
(2011) 08 J&K CK 0039
In the Jammu And Kashmir High Court
Case No : HCP No. 104 of 2011

Farooq Ahmad Rather

APPELLANT

Vs

State of Jammu & Kashmir and others

RESPONDENT

Date of Decision : 11-08-2011

Acts Referred:

Arms Act, 1959 — Section 25, 7
Ranbir Penal Code, 1989 — Section 147, 332, 333

Citation : (2011) 08 J&K CK 0039

Hon'ble Judges : Hasnain Massodi, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Hasnain Massodi, Judge

1. Challenge to order No. DMB/PSA/02 of 2011 dated 22.02.2011, of District Magistrate, Budgam respondent No. 2 herein, whereby one Shri

Farooq Ahmad Rather son of Ali Mohammad Rather resident of Gutpora Tehsil and District Budgam (herein after referred to as 'detenue') has

been placed under preventive detention, must succeed for following reasons:

1. The grounds of detention make reference to case - FIR No. 93/1996 u/s 7/25 I.A. Act at Police Station Beerwah; FIR No. 263/2009 u/s 147,

148, 336, 427, 353 RPC at Police Station Budgam; FIR No. 100/2010 u/s 333, 332, 147, 148, 149, 336 RPC at P/S Beerwah; FIR No.

107/2010 u/s 307, 147, 148, 149, 332, 336 RPC at P/S Beerwah; FIR No. 80/2010 u/s 13 ULA Act at P/S Chadoora; and FIR No. 311/2010

at P/S Budgam, to have been registered against the detenue. The involvement of detenue in the aforementioned cases appears to have heavily

weighed with the detaining authority while making detention order. The grounds

of detention as also detention order reveal that none of the documents referred to in the detention order was ever supplied to detainee. The available record does not indicate that copies of aforementioned First Information Reports, statements recorded u/s 161 Cr.P.C. and other material collected in connection with investigation of aforesaid cases, were ever supplied to detainee. It is pertinent to point out that the detaining authority, in grounds of detention after detailing background in which aforesaid cases were registered against detainee, proceeds to opine. 'Therefore, keeping in view your involvement in anti-national activities and the possibility of your getting bailed out by the Hon'ble Court in the substantive law, it is necessary to see that you do not remain at large to the detriment of peace and public order'. The material, mentioned above, thus assumes significance in the facts and circumstances of the case. It needs no emphasis that the detainee cannot be expected to make a meaningful exercise of his Constitutional and Statutory rights guaranteed under Article 22(5) of the Constitution of India and Section 13 of Jammu and Kashmir Public Safety Act, 1978, unless and until the material on which the detention order is based, is supplied to the detainee. It is only after the detainee has all said material available, that the detainee can make an effort to convince Detaining Authority and thereafter Government, that their apprehension as regards activities of the detainee are baseless and misplaced. If the detainee is not supplied material, on which detention order is based, the detainee cannot be in a position to make an effective representation against his detention order. The failure on the part of Detaining Authority to supply material relied at the time of making detention order to detainee, renders detention order illegal and unsustainable. While holding so, I draw support from *Dhananjay Das Vs. District Magistrate, Darrang* and *Another ; Sophia Gulam Mohd. Bham Vs. State of Maharashtra and Others ; Union of India (UOI) Vs. Ranu Bhandari ; Syed Aasiya Indrabi versus State of Jammu and Kashmir and Others (S.L.J. 2009 (I) 219)*; and *Thahira Haris etc. Vs. Government of Karnataka and Others*, .

2. Article 22(5) of Constitution provides a precious and valuable right to a person detained under preventive detention law - J&K Public Safety Act 1978, to make a representation against his detention. It needs no emphasis that a detainee, on whom preventive detention order is slapped, is

held in custody without a formal charge and a trial. The detainee is held in custody on a mere suspicion that his apprehended activities may be prejudicial to the maintenance of public order or security of the State. Article 22(5), Constitution of India and Section 13 of the Act, thus make it obligatory for Detaining Authority to provide detainee an earliest opportunity of making an effective and meaningful representation against his detention. The object is to enable detainee to convince Detaining Authority and Government, as the case may be, that all apprehensions regarding his activities are grossly misplaced and his detention is unwarranted. To make the Constitutional and Statutory right available to detainee meaningful, it is necessary that detainee be informed with all possible clarity what is/are apprehended activity/ies that persuaded Detaining Authority to make detention order. In case grounds of detention are vague, ambiguous and confusing, the detainee cannot be expected to make a representation against his detention.

In the instant case the detainee is alleged to have instigated and motivated the youth to take part in stone pelting and damaging public property and vehicles. The detainee is not informed with sufficient clarity the exact allegations levelled and furnished the particulars of youth, who are stated to have been instigated and motivated by detainee to indulge in stone pelting, and damaging public property and vehicles. The detainee is alleged to be hardcore 'PAK' trained militant of 'HM' outfit. The words/ expressions like 'PAK' and 'HM' are too vague to make the detainee aware of the exact accusation levelled against him. The detaining authority has not to work on assumptions and presumptions that whatever acronyms it is aware of must be necessarily known to the detainee. Moreover, grounds of detention do not contain details of public property and vehicles or their exact numbers, which are alleged to be damaged by the youth instigated by detainee. The grounds of detention also allege that some arms and ammunition were recovered from the detainee. There is nothing on record to suggest that material record such as dossier or the seizure memo, vide which the alleged recoveries were made, were ever supplied to the detainee. The detainee, in absence of such details, could not be expected to have been in a position to give his side of story and persuade respondent No. 2 and other respondents that the allegations against the detainee were

bereft of any basis. To sum up, the grounds of detention that constitute basis for the detention order in question are ambiguous, vague, uncertain

and hazy. A person of ordinary prudence would not be in a position to explain his stand in reply to the grounds of detention detailed by respondent

No. 2. The detinue has been kept guessing about the facts and events that weighed with the respondent No. 2 and prompted respondent No. 2 to

record subjective satisfaction regarding sufficiency of the material to warrant preventive detention of the detinue. These are only few instances to

illustrate that the grounds of detention are vague and ambiguous and bound to keep the detinue guessing about what really was intended to be

conveyed by the detaining authority. It is well settled law that even where one of the grounds relied upon by the Detaining Authority to order

detention is vague and ambiguous, Constitutional and Statutory right of the detinue to make a representation against his detention are taken to have

been violated. Reference in this regard may be made to Dr. Ram Krishan Versus The State of Delhi and others, AIR, 1953,; Chaju Ram Vs. The

State of Jammu and Kashmir, ; Mohd. Yousuf Rather Vs. State of Jammu and Kashmir and Others, ; and Syed Aasiya Indrabi Versus State of

J&K and others, 2009 (I) SLJ 2009 219.

3. The Detaining Authority respondent No. 2 did not inform the detinue that the detinue, independent of his right to file representation against his

detention to the Government, has also a right to submit a representation to the Detaining Authority till the detention was considered by the

Government and the Government accorded its approval to the detention. The respondent No. 2 has thus violated Constitutional and Statutory

rights of the detinue, guaranteed under Article 22(5) of the Constitution of India and Section 13 of J&K Public Safety Act. It would be apt to

make a reference in this regard to the law laid down in State of Maharashtra and Others Vs. Santosh Shankar Acharya, .

2. Viewed thus, the petition is allowed and detention order No. DMB/PSA/02 of 2011 dated 22.02.2011, passed by the District Magistrate,

Budgam respondent No. 2, directing detention of Shri Farooq Ahmad Rather son of Ali Mohammad Rather resident of Gutpora Tehsil and District

Budgam, quashed.

3. The respondents, in view of quashment of detention order, are stripped of any

authority to detain the detainee under order No. DMB/ PSA/02

of 2011 dated 22.02.2011. Resultantly, the respondents are directed to release the detainee from preventive detention, ordered vide order No.

DMB/PSA/02 of 2011 dated 22.02.2011.

4. Disposed of.