
(2004) 01 J&K CK 0001
In the Jammu And Kashmir High Court
Case No : HCP No. 235 of 2002

Ashiquallah Wani

APPELLANT

Vs

State of Jammu & Kashmir and Others

RESPONDENT

Date of Decision : 27-01-2004

Acts Referred:

Constitution of India, 1950 — Article 22(5)
Jammu and Kashmir Public Safety Act, 1978 — Section 13, 8

Citation : (2004) CriLJ 2796 : (2004) 2 JKJ 57

Hon'ble Judges : Syed Bashir-Ud-Din, J

Bench : Single Bench

Advocate : Mir Shafaqat, for the Appellant; T.A. Khawaja, GA, for the Respondent

Judgement

Sayed Bashir-Ud-Din, J.—Subject Ashiquallah Wani is detained by district Magistrate Srinagar (Vide his order No. dMS/PSA/35 date

6.6.2002) u/s 8 of J&K Public Safety Act with a view to prevent him from acting in any manner prejudicial to the security of the State (Annexure

P2). This order and the consequent detention is challenged in this petition.

2. Respondents have filed counter through district Magistrate Srinagar, the Detaining Authority.

3. Heard. Notwithstanding the fact that several grounds have been taken Ld. Counsel for the petitioner has pressed sole ground to question the

detention as contained in Sub para 3 (d) of the petition supplemented by his submissions that the detenu has not been supplied material and

documents referred in the grounds of detention, thereby he has been prejudiced to make an effective representation against the detention to the

Govt. resulting in violation of constitutional and statutory right of the detenu as

embodied by Art, 22(5) and Section 13 of J&K P. S. Act.

4. Ld. Govt. Advocate Mr. T.K. Khawaja submits that the order of detention as also the memo of grounds, (annexure P1) have been supplied to

detenu and petitioner had the opportunity to make representation which he has not availed and the detention order is in order.

5. Para 3 (d) of the petition reads as under:-

That, the detenu has not been furnished copy of FIR, dossier, statement of prosecution witnesses recorded by the police u/s 161 Cr. P.C. and the

material referred in grounds of detention. Non-supply of the material to detenu, in his own language, prevented the detenu to make a representation

against his detention, on this ground also the detention of the detenu is illegal and renders to be quashed.

6. Reply to para 3(d) above, in counter reads as under :-

That the grounds are correct relevant and hence the order of detention does not suffer from any illegality.

The impugned detention order No. dMS/PSA/35 date 6.6.2002 so far as it is relevant reads as under:-

whereas I, Abdul Hamid, IAS District Magistrate Srinagar am satisfied on the basis of records received from SSP Srinagar that with a view to

prevent Shri Ashiquallah Wani S/o Gh. Mohd. Wani R/o Padashahi Bagh, Srinagar.....

7. Keeping the above plea and reply in juxtaposition to impugned order a combined reading in the light of the submissions made by the learned

counsel for the parties shows that the decision of the District Magistrate of having arrived at the conclusion that it is necessary to prevent the

subject from indulging in activities prejudiced to the Security of the State and consequent detention u/s 8 of J&K P. S. Act, is but based on

material/documents/records supplied to Detaining Authority inter alia by SSP Srinagar. On application of mind decision is spoken to have been

arrived at on the basis of record received from SSP Srinagar. This is what is stated by the impugned order. Reply in terms says that the grounds

are correct and relevant but does not refute or otherwise displace the allegation of non-supply of the material and documents to the detenu. There

is nothing in the reply/counter to show that the allegation of non-supply of material/re-cord/documents basis of satisfaction of the detaining authority

to order in question is addressed to muchless refuted.

8. In the facts and circumstances of this case communication of the grounds as ordered under Article 22(5) and Section 13 of the P.S. Act is not

there. In other words there is non-compliance with the above constitutional mandate and statutory provisions of the J&K P. S. Act.

9. In *Sophia Gulam Mohd. Bham Vs. State of Maharashtra and Others*, , the Apex Court observed:-

... .The right to be communicated the grounds of detention flows 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 against the order of detention. A representation can be made

and the order of detention can be assailed only when all 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.....

In *Naseer Ashmed Sheikh v. Additional Chief Secretary Home and Anor.* 1999 SLJ 241 a Division Bench of this Court observed:-

....The grounds of detention give out that the alleged prejudicial activities came to be attributed on the basis of the reports made available to the

detaining authority by the concerned SSP. No where is it pleaded muchless shown that the copy/copies of these reports of the police on which the

detaining authority based its satisfaction to pass the detention order were supplied/provided to the detenu so as to enable him to make an effective

representation against the order.

In *Ghulam Mohd. Mir v. State of J&K through Addl. Chief secy. (Home) Civil Sectt ; and Ors.* in HCP No. 93/99 the court observed:-

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 with-held 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.

10. In the above view of the matter, detention is not legally sustainable. As a foretiorari impugned detention order is quashed. Detenu Aishaqullah wani S/o Gh. Mohd. Wani R/o Padshahi Bagh, aged 55 years Srinagar shall be released forthwith provided he is not required in any other case, offence or matter.