

(2006) 07 J&K CK 0014
In the Jammu And Kashmir High Court

Farooq Ahmad Shah	Vs	APPELLANT
State of Jammu and Kashmir and Another		RESPONDENT

Date of Decision : 31-07-2006

Acts Referred:

Arms Act, 1959 — Section 27, 7
Constitution of India, 1950 — Article 22

Citation : (2007) 1 JKJ 185

Hon'ble Judges : Jai Pal Singh, J

Bench : Single Bench

Final Decision : Allowed

Judgement

J.P. Singh, J.—Farooq Ahmad Shah alias Showkat alias Mitha has been detained in preventive custody vide order No.

DMS/PSA/108/2005 dated 28.02.2006 of District Magistrate, Srinagar, on the grounds, which read thus:

Whereas, perusal of record provided by Senior Superintendent of Police, Srinagar, reveals that you are affiliated with Let outfit, the most dreaded

organization operating in the State. The activities of the organization are subversive in nature and are aimed at seceding the State of J&K from the

Union of India and to annex it with Pakistan.

Whereas, you came into contact with Nasir Ahmad Mir R/O Sopore, a commander of JUM outfit, who motivated you to join JUM outfit and

work for the militancy. You got readily motivated and started working with Nasir Ahmad Mir. In 1998 you alongwith Nasir Ahmad Mir went to

Jammu for preparing fake passports. However both of you were arrested at Jammu, you were subsequently detained under PSA and were

released in the year 2001. During your detention in the jail you came into

contact with one Abdul Rashid Khanday S/o Abdul Khaliq Khanday R/o

Seer Jagir Sopore who was also detained in the same jail under PSA. After your release from jail you started working as a hawker in Mehraj

bazar Srinagar. However in the year 2003 you met Abdul Rashid Khanday at Sopore. It is pertinent to mention here that Abdul Rashid Khanday

after your release from the jail had got recycled into militancy and was working with Let outfit. After his meeting with you Abdul Rashid Khanday

asked you to remain in touch and in the due course of time motivated you to join the LeT. Since you already had militant background, you got

readily motivated and expressed your consent to work for LeT. In April, 2005 Abdul Rashid Khanday provided one pistol to you for carrying out

subversive activities in Srinagar. Thereafter you remained in constant touch with Abdul Rashid Khanday on your cell No. 9906513808.

Subsequently Abdul Rashid Khanday introduced you to one Ali Mohammad Gojri @ Iqbal R/O Noor bagh. The investigation conducted so far

reveals your involvement in the following subversive activities.

1. SUICIDAL ATTACK ON NEELAM CINEMMA: On 6-9-2005 Ali Mohammad Gojri @ Iqbal handed over two foreign terrorists namely

Rafiq and Abdullah both residents of POK to you at Meharaj Bazar, wherefrom you took both of them to Habbakadal. As per the plan you

handed over them to Jan Mohammad Sheikh R/O Barbarshah and directed him to conduct a racee of Neelam Cinema alongwith two foreign

terrorists. Accordingly Jan Mohammad took both the foreign terrorists to Neelam Cinema where they watched Hindi Movie ""Mongal Panday

After conducting the racee Jan Mohammad again handed over both the foreign terrorists to you and you took them to your house at Barbarshah

Srinagar where they stayed for night. On 7-9-2005 Ali Mohammad Gojri @ Iqbal contacted you on your phone and asked you to reach Habba

Kadai Bridge alongwith two foreign terrorists where Ali Mohammad Gojri was waiting for you alongwith Jan Mohammad Sheikh. Ali Mohammad

Gojri was carrying two hand bags which contained two AK-47 riffles and magazines. Ali Mohammad Gojri took both the foreign terrorists to a

nearby vacant migrant house and handover the arms/ammunition. After getting equipped with the weapons Ali Mohammed Gojri asked you and

Jan Mohammad Sheikh to accompany the foreign terrorists and guide them upto

the head office of Srinagar Municipality.

Whereas, you and Jan Mohammad Sheikh accompanied the foreign terrorists to Municipality gate where Abdul Hamid Bhat was waiting for them

as per the plan. After some time Ali Mohammad Gojri also reached to the spot where from you took the foreign terrorists upto Neelam Cinema,

who subsequently carried out a fidayeen attack on Neelam Cinema. In this regard case FIR No. 106/05 u/s 307/IPC, 7/27 I.A. Act 4/5 Exp.

Sub. Act stands registered in IVS Shaheed Gunj.

2. SUICIDAL ATTACK ON PEAK VIEW HOTEL:-On 08-11-2005 Ab. Rashid Khanday met you at Meharaja Bazar and told you that two

foreign terrorists are to be brought from Rafiaabad to Srinagar to carry out suicidal attack. You accordingly deputed one Jehangir Khan S/o Gh.

Rasool Khan R/o Basant bagh to Ab. Rashid Khanday where Ali Mohammad Gojri was also present. On 09-11-2005 Jehangir informed you on

phone that the two foreign terrorists had been brought from Srinagar and you directed Jehangir to accommodate the two foreign terrorists in Hotel

Shahanshah at Hari Singh High Street, Srinagar After some time you also reached the said Motel and, interacted with the two foreign terrorists

namely Abu-; Karan and Ajax Ahmad Bhat. Ajax Ahmad Bhat was accommodated by you in the hotel while as Abu Faran was taken by you to

your home. Next day on 10-11-2005 you left your home alongwith Abu-Faran and reached Shahanshah Hotel at about 09.00 a.m. where Ab.

Rashid Khanday and Jehangir Ahmad Khan were already waiting. You managed to get an identify card for Ajax Ahmad @ Abu Sumana, (foreign

terrorist) as you were not having an I/C. At about 3.00 p.m. you handed over the foreign militant Ajax Ahmad to Ali Mohammad Gojri while as

you took the other foreign terrorist namely Abu Faran with you and kept him in your house for two days. On 13-11 -2005 you left your house for

Lal Chowk alongwith Abu Faran where you met Ab. Rashid Khanday, Ali Mohammad Gojri and Abu Samana. As per the plan Ali Mohammad

Gojri asked them to wait at a particular spot and himself went and brought two bags containing arms and ammunition with him and handed over the

same to you, you handed over the arms and ammunition to Abu Sumana and Abu Faran. The two foreign terrorists after checking the arms and

ammunition handed over the same to Jan Mohammad Sheikh, Jehangir Ahmad

Khan. You then took both the foreign terrorists to your house at Barbarshah Srinagar.

Whereas, on 14-11-2005 you contacted the other conspirators to reach Lal Chowk alongwith arms and ammunition and accompanied the two foreign terrorist to Lal Chowk. The arms and ammunition were accordingly handed over to the two foreign terrorists near Kokar Bazar Mosque who subsequently earned out the fidayeen attack at Peak View Hotel, this regard case FIR No. 121/05 u/s 302, 308/IPC 7/27 LA. Act stands registered in P/S Maisuma. In addition you have also been found involved in transportation of arms and ammunition and issuing press statements on behalf of LeT outfit.

Whereas, your activities came to an end when you were arrested on 18-12-2005. The case registered against you is under investigation and you are presently lodged in Central Jail Srinagar under proper judicial remand in case FIR No. 106/05 of P/S Shaheed Gunj.

It is clear that your activities are highly pre-judicial to the maintenance of security of the State. Under such compelling circumstances, it has become imperative to detain you under Public Safety Act, 1978 for which orders are being issued separately.

2. Sh. G. N. Shaheen, learned Counsel appearing for the detainee, submits that the grounds of detention exhibit non-application of mind of the

District Magistrate, Srinagar, in directing the detention of Farooq Ahmad Shah besides non-recording of satisfaction by the detaining authority as

to the likelihood of the detainee indulging in activities prejudicial to the security of the State. He submits that material relied upon by the detaining

authority was not supplied to the detainee, thereby depriving him of his constitutional right to make an effective representation against his detention

to the Government.

3. Sh. M. A. Wani, learned Dy. AG on the other hand, reiterates the stand taken by the detaining authority in its reply affidavit.

4. I have considered the submissions of learned Counsel for the parties and perused the detention records.

5. Perusal of the grounds of detention shows that the detaining authority had not referred to any such activities of the detainee, which would be

prejudicial to the security of the State. Learned District Magistrate, after giving

the history of the detainee starting from 1998 including his earlier detention in preventive custody and release therefrom in the year 2001 and referring to the registration of F.I.R. No. 121/2005 under Sections 302, 308 RPC 7/27 Arms Act; and F.I.R. No. 106/2005, recorded that 'the activities of the detainee came to an end when he was arrested on 18.12.2005 and that the case was under investigation and the detainee is in custody with Central Jail, Srinagar, under proper judicial remand in F.I.R. No. 106/2005'.

After recording about the cessation of the activities of the detainee on 18.12.2005, the detaining authority does not refer to any other information, material or basis, on the basis whereof, he would come to the conclusion that the detainee was likely to indulge in activities prejudicial to the security of the State.

6. There being no satisfaction of the District Magistrate as to the likelihood of the detainee indulging in activities prejudicial to the security of the State, no order u/s 8 of the Act could, in law, be passed for the detention of the petitioner in preventive custody. The order of the detaining authority, therefore, is bad in law.

7. The learned District Magistrate, Srinagar, has referred to the records provided to him by the Senior Superintendent of Police, Srinagar, on the basis whereof, he is shown to have recorded his satisfaction as to the activities of the detainee prior to 18.12.2005. THIS record of the Senior Superintendent of Police, Srinagar, has not been supplied to the detainee, is a position which is apparent from the perusal of the detention records.

I do not find any substance in the submission of Sh. M. A. Wani that the District Magistrate has made only passing reference to the F.I.R.s in the grounds of detention and that copies of the F.I.R.S were not required to be supplied to the detainee. District Magistrate has relied upon two F.I.R.s, which are stated to have been under investigation. Copies of these F.I.R.'s alongwith records supplied to the detaining authority by the SSP Srinagar, were, thus, required to be supplied to the detainee, facilitating him to make an effective representation, so as to comply with the constitutional mandate of Article 22(5) of the Constitution of India. This having not happened, renders the detention of the petitioner unconstitutional.

8. I further find from the perusal of grounds of detention that the detaining authority has only reproduced the dossiers supplied to him by the detaining authority by making suitable changes at the beginning of the paragraphs of the dossiers. SSP, Srinagar, had recorded in the dossiers as follows:

The investigations conducted so far reveals the involvement of the subject in the following subversive activities.

9. Learned District Magistrate too says the same thing in his grounds of detention when he records as follows:

The investigation conducted so far reveals your involvement in the following subversive activities.

10. This exhibits complete non-application of mind by the learned District Magistrate while exercising jurisdiction u/s 8 of the J&K Public Safety

Act, 1978. Rather than applying his mind and reflecting his satisfaction in his own words as to the likelihood of detenu's indulging in activities

prejudicial to the security of the State, he has simply reproduced the dossiers supplied to him by the police, thereby failing in his duty to record his

own satisfaction as to whether or not the detenu, on the basis of the material, was required to be detained in preventive custody. This non-

application of mind by the District Magistrate renders petitioner's detention illegal. The detenu, as admitted by the parties, is in custody in serious

cases punishment wherefor is death or imprisonment for life. In such circumstances, when there was no likelihood of his release on bail or

otherwise, I do not find my justification in District Magistrate's implanting an order of preventive detention on the detenu particularly when he had

no material with him that he was likely to be released on bail and while on bail, would indulge in activities prejudicial to the security of the State.

The order of the District Magistrate is, thus, full of legal infirmities and cannot, thus, be sustained.

11. For all what has been said above, this petition is allowed and order No. DMS/PSA/108/2005 dated 28.02.2006 of District Magistrate,

Srinagar, for the detention of Farooq Ahmad Shah alias Showkat alias Mitha S/O All Mohammad Shah R/O Sulimanabad Iqbal Market, Sopore,

is quashed. The petitioner shall be released from preventive custody forthwith. This release shall not, however, permit his release from custody

ordered by competent Court of jurisdiction in this behalf for infraction of penal laws.

12. The detention records be handed over to Sh. M. A. Wani, learned Dy. AG.