
(2011) 11 J&K CK 0013
In the Jammu And Kashmir High Court
Case No : HCP No. 121 of 2011

Bashir Ahmad Dar

APPELLANT

Vs

State of Jammu & Kashmir and Others

RESPONDENT

Date of Decision : 05-11-2011

Acts Referred:

Constitution of India, 1950 — Article 226, 32

Citation : (2011) 4 JKJ 297

Hon'ble Judges : Mansoor Ahmad Mir, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Mansoor Ahmad Mir, Judge

1. By the medium of this petition, petitioner has questioned detention order bearing No. DMS/PSA/135/2010 dated 17.01.2011 passed by

respondent No. 2 on the grounds taken in the memo of petition and has also prayed for staying the execution of the same. Thus, petitioner has

sought quashment of the detention order before its execution.

2. Respondents have failed to file reply. Thus, the averments contained in the petition have remained un rebutted.

3. Impugned detention order came to be passed on 17th January, 2011 and petition in hand came to be filed on 24th of March, 2011. It is

contended that petitioner is handicap and is not in a position to stand by his feet. He has been involved in a false and frivolous FIR No. 61/2008

U/S 7/25 A. Act, P/S Karanagar, and FIR No. 58/2009 P/S Maisuma, and was detained in detention under detention order Nos.

DMS/PSA/31/2009 dated 31.08.2009 and DMS/PSA/2/2010 dated 20.04.2010.

Both the detention orders were quashed by this court and the trial court also granted bail in FIR No. 58/2009 but despite of that respondents have passed the impugned detention order and are bent upon to detain him. Copy of the grounds of detention is annexed with the writ petition. It is alleged that a detention order was quashed by the court on 26th of November, 2010 and thereafter the petitioner recycled his activities. It is apt to reproduce last three paras of the grounds of detention herein:

Immediately after your release, you have been approached by some activists of LeT outfit who visited your residence and during the meeting you

have been asked to restart your activities after some time. You have reportedly accepted the proposal and have asked for some time to resume

your activities. In addition some active militants of LeT outfit have also visited your residence and what has transpired between you and these

militants is being ascertained. Keeping in view your past profile and level of your involvement in facilitating the subversive activities, there is a well

founded apprehension that you are planning to role into militancy and have already made some moves in this direction. You are presently at large.

Therefore, it is clear that your activities are highly prejudicial to the maintenance of security of the state and warrant immediate preventive measures

to be taken against you so as to prevent the society from violence, strikes, economic adversity and social indiscipline.

On the basis of the aforementioned activities, I have reached to the conclusion that it would be expedient to detain you under the provisions of

J&K Public Safety Act, 1978, for which orders are being issued separately.

4. It is beaten law of the land that in pre-execution petition the grounds are very limited to the detenue and the grounds which are available to the

detenue after execution are not available to the detenue before its execution.

5. Apex Court in case titled Union of India (UOI) and Others Vs. Atam Parkash and Another, has held that courts under Article 226 and 32 of

the Constitution of India can interfere at the pre-execution stage in the following circumstances only:

(i) the impugned order is not passed under the Act under which it is purported to have been passed;

(ii) it is sought to be executed against a wrong person;

(iii) it is passed for a wrong purpose;

(iv) it is passed on vague, extraneous and [vexatious] grounds; or

(v) the authority which passed it had not authority to do so.

6. While applying the test, the case of the petitioner does not fall within the said parameters.

7. In the given circumstances, the petition is dismissed along with all connected CMPs. Interim direction, if any, shall stand vacated.