
(2011) 04 J&K CK 0005
In the Jammu And Kashmir High Court
Case No : HCP No. 323 of 2010

Feroz Ahmad Khan

APPELLANT

Vs

State of Jammu & Kashmir and others

RESPONDENT

Date of Decision : 22-04-2011

Acts Referred:

Ranbir Penal Code, 1989 — Section 147, 148, 149

Citation : (2011) 04 J&K CK 0005

Hon'ble Judges : Hasnain Massodi, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Honble Mr. Justice Hasnain Massodi, Judge

1. Challenge to order No. DMB/PSA/206 of 2010 dated 25th September 2010, of District Magistrate, Budgam respondent No. 2 herein,

whereby one Shri Feroz Ahmad Khan son of Mohd Shaban Khan resident of Pathanpora, Pymus, Tehsil and District Budgam (herein after

referred to as 'detenue') has been placed under preventive detention, must succeed for following reasons:

9. The detention order makes mention of material record such as 'dossier and other connecting documents' relied upon by Detaining Authority

while making detention order. The detention order also makes reference to a communication received from Superintendent of Police, Budgam vide

No. Legal/Dos/09/2477-80 dated 24.09.2010. The detention record, however, reveals that none of the documents referred to in the detention

order, was ever supplied to detenue. The endorsement, on the reverse of detention order made by the Executing Officer - Ab. Majeed, ASI,

NOS 108/Bd, P/S Budgam, at the time of execution of detention order, does not make a reference to the documents in question and does not

record that such documents were supplied to detainee at the time of execution of detention order or immediately thereafter.

2. The grounds of detention make reference to case - FIR No. 403/2010 u/s 147, 148, 149, 188, 427, 336 RPC; FIR No. 405/2010 u/s 148,

149, 188, 336, 307, 435, 332 RPC; FIR No. 406/2010 u/s 147, 148, 149, 307, 336, 427, 188, 436, 511 RPC; and FIR No. 408/2010 u/s

147, 148, 149, 307, 427, 188, 435, 332 RPC, at Police Station Budgam, to have been registered against the detainee. The involvement of

detainee in the aforementioned cases appears to have heavily weighed with detaining authority while making detention order. The record as also

counter affidavit do 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 'It becomes,

therefore, necessary to detain you under PSA with a view to preventing you from indulging in the activities which are prejudicial to the maintenance

of Public Order.' The material, mentioned above, thus assumes significance in the facts and circumstances of the case. The respondents, in their

counter affidavit, have not controverted the plea that the said material was not furnished to detainee. The detention record made available by

learned Government Advocate reveals that none of the documents referred to in the detention order was supplied to detainee. 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 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 (2009 (I) S.L.J. 219); and *Thahira Haris etc. Vs. Government of Karnataka and Others*, .

10. Article 22(5) Constitution of India 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) of the Constitution 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 the 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 his 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.

3. In the instant case the detainee is alleged to be responsible for indulging in stone pelting, and instigating the youth to create law and order

problem. The detainee is not furnished with the particulars of youth, who are stated to be instigated by detainee for indulging in stone pelting. The

detainee is again alleged to be responsible for motivating the youth to damage government/public properties and vehicles. The detainee is not

informed with sufficient clarity the exact allegations levelled and furnished the particulars of youth, who are stated to be responsible for indulging in

stone pelting, nor the particulars of public property, which are alleged to be damaged by youth having been motivated by detainee. The counter affidavit as also detention record, do not reveal that the detainee is furnished the necessary details of occurrence(s) attributed to him. Moreover, grounds of detention do not contain details of vehicles or their exact numbers, which are alleged to be damaged by the youth, having been instigated by detainee. The detainee is alleged to be close associate of 'Syed Imtiyaz Hyder', an activist of Hurriyat (G). The detainee was not provided particulars of 'Syed Imtiyaz Hyder' and the detainee thus has been prevented from explaining that the detainee had nothing to do with 'Syed Imtiyaz Hyder'. 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 detaining authority that the allegations against 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 the detaining authority. The detainee has been kept guessing about the facts and events that weighed with the detaining authority and prompted detaining authority to record subjective satisfaction regarding sufficiency of the material to warrant preventive detention of detainee. These are only few instances to illustrate that the grounds of detention are vague and ambiguous and bound to keep the detainee guessing about what really was intended to be conveyed by 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 detainee 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 219.

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

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

Government and approved. The respondent No. 2 has in effect violated Constitutional and Statutory rights of detainee, guaranteed under Article

22(5), Constitution of India and Section 13, Jammu and Kashmir Public Safety Act. Reference in this regard may be made to the law laid down in

State of Maharashtra and Others Vs. Santosh Shankar Acharya, .

4. Viewed thus, the petition is allowed and detention order No. DMB/ PSA/206 of 2010 dated 25th September 2010, passed by the District

Magistrate, Budgam respondent No. 2, directing detention of Shri Feroz Ahmad Khan son of Mohd Shaban Khan resident of Pathanpora, Pymus,

Tehsil and District Budgam, quashed.

5. The respondents in view of quashment of detention order are stripped of any authority to detain the detainee under order No. DMB/ PSA/206

of 2010 dated 25th September 2010. Resultantly, the respondents are directed to release the detainee from preventive detention, ordered under

order No. DMB/PSA/206 of 2010 dated 25th September 2010.

6. Detention record be returned to the counsel for respondents.

7. Disposed of.