
(2011) 08 J&K CK 0031
In the Jammu And Kashmir High Court
Case No : HCP No. 186 of 2011

Azad Ahmad Shah

APPELLANT

Vs

State of Jammu & Kashmir and others

RESPONDENT

Date of Decision : 11-08-2011

Acts Referred:

Arms Act, 1959 — Section 25, 7
Ranbir Penal Code, 1989 — Section 120(B)

Citation : (2011) 08 J&K CK 0031

Hon'ble Judges : Hasnain Massodi, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Hasnain Massodi, Judge

1. Challenge to order No. 49/DMA/PSA/11 dated 23.04.2011, of District Magistrate, Anantnag respondent No. 2 herein, whereby one Shri

Azad Ahmad Shah son of Mohammad Shaban Shah resident of Sydath Colony, Seer Hamdan, Anantnag Tehsil and District Anantnag (herein

after referred to as 'detenue') has been placed under preventive detention, must succeed for following reasons:

The grounds of detention as also detention order make reference to case - FIR No. 57/2011 u/s 7/25 A. Act, 120(B) RPC of Police Station

Kokernag and FIR No. 280/2010 u/s 13(3) ULA(P) Act of Police Station Anantnag, to have been registered against the detenue. The involvement

of detenue in the aforementioned cases appears to have heavily weighed with the detaining authority while making detention order. The detention

record reveals that none of the documents referred to in the detention order was ever supplied to detenue. It is pertinent to point out that the

detaining authority, in grounds of detention after detailing background in which aforesaid cases were registered against detainee, proceeds to opine

It is manifest from the above that activities of the said person are highly prejudicial to the security of the State and national integrity"". The material,

mentioned above, thus assumes significance in the facts and circumstances of the case. The detention record does not indicate that copies of

aforementioned First Information Reports, statements recorded u/s 161 Cr.P.C. and other material collected in connection with investigation of

aforesaid cases, were ever supplied to detainee. The material, mentioned above, thus assumes significance in the facts and circumstances of the

case. The detention record reveals that none of the documents referred to in the detention order was supplied to the detainee. It needs no emphasis

that the detainee cannot be expected to make a meaningful exercise of his Constitutional and Statutory rights guaranteed under Article 22(5),

Constitution of India and Section 13, J&K Public Safety Act, 1978, unless and until the material on which the detention order is based, is supplied

to detainee. It is only after the detainee has all said material available, that the detainee can make an effort to convince detaining authority and

thereafter Government, that their apprehension as regards activities of the detainee are baseless and misplaced. If the detainee is not supplied

material, on which detention order is based, the detainee cannot be in a position to make an effective representation against his detention order. The

failure on the part of Detaining Authority to supply material relied at the time of making detention order to detainee, renders detention order illegal

and unsustainable. While holding so, I draw support from Dhananjoy Das Vs. District Magistrate, Darrang and Another, ; Sophia Gulam Mohd.

Bham Vs. State of Maharashtra and Others, ; Union of India (UOI) Vs. Ranu Bhandari, ; Syed Aasiya Indrabi versus State of Jammu and

Kashmir and Others (2009 (I) S.L.J. 219); and Thahira Haris etc. Vs. Government of Karnataka and Others, . Article 22(5) of Constitution

provides a precious and valuable right to a person detained under preventive detention law - J&K Public Safety Act 1978, to make a

representation against his detention. It needs no emphasis that a detainee, on whom preventive detention order is slapped, is held in custody without

a formal charge and a trial. The detainee is held in custody on a mere suspicion that his apprehended activities may be prejudicial to the

maintenance of public order or security of the State. Article 22(5), Constitution of India and Section 13 of the Act, thus make it obligatory for

Detaining Authority to provide detainee an earliest opportunity of making an effective and meaningful representation against his detention. The

object is to enable detainee to convince Detaining Authority and Government, as the case may be, that all apprehensions regarding his activities are

grossly misplaced and his detention is unwarranted. To make the Constitutional and Statutory right available to detainee meaningful, it is necessary

that detainee be informed with all possible clarity what is/are apprehended activity/ies that persuaded Detaining Authority to make detention order.

In case grounds of detention are vague, ambiguous and confusing, the detainee cannot be expected to make a representation against his detention.

2. In the instant case the detainee is alleged to be close associate of 'LET' outfit, whose headquarter is in POK. The words/ expressions like 'LET'

and 'POK' are too vague to make the detainee aware of the exact accusation leveled against him. The detaining authority has not to work on

assumptions and presumptions that whatever acronyms it is aware of must be necessarily known to the detainee. The reference to the activities of

'LET' outfit is rendered meaningless in view of non-description of organization with which the detainee is alleged to be associated. The detainee is

alleged to have been found to have sheltered militants and provided them necessary inputs and assistance to organize ambushes against security

forces. The militants, who are alleged to have been sheltered and provided inputs and assistance by the detainee, are not identified nor their identity

disclosed. The detainee is also alleged to have motivated the youth to join LeT outfit. The detainee has not been given the details and particulars of

youth, who are alleged to have been motivated by detainee to join LeT outfit. It was incumbent upon the detaining authority to give adequate

information regarding identity of militants, with whom the detainee was alleged to have associated to indulge in subversive activities. The detainee, in

absence of such details, could not be expected to have been in a position to give his side of story and persuade respondent No. 2 and other

respondents that the allegations against detainee were bereft of any basis. To sum up, the grounds of detention that constitute basis for the detention

order in question are ambiguous, vague, uncertain and hazy. A person of ordinary prudence would not be in a position to explain his stand in reply

to the grounds of detention detailed by respondent No. 2. The detainee has been kept guessing about the facts and events that weighed with

respondent No. 2 and prompted respondent No. 2 to record subjective satisfaction regarding sufficiency of the material to warrant preventive

detention of the detainee. These are only few instances to illustrate that the grounds of detention are vague and ambiguous and bound to keep the

detainee guessing about what really was intended to be conveyed by the detaining authority. It is well settled law that even where one of the

grounds relied upon by the Detaining Authority to order detention is vague and ambiguous, Constitutional and Statutory right of the detainee to

make a representation against his detention are taken to have been violated. Reference in this regard may be made to Dr. Ram Krishan Versus The

State of Delhi and others, AIR, 1953,; Chaju Ram Vs. The State of Jammu and Kashmir, ; Mohd. Yousuf Rather Vs. State of Jammu and

Kashmir and Others, ; and Syed Aasiya Indrabi Versus State of J&K and others, 2009 (I) SLJ 219.

3. The Detaining Authority respondent No. 2 did not inform the detainee that the detainee, independent of his right to file representation against his

detention to the Government, has also a right to submit a representation to the Detaining Authority till the detention was considered by the

Government and the Government accorded its approval to the detention. The respondent No. 2 has thus violated Constitutional and Statutory

rights of the detainee, guaranteed under Article 22(5) of the Constitution of India and Section 13 of J&K Public Safety Act. It would be apt to

make a reference in this regard to the law laid down in State of Maharashtra and Others Vs. Santosh Shankar Acharya, .

4. Viewed thus, the petition is allowed and detention order No. 49/DMA/PSA/11 dated 23.04.2011, passed by the District Magistrate, Anantnag

respondent No. 2, directing detention of Shri Azad Ahmad Shah son of Mohammad Shaban Shah resident of Sydath Colony, Seer Hamdan,

Anantnag Tehsil and District Anantnag, quashed.

5. The respondents, in view of quashment of detention order, are stripped of any authority to detain the detainee under order No.

49/DMA/PSA/11 dated 23.04.2011. Resultantly, the respondents are directed to release the detainee from preventive detention, ordered vide

order No. 49/DMA/PSA/11 dated 23.04.2011.

6. Detention record be returned to the counsel for respondents.

7. Disposed of.