
(1984) 08 J&K CK 0003
In the Jammu And Kashmir High Court

Ghulam Hassan Kanroo

APPELLANT

Vs

State of J. and K. and Another

RESPONDENT

Date of Decision : 02-08-1984

Acts Referred:

Constitution of India, 1950 — Article 22
Criminal Procedure Code, 1973 (CrPC) — Section 151

Citation : (1985) CriLJ 406 : (1985) 1 RCR(Criminal) 433

Hon'ble Judges : M.L. Bhat, J

Bench : Single Bench

Judgement

M.L. Bhat, J.—Detenu Bashir Ahmed Kanroo has been detained on 17-5-1984 by District Magistrate, Baramulla (the detaining authority)

under the provisions of Section 8 of the J.&K. Public Safety Act, hereinafter to be referred to as the Act, on the grounds forming part of the

detention order. The detention of the detenu is challenged in this Court by one Ghulam Hassan Kanroo, who claims to be the brother of the

detenu. The detention as revealed from the grounds of detention is ordered for the following reasons :-

You are an important staunch worker of Peoples League aim of which is to liberate the State of Jammu & Kashmir from the Union of India. You

have associated yourself with the programmes and policies of the League since 10 years and have been implementing its policies and programmes.

You have also been indulging in anti-national activities in manner prejudicial to the security of the State and for this purpose you have been

instigating, provoking and abetting the use of force to overthrow the Govt. established by law and the State. You have been challenging the

accession of State with the Union of India for which you have publicly preaching

and advocating. You are devoted and dedicated worker of the

League and are publicly preaching and advocating to take out the State from the Union of India and facilitate its annexation with Pakistan.

With a view to prevent you from clandestine and subversive activities you were arrested u/s 151 Cr.P.C. on 26-3-82.

In the past you have committed the following activities which are prejudicial to the security of the State :

1. On 1-10-81 you while addressing the party in Baramulla declared that Kashmir issue is, still unsolved and India has forcibly occupied its

territory. You further declared that to enable liberate Kashmir from Indian Yoke there will be no hesitation to rise in revolt against the Government.

2. On 26-3-82 while addressing your party workers at Baramulla Chowk you said that Indira Gandhi was responsible for massacre of Mislms in

India. You by such utterances promoted feeling of enmity, hatred and disharmony on the grounds of religion between various communities of the

State.

3. On 16-4-83 you while addressing audience in Main Chowk Baramulla condemned the Govt. of India and held it responsible for massacre of

Muslims in India. By such utterances you created feelings of hatred and enmity among the people on the grounds of religion.

4. On 16-2-84 you organized a procession of your party workers against the execution of Maqbool Bhat and while addressing your party workers

you condemned the State Govt. for having connived with Govt. of India. You further declared that struggle started by Maqbool Bhat will not end

by his execution but will continue till the State is liberated from the Union of India.

From the above it is clear that you have been inciting, instigating and provoking the people to use force to overthrow the Govt. to get the State

liberated from the Indian Union and your persistent acts of promoting, propagating and attempting to create the feeling of hatred and disharmony

on the grounds of religion are prejudicial to the security of State and maintenance of public order.

The detention of the detenu is challenged inter alia on the ground that the detenu was arrested from his shop by Police Station Baramulla and was

kept at Police Station Safe Kadal up to 19-5-1984. Thereafter he was shifted to

Central Jail, Jammu and he is in continued detention at Central

Jail, Jammu, since then. Legality of the detention is challenged on behalf of the detenu on various grounds such as non-application of mind by the

Detaining Authority, and because of having clubbed activities prejudicial to the security of the State and maintenance of public order which

according to the petitioner are two separate concepts and cannot be clubbed together. In point of time, the grounds of detention are too remote

and stale, and have no proximity with the objects sought to be achieved. It is also alleged that the detenu was not supplied the grounds of detention

in time, therefore, he was denied an opportunity to file an effective representation and the detention was also violative of Section 13 of the Act.

2. In his counter-affidavit, the Detaining Authority has, while denying the averments made in the petition not replied para 2 of the petition in which

allegation of the detenu having been arrested by the Police on 24-4-1984 is averred. Therefore, this fact shall be deemed to have been accepted

by the Detaining Authority.

3. I have heard the learned Counsel for the parties at length and examined the record as also the grounds of detention.

4. It is to be presumed correct, in the absence of any rebuttal, that the detenu was arrested from his shop by the Baramulla Police on 25-4-1984

and was lodged in Police Station Safakadal till 19-5-1984 and on 19-5-1984 he was shifted to Central Jail, Jammu. Now it is to be seen what is

the effect of the detenu having been arrested before the issuance of order of detention by the Police Baramulla. In the grounds of detention this fact

has conveniently been omitted by the Detaining Authority and no mention is made about this important fact. It was the duty of the Detaining

Authority to indicate his awareness about the detenu having been arrested and being in jail at the time of issuance of the detention order. It was

necessary for the Detaining Authority to indicate as to why the detention order under the Act was required to be issued in respect of the detenu

who was already in jail. The detenu could not have been jailed without there being a case registered against him. Therefore the awareness of this

fact was to be shown by the Detaining authority as to why he had deemed it necessary to detain the detenu and as to why arrest of the detenu

under the normal law was not a sufficient remedial measure. Having taken

recourse to the Public Safety Act in respect of the detenu who was already in jail it should have been indicated that the detenu could not be dealt with effectively under the ordinary law of the land. Having failed to show his awareness about the arrest of the detenu prior to the issuance of the detention order of the detenu and having failed to mention the necessity of detaining the detenu under the Act, despite the detenu having been arrested before the issuance of the detention order, it is to be held that the Detaining Authority has not applied his mind and in that view of the matter it can be safely said that the Detaining Authority has issued the detention order arbitrarily and mechanically. This is sufficient to vitiate the order of detention of the detenu.

5. The learned Counsel for the petitioner next urged that the detention order u/s 8(a)(i) of the Act postulates that detenu can be arrested for acting in a manner prejudicial to the security of the State or maintenance of the public order. That means he can be detained on one of the grounds. He cannot be detained for both the grounds and if it is disclosed that the detenu has been detained on both the grounds, then the detention order becomes invalid. In support of his submission he has drawn my attention to a case decided by the Supreme Court G.M. Shah Vs. State of Jammu and Kashmir, . I have examined the said authority. Their Lordships of the Supreme Court were dealing with Section 8 of the Act. While releasing the detenu in that case, their Lordships examined the provisions of Section 8 of the Act and ruled that while detaining a detenu by placing reliance on both the basis i.e. for preventing him from acting in any manner prejudicial to the security of the State or maintenance of the public order in the grounds furnished to the detenu has to be held to be illegal one. Their Lordships had relied upon Dr. Ram Manohar Lohia Vs. State of Bihar and Others, and the case of Bhupal Chandra Ghosh v. Arif Ali : 1974CriLJ326 and the case of Shri Satya Brata Ghose Vs. Mr. Arif Ali, District Magistrate, Sibasagar, Jorhat and Others, .

6. I have examined the grounds of detention. In the concluding para of the grounds of detention, it is held by the Detaining Authority that on the basis of the grounds supplied to the detenu, the detenu has indulged in various activities which according to the Detaining Authority are prejudicial to the security of the State and maintenance of public order. So the detenu is

detained on both the grounds of acting in a manner prejudicial to the security of the State and maintenance of public order. This could not be done by the Detaining Authority. The detenu could be detained on either of the grounds. Both grounds could not be clubbed together and the course adopted by the Detaining Authority is, therefore, to be declared illegal in view of the authoritative pronouncement of the Supreme Court. I, therefore, hold that the detention order of the detenu on this ground must also be set aside, I say so because the expression ""public order"" and ""security of the State"" are distinct concepts. Every disorder may give rise to disturbance of public order but disturbance of public order may not prejudicially affect the security of the State. Moreover what is meant by acting in a manner prejudicial to the security of the State is defined in the Public Safety Act. Meaning is given to this expression in Section 8(3) (a) of the Act. No other meaning can be given to the said expression. Meaning is also assigned to acting in a manner prejudicial to the public order. The expression is defined in Section 8(3)(b). So the two concepts are distinct and separate Therefore, their clubbing together for purpose of detaining a citizen will be violative of Section 8 itself. The Detaining Authority is bound to follow the mandate contained in Section 8 of the Act. It cannot make departure from the procedure laid down in Section 8 of the Act for ordering detention of a citizen. Any departure made by the Detaining Authority from the procedure laid down by the law will definitely benefit the detenu. Detention u/s 8 of the Act is harsh because a citizen detained under the said section is deprived to face trial and the detention is made to prevent him, in future, from acting in a manner which is prejudicial to the security of the State, public order or maintenance of essential supplies. The Detaining Authority has to strictly comply with the provisions of Section 8 and it has to bear in mind that the rigor of Section 8 of the Act cannot be violated in any manner. Any departure from the established procedure shall affect the detention order and even if the Detaining Authority has made an honest effort to detain a citizen that honest effort will get defeated and frustrated because of non-compliance with the mandate of Section 8 of the Act.

7. The next point raised by the learned Counsel for the petitioner was about the vagueness of the grounds of detention which according to him would prevent the detenu from making an effective representation under Article

22(5) of the Constitution. Article 22(5) guarantees the fundamental rights of a detenu to know exactly what is the basis for his detention so as to enable him to make a representation which must be effective. From the perusal of the grounds of detention it appears the preamble of the detention order is nothing but vague. The vagueness is writ large because it is not stated as to when the detenu has indulged in alleged anti-national activities and when he has been publicly preaching and advocating secession from Indian Union. He is termed as an activist of 'Peoples League, which advocates liberation of the State of Jammu and Kashmir from India. It is not stated that Peoples League was a banned organization and on what date and in which year the detenu has indulged in the activities attributed to him in the preamble. In support of his submissions, learned Counsel for the petitioner has relied on a case viz : Mohd. Yousuf Rather Vs. State of Jammu and Kashmir and Others, . The Supreme Court while examining the case law on the point has held that irrelevant and vague grounds have no connection with the satisfaction of the authority making the order of detention under the Act. The preamble of the grounds of detention cannot be separated from the other grounds of detention. The introductory paragraph of the grounds of detention is in the nature of a preamble of the grounds of detention. The other grounds of detention are indicated as part of the preamble. The preamble is vague and on the basis of vagueness the detenu's two valuable rights guaranteed to him under Article 22(5) of the Constitution of India are violated. The first, right of the detenu is to know exactly the basis of the order of detention which led to the subjective satisfaction of the Detaining Authority and his second right is to be afforded an earliest opportunity to make an effective representation. Obviously the detenu must have been misled by the grounds of detention because they are vague and on account of the vagueness right to make a representation is taken away from him. The important safeguard which guarantees the fundamental right of the detenu is violated because of vagueness of the grounds of detention. Vice of vagueness and irrelevancy in the grounds of detention would abridge the fundamental rights of the detenu and the detention order on that count also is to be set aside.

8. It was lastly argued that the grounds of detention were too stale in point of time to be taken into consideration as the grounds were too remote

and were not proximate to the order of detention. From the perusal of the grounds of detention, it appears, instances of 1-10-1981, 26-3-1983,

16-4-1983 and 16-2-1984 have been taken into consideration by the Detaining Authority. It was not open to the detaining authority to take up an

old and stale incident and make out a basis for the detention of the detenu. Even if one ground is stale the entire detention order of the detenu is to

be quashed because that stale ground, also must have influenced the Detaining Authority in assuming subjective satisfaction. To what extent it has

influenced his mind is not material but the influence of the stale ground seems to be substantial. Detention order on the basis of a stale ground and

on a ground which is too remote in point of time has no nexus with the object sought to be achieved. Therefore, this argument of the learned

Counsel for the petitioner has force. He has also drawn my attention to an authority viz. Kamlakar Prasad Chaturvedi Vs. State of M.P. and

Another, . The Supreme Court while examining the case law has said that it is not open to the Detaining Authority to pick up a stale ground and

base detention order on it. I therefore, am of the opinion that the detention order of the detenu is bad and illegal for this reason also.

9. The learned Chief Govt. Advocate has argued that past conduct of the detenu mentioned in the detention order is relevant and the detention

order cannot be declared void on that count In support of his contention he has invited my attention to an authority of this Court viz : National

Textile Corporation Ltd. Vs. Romesh Chander Aggarwal and Another, . In this authority Anand J. as his Lordship then was, sitting singly, was of

the view that the order of detention would not be rendered invalid merely because introductory facts etc. are contained in the grounds of detention

and they have no relation with the previous acts of the detenu. The detention order in that case was issued on 17-8-1981 and incidents relating to

Sept. 1980 and Oct. 1980 as also June 1981 were taken into consideration by the, Detaining Authority. In the peculiar circumstances of that case,

the learned Judge did not agree with the contention of the detenu but on facts that authority is distinguishable because in the present case detention

is ordered on 17-5-1984 and incidents of 1981 are taken into consideration National Textile Corporation Ltd. Vs. Romesh Chander Aggarwal

and Another, therefore is not an authority for the proposition that in every case stale ground or grounds, too remote in point of time, shall be

declared valid as having proximity with the detention order. That proposition can be dangerous because every case is to be decided on its own

facts.

10. For the reasons stated above, I allow this petition and hold that the detention order of the detenu dt. 17-5-1984 passed by the Detaining

Auhorit viz : District Magistrate, Baramulla, is illegal and unconstitutional and is hereby quashed. It is therefore, ordered that the detenu may be set

at liberty forthwith.