

(2018) 08 J&K CK 0048

In the Jammu And Kashmir High Court

Case No : Habeas Corpus Petition No.32 Of 2018

Farooq Ahmad Najar @APPELLANT@Hash State Of Jammu & Kashmir And Others

Date of Decision : 20-08-2018

Acts Referred:

Jammu and Kashmir Public Safety Act, 1978 — Section 8

Citation : (2018) 08 J&K CK 0048

Hon'ble Judges : Dhiraj Singh Thakur, J

Bench : Single Bench

Judgement

1. In this Habeas Corpus petition, the petitioner challenges the order of detention dated 27.01.2018, whereby the District Magistrate, Baramulla in

exercise of the powers vested in him under Section 8(a) of Jammu and Kashmir Public Safety Act, 1978 has ordered the detention of the petitioner,

with a view to prevent him from indulging in activities, which are prejudicial to the security of the State.Â

2. The grounds on which the order of detention has been challenged are that the detention order suffers from nonapplication of mind, inasmuch as,

on the date when the detention order was passed the petitioner was already under arrest in FIR No. 07/2018Â u/s 506 RPC, 13 ULA, registered in

Police Station, Bomai.Â Â

3. It was urged that despite being already under arrest in the aforementioned FIR, the petitioner was booked under the provisions of Preventive

Detention Law vide order dated 24.03.2017, which was subsequently quashed vide judgment and order dated 27.11.2017.

4. It was further urged that a fresh order of detention dated 27.01.2018 was passed against the petitioner, in spite of the fact that the petitioner was

already under arrest in FIR No. 07/2018.Â

5. The aforementioned averment of the petitioner, however, was not specifically answered by the respondents, with a view to satisfy this Court as to

whether on the date of passing of the detention order, the petitioner was already under arrest in FIR No. 07/2018. In the absence of the specific

denial of the said averment, same are admitted to be correct.Â

6. The Apex court in Binod Singh vs. District Magistrate Dhanbad, (1986) 4 SCC 416 held that if a person was in custody and there was no imminent

possibility of his being released therefrom, the power of detention should not ordinarily be exercised.Â It was further held that there must be cogent

materials before the officer passing the order of detention that the detenu was likely to be released on bail. The inference must be drawn from the

available material on record and must not be the ipse dixit of the officer passing the order of detention.Â...Â??

7. In Surya Prakash Sharma vs. State of U.P reported in 1994 Supp (3) 195, the Apex court in paragraph 5 held as under:

Â??5.Â The question as to whether and in what circumstances an order for preventive detention can be passed against a person who is already in

custody has had been engaging the attention of this Court since it first came up for consideration before a Constitution Bench in Â??Rameshwar

Shaw v. District Magistrate, Burdwan.Â To eschew prolixity we refrain from detailing all those cases except that of Dharmendra

Suganchand Chelawat v. Union of India wherein a three judge Bench, after considering all the earlier relevant decisions including Rameshwar Shaw

answered the question in the following words:

Â??The decisions referred to above lead to the conclusion that an order for detention can be validly passed against a person in custody and for that

purpose must show that (i) the detaining authority was aware of the fact that the detenu is already in detention; and (ii) there were compelling reasons

justifying such detention despite the fact that the detenu is already in detention. The expression Â??compelling reasonsÂ?Â in the context of making

an order for detention of a person already in custody implies that there must be cogent material before the detaining authority on the basis of which it

may be satisfied that (a) the detenu is likely to be released from custody in the near future; and (b) taking into account the nature of the antecedent

activities of the detenu, it is likely that after his release from custody he would

indulge in prejudicial activities and it is necessary to detain him in order to prevent him from engaging in such activities.â??

8. In *Amritlal and others vs. Union Government through Secretary, Ministry of Finance and others*, AIR 2000 SC3675, the Apex Court was dealing with an order of detention passed under the Prevention of Illicit Traffic in Narcotic Drugs and Psychotropic Substances Act, 1988 where the detaining authority had recorded a satisfaction to the extent that even though prosecution proceedings under NDPS Act, 1985 had been initiated against the petitioner, he was satisfied that there was every likelihood of his moving an application for bail and in the event of his being granted bail, there was a likelihood of his indulging in illicit traffic in narcotic drugs and thus detained him under the Prevention of Illicit Traffic in Narcotic Drugs and Psychotropic Substances Act, 1988.

It was held that the reasoning given by the detaining authority was not sufficient compliance with the requirements of law and that the â??likelihood of his moving an application for bailâ?? was different from â??likelihood to be released on bailâ??.Â The Apex Court held thus :

â??6. The requirement as noticed above in *Binod Singh's case* (AIR 1986 SC 2090: 1986 Cri LJ (supra) that there is â??likelihood of the petitioners being released on bail? that however is not available in the reasonings as provided by the concerned officer.Â The reasoning available is the â??likelihood of his moving an application for bail? which is different from â??likelihood to be released on bail?.Â This reasoning in our view is not sufficient with the requirements as laid down.â??Â

â??7. The emphasis however, in *Binod Singh's case* (supra) that before passing the detention order the concerned authority must satisfy himself of the likelihood of the petitioner being released on bail and that satisfaction ought to be reached on cogent material.Â Available cogent material is the likelihood of having a bail application moved in the matter but not obtaining a bail order.â??

9. Keeping in view the principles of law aforementioned, the order of detention can clearly be stated to be suffering from nonapplication of mind on the part of the District Magistrate.Â The order impugned dated 27.01.2018, therefore, is legally untenable and is accordingly quashed.

10. The detention record be returned to the learned counsel for the respondents

against proper receipt.