

(2009) 08 J&K CK 0017

In the Jammu And Kashmir High Court

Case No : Habeas Corpus Petition No. 102 Of 2009

Fahmeeda

APPELLANT

Vs

State & Ors.

RESPONDENT

Date of Decision : 27-08-2009

Acts Referred:

Constitution of India, 1950 — Article 22(5)

Jammu and Kashmir Public Safety Act, 1978 — Section 13, 8

Citation : (2009) JKJ 25 Supp

Hon'ble Judges : Sunil Hali, J

Bench : Single Bench

Advocate : N.H.Shah,AG, M.A.Qayoom, Advocates appearing for the Parties

Judgement

1. In terms of order no. DMS/PSA/18/2009 dated 11.06.2009, the petitioner has been detained under the provisions of Jammu and Kashmir

Public Safety Act and has been lodged in District Jail, Jammu. The detention order reveals that she is affiliated with DukhtarianiMilat, a women

secessionist organization, which advocates the merger of State of Jammu and Kashmir from Union of India and to annex it with Pakistan.

Influenced by the secessionist ideology and being a member of the movement, she has been indulging in activities, which are prejudicial to the

security of the State. The said organization has engaged itself in illegal activities like throwing of acid upon women for implementing their own

Islamic code. It reveals that during the land row agitation in the year 2008, the detenu was found instigating the general public in resorting to

violence and instigated the women to participate in the illegal agitation.

2. It is further revealed from the detention order that on 31.5.2009, violent protests were organized at the behest of said organization, of which

detenue was also a part. The said organization gave a call for women to assemble in Iddgah on 07.06.2009, which resulted in enforcing shutdown

in the area and disrupting the traffic. The object of the organization is to resort to agitations in order to highlight the Kashmir issue and to press for

the demand of secession of State of J&K from Union of India. Being part of the said organization, the detenu is stated to have played a vital role. It

is in these circumstances that the respondents have detained the detenue under the J&K Public Safety Act, 1978.

3. Mr. Qayoom, appearing for the petitioner has questioned the order of detention on the following grounds:

4. That the material on the basis of which the detention order has been passed, as also the dossiers and connected documents have not been

served to the detenue alongwith the detention order.

5. The grounds of detention are vague and indefinite which debar the detenue in making representation as contemplated under Article 22 (5) of the

Constitution.

6. On the other hand, stand of the respondents is that detenue has been indulging in the activities, which are prejudicial to the security of the State.

The grounds of detention of the petitioner are unambiguous and same is reflected from the fact that detenu has been involved in the activities, which

are prejudicial to the maintenance of security of State.

7. I have heard learned counsel for the parties.

8. Undoubtedly, there is no dispute that State has power to detain a person by resorting to preventive detention, but this power of detention is not

absolute and all the procedural safeguard are required to be complied with.

9. Law is now well settled that a detenu has two rights under Article 22 (5) of the Constitution(1) to be informed as soon as may be, of the

grounds on which the order of detention is made, that is, the grounds which led to the subjective satisfaction of the detaining authority, and (2) to

be afforded the earliest opportunity of making a representation against the order of detention, that is, to be furnished with sufficient particulars to

enable him to make a representation which on being considered may obtain relief to him. The inclusion of an irrelevant or nonexistent ground,

among other relevant grounds is an infringement of the first of the rights and the inclusion of an obscure or vague ground among other clear and

definite grounds is an infringement of the second of the rights. Therefore, in this view of the legal position, if the grounds are vague and indefinite

that would amount to an infringement of the second right of the petitioner. It is by virtue the second right that the detaining authority has to supply

material facts on the basis of which subjective satisfaction was derived while passing the order of detention.

10. Applying the aforementioned proposition of law to the present case, it is seen that material on the basis which subjective satisfaction was

derived while passing the order of detention has not been served to the detainee. The grounds of detention make generalize assessment about the

role of detainee who is stated to be affiliated with the said organization, which is involved in the activities which are prejudicial to the security of the

State and what has been the role of the detainee in organizing the protests and instigating them to go for hartal has not been disclosed in the

detention order. By showing her association with the organization which is involved in the activities, which are prejudicial to the security of State is

not sufficient to order his detention. Detention order per se is vague and indefinite. Mere reading of the detention order would reveal that the

grounds of detention are vague and indefinite.

11. I fortify my view with the judgment of the Apex Court, reported in AIR 1982 Supreme Court 1315, titled, Dhananjay Das v. District

Magistrate in which the Apex Court has held as under:

The law is by now well settled that a detenu has two rights under Art. 22(5) of the Constitution (1) to be informed as soon as may be, of the

grounds on which the order of detention is made, that is, the grounds which led to the subjective satisfaction of the detaining authority, and (2) to

be afforded the earliest opportunity of making a representation against the order of detention, that is, to be furnished with sufficient particulars to

enable him to make a representation which on being considered may obtain relief to him. The inclusion of an irrelevant or non-existent ground

among other relevant grounds is an infringement of the first of the rights and the inclusion of an obscure or vague ground among other clear and

definite grounds is an infringement of the second of the rights. Therefore in this view of the legal position if the grounds are vague and indefinite that

would amount to an infringement of the second right of the appellant. It is by

virtue of the second right that the detaining authority has to supply the material facts on the basis of which subjective satisfaction was derived for passing the order of detention and this how the facts from which the inference is drawn also become a part and parcel of the grounds.

12. The question whether a particular ground is vague will depend on the facts and circumstances of each case because vagueness is a relative

term. What may be vague in one case may not be so in similar circumstances of the other case. If the basic facts have been given in a particular

case constituting the grounds of the detention which enable the detenu to make an effective representation, merely because meticulous details of

facts are not given will not vitiate the order of detention." 12. For the reasons stated hereinabove, I allow this petition and quash the order no.

DMS/PSA/18 dated 11.6.2009. The respondents are directed to set the detenu at liberty. Before parting with the judgment, it has been seen that

while passing the order of detention, the District Magistrate invariably shows ignorance regarding the manner in which detention order is

required to be passed. The order of detention has the effect of taking away the liberty of a person. Such powers have to be exercised with proper

care and caution. The persons may be generally involved in the activities, which are prejudicial to the security of the State are let off not because

the grounds and material is not sufficient, but because the manner in which orders are passed by the District Magistrates. In both the cases,

violence is done to the Constitution and liberty of person. The District Magistrate before issuing order of detention must ensure that all the

safeguards enumerated therein are not violated. Disposed of.