
(2017) 05 J&K CK 0032
In the Jammu And Kashmir High Court
Case No : 78 of 2017

Ghulam Hassan Shah

APPELLANT

Vs

State of JK &Ors.

RESPONDENT

Date of Decision : 09-05-2017

Acts Referred:

[Jammu and Kashmir Public Safety Act, 1978](#), [Section 8](#)

Citation : (2017) 05 J&K CK 0032

Hon'ble Judges : Ramalingam Sudhakar

Bench : SINGLE BENCH

Advocate : MianTufail, Asif Maqbool

Final Decision : Allowed

Judgement

1. The instant Habeas Corpus petition has been filed challenging the order of detention bearing No.260/DMB/PSA/2017 dated 22nd February, 2017, passed by District Magistrate, Baramulla i.e. Respondent No.2.
2. In the grounds of detention, it is stated that the detainee in this case is 31 years old and his education is upto 10th Class. On 10th July, 2016, the detainee, being part of a unruly/violent mob, armed with lathies, axes and stones, resorted to heavy stone pelting on Police and CRPF personnel near Bomai. The unruly mob also sprinkled kerosene oil on the Santry post of Police Station Bomai and set it ablaze for which FIR No.73/2016 came to be registered in Police Station Bomai. Again, on 11th July, 2016, it is stated that the detainee was part of a violent mob which resorted to heavy stone pelting at police and other paramilitary security personnel leading to registration of FIR No.74/2016 in the Police Station Bomai. One more incident is stated to have happened on 23rd July, 2016, resulting in

registration of FIR No.75/2016 in the same Police Station (i.e. Bomai).

3. According to the detaining authority, the detainee instigated/motivated stone pelters and that his anti-national activities caused serious damage to

the maintenance of public order. It is stated that the normal law did not prove sufficient to deter the detainee from indulging in anti-national activities,

as such, the detainee was detained under the provisions of Section 8 of the Jammu and Kashmir Public Safety Act, 1978.

4. Mr. MianTufail, learned counsel for the detainee, states that the detention of the detainee is bad on two main grounds. Learned counsel states

that, firstly, the relied upon documents for detaining the detainee have not been served on the detainee and, therefore, his right to make an effective

representation has been affected. The second ground raised by learned counsel for the detainee is that in terms of communication dated 22nd

February, 2017, though, the detainee has been informed of his right to make a representation to the Government, however, no right has been given

to the detainee to make a representation to the detaining Authority, thereby infringing his right guaranteed by the Constitution.

5. Respondents have filed their counter. On the first issue raised by learned counsel for the detainee i.e. non-supply of relied upon documents, at

Para No.4 of the counter, it has been stated that whatever material that was relied upon by the detaining authority for detaining the detainee was

furnished to the detainee along with copies of grounds of detention and order of detention. There is nothing on record to show that the relied upon

documents mentioned in the grounds of detention (e.g. copies of FIR) were supplied to the detainee. Therefore, it is evident that the right of the

detainee to make a meaningful representation has been seriously affected.

6. Mr. Asif, learned GA, states that in terms of the J&K Public Safety Act, 1978, in the case of detention, the representation can only be made to

the Government and not to the detaining Authority.

7. With regard to the first issue i.e. non-supply of relied upon documents, the same was considered by this Court in HCP No.522/2016 dated

28th February, 2017, wherein this Court, at Paragraph No.5, has observed as under:

5. In this case, the right of the detainee to make a meaningful representation to the competent Authority against his detention order

has been affected because from the grounds of detention it is evident that two FIRs registered against the detainee are primarily the

reasons for which the respondents have detained the detainee under the provisions of the J&K Public Safety Act, 1978, and the said

relied upon documents for detaining the detainee have not been supplied to him, therefore, this Court has no hesitation to hold that the

detention is bad on this ground alone.

8. Further reliance has been placed on Paragraph Nos. 27 and 28 of the decision of the Hon^{ble} Supreme Court in case titled ""ThahiraHaris V.

Government of Karnataka, reported in AIR 2009 SC, 2184"", which are reproduced as under:

27. There were several grounds on which the detention of the detainee was challenged in these appeals but it is not necessary to refer

to all the grounds since on the ground of not supplying the relied upon documents, continued detention of the detainee becomes illegal

and detention order has to be quashed on that ground alone.

28. Our Constitution provides adequate safeguards under clauses (5) and (6) of Article 22 to the detainee who has been detained in

pursuance of the order made under any law providing for preventive detention. He has right to be supplied copies of all documents,

statements and other material relied upon in the grounds of detention without any delay. The predominant object of communicating

the grounds of detention is to enable the detainee at the earliest opportunity to make effective and meaningful representation against his

detention.

9. The second contention i.e. denial of representation to the detaining Authority merits consideration in light of the decision of this Court rendered

in "HCP No.634/2016,in case titled Abdul RehmanTantaray Vs. State of JK". Paragraph Nos. 5 to 7 whereof are reproduced as under:

5. It is pleaded that neither the detention order nor the aforesaid intimation in terms of Section 13 of the Jammu & Kashmir Public

Safety Act, makes it clear that detainee will be entitled to make a representation to the detaining authority. Prejudice to the detainee is

pleaded stating that his right to make effective representation to the detaining authority who has issued the detention order is denied.

To buttress this argument, learned counsel for the detainee relied upon the decisions of this Court in "Bashir Ahmad Sheikh v. State of

J&K &Ors., 2011 (1) JKJ HC 82" and "Shabir Ahmad Malik v. State of J&K &Ors. 2011 (1) JKJ HC 171". Further reliance is

also placed on the decision of the Hon"ble Supreme Court in the case of "State of Maharashtra &Ors. v. Santosh Shankar Acharya,

AIR 2000 SC 2504", where provisions of Sections 3(2), 8(1) of the Maharashtra Prevention of Dangerous Activities of Slumlords,

Bootleggers, Drugs Offenders and Dangerous Persons Act, 1981, were considered in the light of the plea that the detaining authority

did not provide an opportunity to the detainee to make a representation to the Detaining Authority and therefore, it was held to be

bad.

6. Considering the language used in Section 8(1) of the Maharashtra Act, the Hon"ble Supreme Court held that if the detention order

is passed by an Officer other than the State Government the right to make representation to the said detaining authority cannot be

taken away. The reliance was placed on the provisions of Section 21 of the Bombay General Clauses Act, 1904.

7. In this case also the detention order has been passed by the District Magistrate, however, right to make a representation to that

authority has not been granted, however, it is specifically mentioned that representation is to be made to the Government. Thereby

detainee has been put to great prejudice as he is unable to make a representation to the said authority.

10. Since the detention order in this case suffers from error as pointed out above, the same is liable to be set aside. Accordingly, the instant

Habeas Corpus petition is allowed and order of detention bearing No.192/DMB/PSA/2016 dated 14th December, 2016 is hereby quashed. The

respondents are directed to release the detainee, namely, Ghulam Hassan Shah S/o Mohammad Subhan Shah R/o Bomai, District Baramulla, from

preventive custody forthwith, if not required in any other case.