

(2020) 08 J&K CK 0085
In the Jammu And Kashmir High Court
Case No : Writ Petition (C) No. 343 Of 2019

Azad Ahmad Shah

APPELLANT

Vs

State Of J&K And Others

RESPONDENT

Date of Decision : 13-08-2020

Acts Referred:

Jammu And Kashmir State Ranbir Penal Code, 1989 — Section 8
Jammu And Kashmir State Ranbir Penal Code, 1989 — Section 147, 148, 149, 188,
336, 341, 353, 380, 457
Constitution Of India, 1950 — Article 370

Citation : (2020) 08 J&K CK 0085

Hon'ble Judges : Sindhu Sharma, J

Bench : Single Bench

Advocate : Bilal Ahmad Khan, B. A. Dar

Final Decision : Dismissed

Judgement

Sindhu Sharma, J

1. This petition has been filed by the detenu-Azad Ahmad Shah for quashing the detention order No. DMB/PSA/60 of 2019 dated 22.08.2019 passed by District Magistrate, Budgam vide which the detenu was placed under detention under section 8 of J&K Public Safety Act. The detenu has questioned this order of detention through his father-Ghulam Ahmad Shah.

2. The order of detention has been questioned on the ground that the allegations stated in the grounds of detention are vague and mere assertions on which no representation can be made. It is submitted that the grounds of detention have no nexus with the detenu and have been fabricated by the police in order to illegally detain the detenu, as such, the impugned order of detention is bad. The order of detention suffers from unexplained delay as the alleged activities said to have been taken place on 09.08.2019 and the impugned order of detention has been passed on 22.08.2019. The detaining authority has not given any cogent explanation for the same. The detenu has not been furnished copy of all the

material relied upon by the detaining authority while passing the detention order, thus, the same is bad and is required to be set aside.

3. Mr. B. A. Dar, learned Sr. AAG has not filed counter affidavit but produced the detention record. It is stated that the detenu was detained to prevent him from his activities which were prejudicial to the maintenance of Public Order.

4. The grounds of detention stated as under:

"That you always look for opportunities where you can exploit the sentiments of the common masses which ultimately results in breakdown of law and order. You are in constant touch with anti-national elements and act at their behest. The field report reveals that you are mobilizing the members of the society and indoctrinating them to cause disruption in the law and order at a large scale. You have been found involved in the stone pelting incident and a recent Case FIR No. 183/2019 U/S 457, 380 RPC and Case FIR No. 136/2019 U/S 147, 148, 149, 336, 353, 341, 188 RPC stands registered against you in Police Station Beerwah.

That your involvement in the above mentioned case and your other clandestine activities have direct bearing on the maintenance of public order in the area. You became a chronic mobilize of antinational elements and do not allow the peace and stability to prevail and always look for opportunities to disturb tranquility in the area. The antinational activities resorted to, by you are pointing out that you are not likely to mend your ways. The material produced against, to you activities is of such a nature that there is reasonable probability of you may again cause disturbance to the public tranquility. In the wake of recent parliamentary proceedings vis-à-vis abrogation of Article 370 and there are reports from the field suggestive of the fact that you are planning to instigate the youth to disrupt the public order by resorting to arson, stone pelting and blocking of roads which in turn will endanger the human life and result in loss to public as well as private property. It has been seen in the past whenever such illegal activities were carried out by the antinational elements it caused severe loss to the business establishments, educational institutions, smooth supply of essential commodities and even human life.

That though normal law of the land has been invoked against you, there are well founded apprehensions that if you remain at large, you will again indulge in stone pelting and such other criminal/anti-national activities that has the potential to disrupt Public order. Taking a holistic view of your activities it can be safely concluded that the activities are highly prejudicial to the maintenance of public order."

5. Heard learned counsel for the parties and perused the record also.

6. Perusal of the record reveals that the detenu was supplied with the copy of the entire material relied upon by the detaining authority. The material supplied contains of PSA warrant(01 leaf), notice (01 one leaf), grounds of detention (02 leaves), dossier (03 leaves), Copy of FIR's (02 leaves) in total (09 leaves) were

read over and explained to the detenu in Urdu/Kashmiri Languages which the understood fully and all the material were furnished of the detenu under proper receipt.

7. In *State of Maharashtra and others V. Bhaurao Punjabrao Gawande*, (2008) 2 SCC 613, it has held that:

"36. Liberty of an individual has to be subordinated within reasonable bounds, to the good of the people. The framers of the Constitution were conscious of the practical need of preventive detention with a view to striking a just and delicate balance between need and necessity to preserve individual liberty and personal freedom on the one hand and security and safety of the country and interest of the society on the other hand. Security of State, maintenance of public order and services essential to the community, prevention of smuggling and black marketing activities, etc. demand effective safeguards in the larger interests of sustenance of a peaceful democratic way of life."

8. In *State of Gujarat V. Adam Kasam Bhaya*, (1981) 4 SCC 216, it is settled proposition that this court does not sit in appeal over decision of detaining authority and cannot go further and examine sufficiency of material.

9. All the provisions of Public Safety Act, have been complied with and the detenu has been detained with a view to prevent him from acting in any manner prejudicial to the maintenance of Public Order.

10. The detention order passed by the detaining authority is precautionary measure based on a reasonable consideration of the future behavior of the detenu, keeping in view his conduct and also in view of the circumstances which warrant the detention of the detenu. The grounds of detention are definite, proximate and free from any ambiguity. The detenu was informed of what actually weighed with the Detaining Authority, while passing the detention order and the Detaining Authority has recorded its subjective satisfaction which was required to place the detenu in preventive detention in order to prevent him from acting in any manner prejudicial to the maintenance of Public Order. The detenu has been informed of his right to make representation against the detention order to both, the Government as well as Detaining Authority but he has not chosen to do so. Thus, none of the statutory and Constitutional rights of the detenu have been infringed. The Detaining Authority has passed the order of detention, after arriving at its subjective satisfaction and considering all the material before it.

11. In view of the above, there is no merit in this petition and the same is, accordingly, dismissed.

12. Let the detention record be handed over to learned counsel for the respondents.