

(2005) 07 J&K CK 0010
In the Jammu And Kashmir High Court
Case No : HCP No. 357 of 2004

Ghulam Hassan Dar	Vs	APPELLANT
State of Jammu & Kashmir and Others		RESPONDENT

Date of Decision : 25-07-2005

Acts Referred:

Jammu and Kashmir Public Safety Act, 1978 — Section 8

Citation : (2005) 07 J&K CK 0010

Hon'ble Judges : Mansoor Ahmad Mir, J

Bench : Single Bench

Advocate : A.M. Padroo, for the Appellant; M.A. Warn, Dy. AG, for the Respondent

Final Decision : Allowed

Judgement

Mansoor Ahmad Mir, J.—Subject, Ghulam Hassan Dar son of Ghulam Rasool Dar, resident of Samboora Teh. Pampore District Pulwama,

through his son, Khursheed Ahmad Dar, seeks to quash the detention order bearing No. 42/DMP/PSA/04 dated 22.11.2004 passed by

respondent No. 3 District Magistrate, Pulwama in exercise of powers in terms of Section 8 of Jammu & Kashmir Public Safety Act, 1978,

whereby the detainee stands detained in detention for a period of twelve months and lodged in District Jail Kathua on various grounds taken in the

memo of petition.

The respondents have filed reply.

Heard. Considered.

2. It appears that SSP Awantipora had, vide communication No. CS/D-26/2004/4153-55 dated 06.11.2004, made request to District

Magistrate, Pulwama to detain the detainee Ghulam Hassan Dar. It appears that District Magistrate has directed the SSP, Awantipora to make re-verification. It is profitable to reproduce the contents contained in annexure-A herein;-

Please refer your No. CS/D-26/2004/4153-55 dated 06-11-2004 regarding the detention of Gh. Hassan Dar @ Husa, S/O Gh, Rasool Dar R/O

Samboora Tehsil Pampore.

02) Quite on the heels of receipt of dossiers people generally approached undersigned with their version about their non-involvement in the

militancy related activities. In some cases even the recoveries of weapons to have been claimed are disputed by maintaining that these allegations

are made in order to detain them. However, generally I go along with the reports of S.P. concerned unless substantially evidence is available to

controvert the information placed before me in the form of a dossier. In the instant case the accused is an elderly person and a delegation from the

village plead with conviction that the said person was not found to be in possession of Arms/ammunition as is alleged but did not dispute about his

political affiliation with Jamat-e-Islamia. In the context of detainee in the subcontinent perhaps Govt. policy is not to apprehend over ground

workers of secessionist organizations unless they are proved to be involved directly/indirectly in promotion of violence/militancy/hatred/disorder in

the State. Similarly the accused is reported to be around 65 years of age and it is not properly timed for detention on the eve of Idd. For these

reasons you are requested to have the matter reverified with regard to recovery of 2 Chinese hand grenades and 4 detonators from the accused.

3. In terms of annexure-C, i.e., impugned order, the detaining authority, District Magistrate, Pulwama had detained the detainee in terms of Public

Safety Act vide order dated 22.11.2004. Thus impugned order suffers from non-application of mind. It is profitable to reproduce the impugned

order herein;-

1. Whereas, on the basis of grounds of detention placed before me by Superintendent of Police Pulwama/Awantipora/CID CIK Srinagar vide No:

CS/D-21/2004/4129-31 dated 30-10-2004, I am satisfied that with a view to prevent Shri Gh. Hassan Dar S/O Gh. Rasool Dar R/O Samboora

Tehsil Pampore, District Pulwama from acting in any manner which is prejudicial

to the security of the State, it is necessary so to do.

2. Now, therefore, in exercise of powers conferred by clause (a) of Section 8 of J&K Public Safety Act, 1978, I, District Magistrate, Pulwama

hereby direct that the said Shri Gh. Hassan Dar S/O Gh. Rasool Dar R/O Samboora Tehsil Pampore District Pulwama be detained and lodged in

District Jail Kathua for a period upto 12 (twelve) months.

4. Whether the grounds of detention were furnished by SSP, Pulwama or Awantipora or by CID CIK Srinagar is not spelled out in the impugned

order. However, the date is relevant which is given as 30th October, 2004. It is worthwhile to mention herein that in terms of annexure-A dated

06.11.2004, referred hereinabove, the District Magistrate has directed SSP Awantipora to make re-verification. Then how the detaining authority

has derived satisfaction in terms of report dated 30th October, 2004?

5. Record has been made available, but there is no such communication whereby it could have been concluded or said that SSP, Awantipora has

made verification after 06.11.2004 and on that basis detention order has been passed.

6. In terms of annexure-B, the detainee was asked to make a representation. It is profitable to reproduce relevant portion of annexure-B herein;-

Copy to the;-

1. Financial Commissioner Home Department J&K Government (Civil Sectt.) Srinagar/Jammu.

2. Superintendent, District Jail Kathua along with a copy of the grounds of detention and that of letter addressed to the detainee, which may be

communicated and delivered to him (detainee), within stipulated period of 5 days from the date of his detention except in a case covered u/s 13 of

PSA for which reasons are to be recorded in writing and time frame extendable by another 05 days against proper receipt under intimation to this

office along with confirmation of factum as to whether the detainee was informed about para 03 of the letter and whether he choose to or not to

make representation to the Government against the detention order.

7. While going through this communication, it appears that the detainee has been asked to make a representation in terms of Public Safety Act and

reference has been made to dossier dated 2nd November, 2004 received from SSP Pulwama but neither such communication has been referred in

the impugned order nor such communication is available on record. If communication was made by SSP Pulwama on 2nd November, 2004 then

why District Magistrate, vide annexure-A, directed SSP Awantipora to make re-verification. This shows that detaining authority has passed the

impugned order without application of mind. It was for the detaining authority to inform the detainee about the grounds of detention, dossier and

other material. All the communications and so called notice contained in annexure-B are vague and thus the petitioner has been deprived from

making representation.

8. The petitioner has also not been provided with the copies of the grounds of detention, warrant of detention and other material. The respondents

should have explained by filing an affidavit of the serving officer but that too has not been done.

9. As per the Photostat copy of the report of serving officer, the grounds of detention were read over and explained to the detainee in Kashmiri

language but the material relied upon in the grounds of detention i.e., FIR, seizure memo have not been furnished or explained to the detainee.

There is nothing on the file suggesting the fact that such material was supplied to the detainee in order to make an effective representation. Thus on

this count also, the detention order needs to be quashed.

In *Sophia Gulam Mohd. Bham Vs. State of Maharashtra and Others*, the Apex Court has observed as under;-

... The right to be communicated the grounds of detention flows from Article 22(5) while the right to be supplied all the material on which the

grounds are based flows from the right given to the detenu to make a representation can be made and the order of detention can be assailed only

when all the grounds on which the order is based are communicated to the detainee and the material on which those grounds are based are also

disclosed and copies thereof are supplied to the person detained in his own language

10. In view of the above discussion, it is hereby held that detention order needs to be quashed.

Accordingly, the petition is allowed. The detention order is hereby quashed with the command to the State to release the detainee forthwith

provided he is not required in any other case. Record be returned back to Mr.

M.A. Wani, Dy. AG.