

(2017) 03 J&K CK 0033
In the Jammu And Kashmir High Court
Case No : 307 of 2016

Bilal Ahmad Dar

APPELLANT

Vs

State of J&K and others

RESPONDENT

Date of Decision : 02-03-2017

Acts Referred:

Citation : ,2017 0 CriLJ 3128

Hon'ble Judges : Tashi Rabstan

Bench : SINGLE BENCH

Advocate : Wajid Haseeb, Shafqat Hussain, B. A. Dar

Final Decision : Dismissed

Judgement

1. Impugned in this petition is Order No.DMS/PSA/33/2016 dated 10th September 2016, of District Magistrate, Srinagar - respondent No.2

herein, whereby one Bilal Ahmad Dar son of Ghulam Nabi Dar resident of Wussan Kahaie Pattan, District Baramulla (for brevity ""detenu"") has

been placed under preventive detention to prevent detenu from acting in any manner prejudicial to the maintenance of security of the State.

2. The case set up in the petition is that respondent No.2, while slapping preventive detention on the detenu, has not adhered to Constitutional and

Statutory safeguards available to detenu under the Constitution of India and J&K Public Safety Act, 1978.

3. I have heard learned counsel for parties. I have gone through the pleadings as also record made available by learned Additional Advocate

General. I have considered the matter

4. Right of personal liberty is most precious right guaranteed under the Constitution. It has been held to be transcendental, inalienable and available

to a person independent of the Constitution. A person is not to be deprived of his personal liberty, except in accordance with procedures

established under law and the procedure as laid down in *Maneka Gandhi v. Union of India*, (1978 AIR SC 597), is to be just and fair. The

personal liberty may be curtailed, where a person faces a criminal charge or is convicted of an offence and sentenced to imprisonment. Where a

person is facing trial on a criminal charge and is temporarily deprived of his personal liberty owing to criminal charge framed against him, he has an

opportunity to defend himself and to be acquitted of the charge in case prosecution fails to bring home his guilt. Where such person is convicted of

offence, he still has satisfaction of having been given adequate opportunity to contest the charge and also adduce evidence in his defence.

However, framers of the Constitution have, by incorporating Article 22(5) in the Constitution, left room for detention of a person without a formal

charge and trial and without such person held guilty of an offence and sentenced to imprisonment by a competent court. Its aim and object is to

save the society from activities that are likely to deprive a large number of people of their right to life and personal liberty. In such a case it would

be dangerous for the people at large, to wait and watch as by the time ordinary law is set into motion, the person having dangerous designs, would

execute his plans, exposing general public to risk and causing colossal damage to life and property. It is, for that reason, necessary to take

preventive measures and prevent the person bent upon to perpetrate mischief from translating his ideas into action. Article 22(5) Constitution of

India therefore leaves scope for enactment of preventive detention law.

5. The essential concept of preventive detention is that the detention of a person is not to punish him for something he has done but to prevent him

from doing it. The basis of detention is the satisfaction of the executive of a reasonable probability of likelihood of detenu acting in a manner similar

to his past acts and preventing him by detention from doing the same. The Supreme Court in *Hardhan Saha v. State of W.B.* (1975) 3 SCC 198,

points out that a criminal conviction on the other hand is for an act already done which can only be possible by a trial and legal evidence. There is

no parallel between prosecution in a Court of law and a detention order under the Act. One is a punitive action and the other is a preventive act. In

one, case a person is punished to prove his guilt and the standard is proof beyond reasonable doubt whereas in preventive detention a man is

prevented from doing something which it is necessary for reasons mentioned in the Act, to prevent.

6. It is long back that an eminent thinker and author, Sophocles, had to say: ""Law can never be enforced unless fear supports them."" This

statement was made centuries back, but it has its relevance, in a way, with enormous vigour, in today's society. Every right-thinking citizen is duty

bound to show esteem to law for having an orderly, civilized and peaceful society. It has to be kept in mind that law is antagonistic to any type of

disarray. It is completely intolerant of anarchy. If anyone flouts law, he has to face the ire of law, contingent on the concept of proportionality that

the law recognizes. It can never be forgotten that the purpose of criminal law legislated by the competent legislatures, subject to judicial scrutiny

within constitutionally established parameters, is to protect the collective interest and save every individual that forms a constituent of the collective

from unwarranted hazards. It is sometimes said in an egocentric and uncivilised manner that law cannot bind the individual actions which are

perceived as flaws by the large body of people, but, the truth is and has to be that when the law withstands the test of the constitutional scrutiny in

a democracy, the individual notions are to be ignored. At times certain activities, wrongdoings, assume more accent and gravity depending on the

nature and impact of such deleterious activities on the society. It is neither to be guided by a sense of sentimentality nor to be governed by

prejudices. Acts or activities of individual or a group of individuals, prejudicial to the security of the State, have magnitude of across-the-board

disfigurement of societies. No court should tune out such activities, being won over by passion of mercy. It is the obligation of the court to

constantly remind itself the right of society is never maltreated or marginalised by the doings an individual or set of individuals propagate and carry

out.

7. Article 22(5), Constitution of India and Section 13, J&K Public Safety Act, 1978, guarantee safeguard to detenu to be informed, as soon as

may be, of the grounds on which the order of detention is made which led to the subjective satisfaction of detaining authority and also to be

afforded earliest opportunity of making representation against order of detention. Detenu is to be furnished with sufficient particulars to enable him

to make representation, which on being considered, may obtain relief to him. The detention record made available by learned Additional Advocate

General reveals that detention order was made on proper application of mind to the facts of the case and that the detenu was delivered at the time

of execution of detention order, the material and grounds of detention and also informed that he had a right to represent against his preventive

detention. The record further reveals that impugned detention has been, in exercise of powers conferred by sub-section (4) of Section 8 of the

Jammu and Kashmir Public Safety Act, 1978, approved by the Government. From the perusal of the detention record it transpires that the detenu

at the time of execution of detention order, has been handed over copy of detention order, grounds of detention and other material that finds

mention in the detention order, so as to enable him to make a representation against his detention. The detenu has been also informed that he can

file a representation against his detention. The grounds of detention are definite, proximate and free from any ambiguity. The detenu is informed

with sufficient clarity what actually weighed with Detaining Authority while passing detention order. The Detaining Authority has narrated facts and

figures that made the authority to exercise its powers under section 8, J&K Public Safety Act 1978 and record subjective satisfaction that the

detenu was required to be placed under preventive detention in order to prevent him from acting in any manner prejudicial to the maintenance of

security of the State.

8. Detaining authority, in present case, has informed detenu that detenu joined terrorist organization and indulged in illegal activities to carry out

nefarious designs of terrorists. Grounds of detention also mention that detenu and his associates on 30th July 2016 came to Srinagar to carry out

attacks on security forces and to create large scale law and order problem by inflicting attacks on security forces and while reaching at Shreen

Bagh, Karan Nagar, where a naka was established by the police post Bagyas and police component Srinagar, detenu along with his associate was

arrested and arms/ammunition were recovered from his possession, which were: one AK-47 Rifle; 03 AK-47 magazine; 60 round AK-47

Ammunition; one Pistol; one Pistol magazine; 05 rounds of Pistol ammunition; one hand grenade. In this regard a case FIR no.100/2016 under

Section 7/25 I. A. Act, 3/4 Exp. Sub. Act was registered in Police Station Safa Kadal. This act is sufficient to prevent detenu from indulging in

such prejudicial activities that has direct bearing on our society. So viewed the detenu is not to be heard saying that any of his Constitutional and

Statutory rights have been violated while the detention order in question was slapped on him and thereafter executed.

9. In the petition the contention is that allegations/grounds of detention are vague and the cases mentioned in grounds of detention have no nexus

with detenu and have been fabricated by police in order to justify its illegal action of detaining detenu. It is also mentioned in the petition that

detaining authority has mentioned a single FIR in the grounds of detention for slapping preventive detention upon detenu. It may not be out of place

to mention here that the Supreme Court, in several decisions, has held that even one prejudicial act can be treated as sufficient for forming the

requisite satisfaction for detaining the person.

10. In *Debu Mahato v. State of W.B.* (1974) 4 SCC 135, it was observed that while ordinarily speaking one act may not be sufficient to form the

requisite satisfaction, there is no such invariable rule and that in a given case "one act may suffice". That was a case of wagon-breaking and given

the nature of the Act, it was held therein that "one act is sufficient". The same principle was reiterated in *Anil Dely v. State of W.B.* (1974) 4 SCC

514. It was a case of theft of railway signal material. Here too "one act was held to be sufficient". Similarly, in *Israil SK v. District Magistrate of*

West Dinajpur (1975) 3 SCC 292 and *Dharua Kanu v. State of W.B.* (1975) 3 SCC 527, single act of theft of telegraph copper wires in huge

quantity and removal of railway fishplates respectively, was held sufficient to sustain the order of detention. In *Saraswathi Seshagiri v. State of*

Kerala (1982) 2 SCC 310, a case arising under a single act, viz. attempt to export a huge amount of Indian currency was held sufficient. In short,

the principle appears to be this: "Though ordinarily one act may not be held sufficient to sustain an order of detention, one act may sustain an order

of detention if the act is of such a nature as to indicate that it is an organised act or a manifestation of organised activity." The gravity and nature of

the act is also relevant. The test is whether the act is such that it gives rise to an inference that the person would continue to indulge in similar prejudicial activity. That is the reason why single acts of wagon-breaking, theft of signal material, theft of telegraph copper wires in huge quantity and removal of railway fish-plates were held sufficient by the Supreme Court. Similarly, where the person tried to export huge amount of Indian currency to a foreign country in a planned and premeditated manner, as in the present case detenu has been apprehended with arms and ammunition, it was held that such single act warrants an inference that he will repeat his activity in future and, therefore, his detention is necessary to prevent him from indulging in such prejudicial activity. If one looks at the acts, the J&K Public Safety Act, 1978, is designed for, is to prevent, they are all these acts that are prejudicial to security of the State or maintenance of public order. The acts, indulged in by persons, who act in concert with other persons and quite often such activity has national level ramifications. These acts are preceded by a good amount of planning and organisation by the set of people fascinated in tumultuousness. They are not like ordinary law and order crimes. If, however, in any given case a single act is found to be not sufficient to sustain the order of detention that may well be quashed but it cannot be stated as a principle that one single act cannot constitute the basis for detention. On the contrary, it does. In other words, it is not necessary that there should be multiplicity of grounds for making or sustaining an order of detention. Recently, same views and principles have been reiterated by the Supreme Court in Gautam Jain vs Union of India anr. reported in AIR 2017 SC 230.

11. For the reasons discussed, the petition fails and is, accordingly, dismissed.

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