IED recovered from his possession. FIR No.42/2017 under Sections 147, 148, 149, 353, 332, 307, 336 RPC was registered in Police Station, Zainapora against the detainee and others on the allegation that the detainee along with others miscreants provoked youth in Zainapora market

to pelt stones on security forces that were deployed in the market. FIR No.58/2018 under Sections 148, 149, 336, 341, 353 RPC came to be registered in Police Station, Zainapora on the allegations that after killing of two militants in an encounter with the security forces, detainee along with other

OGWs instigated youth to gather in the vicinity of CRPF camp located at Babapora and to pelt stones on security forces. On 16.06.2019, police of

Police Station, Zainapora received a reliable information that militants of HM, namely, Syed Naveed Mushtaq @ Naveed Babu, Shakir Ahmad Paul,

Aadil Bashir Shaikh in active association with detainee and other OGWs were devising a strategy to increase the militant activities. Accordingly, FIR

No.39/2019 under Section 16,18, 38, 39 ULA(P) Act came to be registered in Police Station Zainapora and the detainee along with others was

apprehended. During investigation, an IED was recovered from the possession of the detainee. The petitioner was arrested in the aforesaid FIR

No.39/2019 and while he was in custody and on remand, it was apprehended that he might succeed in getting bail from the Court and on being

enlarged he would again indulge in militancy related activities prejudicial to the security of State. The Detaining Authority, thus, arrived at the

satisfaction that it was necessary to place the petitioner in preventive detention with a view to preventing him from indulging in activities prejudicial to

the security of the State.

4) The impugned detention order is assailed by the petitioner, inter alia, on the ground that while the petitioner was in custody of the respondents

having been arrested in case FIR No.39/2019 registered in Police Station, Zainapora, yet the detention order passed by the Detaining Authority on 23th

August, 2019 was executed and the petitioner taken in preventive custody only on 21.12.2019. There is, thus, unexplained delay of near about four

months in execution of the impugned detention order and placing of the petitioner in preventive custody. Reliance in this regard is placed by the

learned counsel for the petitioner on a three-Judge Bench judgment of the Supreme Court in KPM Basheer v. State of Karnataka and another, AIR

1992 SC 1353. Learned counsel for the petitioner also placed on record a copy of order dated 17.12.2019 passed by the Special Judge Designated

under NIA Act, Srinagar, whereby the petitioner was directed to be enlarged on bail.

5) Learned counsel for the petitioner also urged that the impugned order would

not sustain for the reason that the relevant record viz. dossier supplied by the police, copy of the FIR, site plan, seizure memo, arrest memo, disclosure memo and statements recorded under Section 161 Cr.P.C. was not

provided to the petitioner, which prevented him from making an effective representation to the Government against his preventive detention.

6) Having heard learned counsel for the parties and perused the record, I am of the view that the impugned order of detention is not sustainable in law

and, therefore, deserves to be quashed.

7) Admittedly, pursuant to the material supplied by the Senior Superintendent of Police, Shopian vide his communication dated 01.08.2019, the

impugned detention order was passed by the Detaining Authority on 23.08.2019. There is admittedly a delay of 22 days in passing the order. Even if,

we ignore this delay, the respondents, in particular the Detaining Authority, has not explained the delay of about four months in executing the impugned

order of detention, more so, when the detainee was already in custody of the respondents having been arrested in FIR No.39/2019. This unexplained

delay of about four months vitiates the impugned order of detention.

8) The observations of the Supreme Court made in paragraph No.15 of the judgment in the case of Adishwar Jain v. Union of India and another,

(2006) 11 SCC 339 are noteworthy and are reproduced hereunder: -

¶15. Delay, as is well known, at both stages has to be explained. The court is required to consider the question having regard to the overall picture.

We may notice that in *Sk. Serajul v. State of West Bengal* [(1975) 2 SCC 78], this Court opined:

There was thus delay at both stages and this delay, unless satisfactorily explained, would throw considerable doubt on the genuineness of the

subjective satisfaction of the District Magistrate, Burdwan recited in the order of detention. It would be reasonable to assume that if the District

Magistrate of Burdwan was really and genuinely satisfied after proper application of mind to the materials before him that it was necessary to detain

the petitioner with a view to preventing him from acting in a prejudicial manner, he would have acted with greater promptitude both in making the

order of detention as also in securing the arrest of the petitioner, and the petitioner would not have been allowed to remain at large for such a long

period of time to carry on his nefarious activities...

9) From the judgment aforesaid, more particularly the observations made in paragraph No.15, it is abundantly clear that the delay at both stages has to be explained and unless this delay is satisfactorily explained, it will throw considerable doubt on the genuineness of the subjective satisfaction derived by the Detaining Authority. Delay, whether it is in making the detention order or it pertains to its execution, both are required to be satisfactorily explained. To the similar effect is the legal position summed up in para 11 of the judgment in KPM Basheer (supra). For ready reference, para 11 of the judgment is reproduced hereunder: -

11. Under these circumstances, we are of the view that the order of detention cannot be sustained since the 'live and proximate link' between the grounds of detention and the purpose of detention is snapped on account of the undue and unreasonable delay in securing the appellant/detenu and detaining him. As we have now come to the conclusion that the order of detention is liable to be set aside on this ground alone we are not dealing with other contentions raised in the Memorandum of Appeal as well as in the writ petition.

10) In the instant case, though, very detailed reply affidavit has been filed by the Detaining Authority, yet no attempt seems to have been made to explain the delay of about three weeks in passing the order of detention and about four months in executing the impugned order of detention. The petitioner was all along in the custody of the respondents. He was arrested in FIR No.39/2019 and was in custody when the order of detention was made and had not been released on bail. The judgments referred to herein above support the contention of the learned counsel for the petitioner and render the order impugned bad in the eye of law.

11) Since the ground on which the order of detention is rendered unsustainable goes to the legitimacy of the subjective satisfaction of the Detaining Authority and, therefore, this Court need not dwell and consider other grounds of challenge urged by the petitioner.

12) For the foregoing reasons, this petition is allowed, the impugned order of detention is quashed. The respondents are directed to release the petitioner from preventive custody forthwith, provided he is not required in any other case.

13) Detention record be returned back to the learned counsel for the

respondents.