
(2011) 07 J&K CK 0011
In the Jammu And Kashmir High Court
Case No : HCP No. 17 of 2011

Ashiq Hussain

APPELLANT

Vs

State of Jammu & Kashmir and Others

RESPONDENT

Date of Decision : 20-07-2011

Acts Referred:

Constitution of India, 1950 — Article 22(5)

Citation : (2011) 3 JKJ 411

Hon'ble Judges : Hasnain Massodi, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Hasnain Massodi, J.—Heard. Considered

Challenge to order No. DM/DODA/PSA/2KXI/241-48 dated 02.02.2010, (herein after ""detention order"") whereby District Magistrate, Doda -

respondent No. 2 herein, has placed one Shri Ashiq Hussain son of Gulla Butt resident of Kilhotran Tehsil Gandoh District Doda (herein after

referred to as ""detenue"") under preventive detention, is to be allowed and the detention order quashed on the ground that the impugned order

depicts non-application of mind on the part of detaining authority. The detention order has been made to prevent the detenue from acting in any

manner ""prejudicial to the security of the State"". However, the grounds of detention do not at all make mention that preventive detention of the

detenue is necessary to prevent him from acting in any manner prejudicial to the security of the State but states that preventive detention of the

detenue is necessary to prevent the detenue from acting in any manner ""prejudicial to the maintenance of peace and public order"". The grounds of

detention that form edifice of detention order are in conflict with the detention order and do not support the conclusions spelt out in the detention

order. There is thus non-application of mind writ large on the detention order.

2. The detaining authority has passed the detention order in a mechanical manner oblivious to the grounds of detention set out in support of

detention order. It is pertinent to point out that the detention order in terms of Section 8, J&K Public Safety Act 1978 can be made by the

Government and in terms of Section 8(2) of the Act by the Divisional Commissioner or District Magistrate only to prevent a person from acting in

any manner prejudicial to the (i) security of State and (ii) maintenance of public order. The detention order and the grounds of detention being

indicative of two set of circumstances strip the detention order of its sanctity of renders it unsustainable under law.

3. This apart, the detaining authority has not informed the detainee that he in addition to his right to file a representation against his detention to the

Government is also entitled to approach the detaining authority with a representation, questioning his detention within 12 days after the detention

order is made or till it is

approved by the Government. The respondents have also by their failure to provide detainee the material relied upon, to make the detention order

violated Constitutional and Statutory safeguards available to the detainee under Article 22(5) Constitution of India and Section 13 J&K Public

Safety Act 1978.

4. It is pertinent to point out that as per grounds of detention the involvement of detainee in various FIR detailed therein has weighed heavily with

the detaining Authority while slapping detention on the detainee. It was thus necessary for the respondents to provide the detainee copies of FIRs

and connected material so as to enable the detainee to make an effective and meaningful exercise of aforementioned Constitutional and Statutory

safeguards. Failure on the part of detaining authority to discharge their Constitutional and Statutory obligation has again rendered the detention

order unsustainable.

5. For the reasons discussed above, the petition is allowed and detention order No. DM/ DODA/PSA/2KXI/241-48 dated 02.02.2010,

quashed. The respondents are directed to release the detainee forthwith from the

preventive detention, ordered under order No. DM/DODA/
PSA/2KXI/ 241-48 dated 02.02.2010.

6. Detention record be returned to counsel for respondents. Disposed of.