

(2004) 05 J&K CK 0001
In the Jammu And Kashmir High Court
Case No : H.C.P. No. 395 of 2002

Farooq Ahmad Malik

APPELLANT

Vs

State and Others

RESPONDENT

Date of Decision : 11-05-2004

Acts Referred:

Constitution of India, 1950 — Article 22(5)
Jammu and Kashmir Public Safety Act, 1978 — Section 8

Citation : (2005) CriLJ 271 : (2010) 3 JKJ 294

Hon'ble Judges : Syed Bashir-Ud-Din, J

Bench : Single Bench

Advocate : Mir Shafaqat Hussain, for the Appellant; T. Khawaja, Government Advocate, for the Respondent

Judgement

Syed Bashir-Ud-Din, J.—The subject, one Farooq Ahmad Malik is detained u/s 8 of Jammu and Kashmir Public Safety Act, 1987 by

District Magistrate Pulwama by his order No. 50/DMP of 2002 dated 8-11-2002. This order is impugned in this petition on number of grounds.

The Ld. counsel for the petitioner has made and confined his submission to the sole ground that the detenue has not been supplied order of

detention, copy of dossier and other material on which the detaining authority has drawn satisfaction. This was more so as the detenue is stated to

be an illiterate and at least a translated copy or transcription in Urdu or Kashmiri language was to be furnished to him, if the petitioner was to make

an effective and meaningful representation to the Government.

2. The Ld. counsel for the respondents submits that the detenue has not been prejudiced by not supplying the dossier though referred to in the

order of detention and that the detenue has been supplied copy of order of

detention with grounds and he has been also explained same and informed of his right to make representation. The counsel further submits that the information contained in the dossier has been included in the grounds of detention.

3. I have also perused the detention file produced by the Ld. counsel for respondents.

4. Considered.

5. Para (b) of the grounds reads as under :-

That the detainee has not furnished with the grounds of detention, order of detention, copy of dossier and copy of FIR and other connected material referred in the grounds of detention, non-supply of the material in detainee's own language prevented him to make a representation against his detention, on this ground also the detention of the detainee is illegal and renders to be quashed.

6. In counter, by way of reply to para (b) it is stated :-

.....:.....It is submitted that since the grounds of detention contained all the material details, no prejudice has been caused to the detainee in as much as the details given in the grounds of detention were sufficient to enable the detainee to make a representation against the order of detention if he so desired.

7. The order of detention opens and reads as :-

Whereas, on the basis of dossier placed before me, I am satisfied that with a view to prevent.....

8. The detention file also shows that the dossier is on record.

9. A combined reading (in between the lines) of above would show that the detention order is passed by the detaining authority on material in the form of dossier report placed before the District Magistrate Pulwama, the detaining authority, by SSP Pulwama. But the dossier and report is not forthcoming from record. It is nowhere stated that the dossier or substantial portion thereof is reproduced or form the grounds of detention.

10. Once the detention is pleaded/alleged to be illegal, the State is under statutory duty to show that the detention is in order and that the steps as required under Article 22(5) of the Constitution of India, and Section 13 of the J & K Public Safety Act, have been taken in the context of the

legal provision as clarified and adumbrated by case law from time to time. This is not the case here. The detainee cannot be said to have been

communicated the relevant material to enable him to make an effective representation.

11. The other limb of the argument is that the detainee is not explained the grounds of detention and this needs to be examined in the light of the

petition allegation and plea that the detainee is an illiterate and he has not been supplied any translated copy of the grounds or explained the grounds

in the language he knows. From record it is seen that the order of detention has been supplied to detainee when the detainee was handed over for

lodgment at Srinagar Central Jail on 14-11 -2002 and the grounds of detention were handed over to Superintendent Central Jail, Srinagar. The

receipt of the grounds of detention carrying the signature of Dy. Superintendent, Central Jail, Srinagar dated 14-11-2002 shows the copy of the

grounds received in English has been handed over to the detainee and that he was informed of his right to make representation to the Government.

But the receipts and the endorsement put in juxtaposition to each other, nowhere shows that the grounds were read over and explained in Urdu or

Kashmiri language to detainee or that he was supplied any translated copy of the grounds.

12. In such circumstances, the following observations of the Supreme Court made in Smt. Raziya Umar Bakshi Vs. Union of India and Others, is

apt to be taken note of:-

.....Where the detaining authority is satisfied that the grounds are couched in a language which is not known to the detainee, it must see to it that

the grounds are explained to the detainee, a translated script is given to him and the grounds bear some sort of certificate to show that the grounds

have been explained to the detainee in the language which he understands. A bare denial at the stage when Habeas Corpus petition is filed in the

Court by the detaining authority that these formalities were observed would be of no consequence particularly when it is not supported by any

document or by any affidavit of the person who had done the job of explaining or translation.

13. Seen thus, the detainee cannot be said to be communicated basic facts and grounds to enable him to make effective and meaningful

representation to Government against detention and thereby mandate of Article 22 is violated.

14. For the aforesaid view of the matter, the detention is vitiated. Consequently, the impugned order No. 50 of DMP of 2002 dated 8-11-2002 is

quashed. The respondents authority/officer having physical corpus of detainee Farooq Ahmad Malik S/o Khazir Malik R/o Krawoosa Shopian

District Pulwama aged.....is directed to release the detainee from detention provided not required in any other case, offence or matter.

15. Copy of the order be given to the detainee free of cost. Registrar Judicial to take follow up action. The detention record is handed over to Mr.

T. Khawaja, GA, in open Court.

Disposed of.