

(2011) 09 J&K CK 0015

In the Jammu And Kashmir High Court

Case No : HCP No. 198 of 2011 and IA No. 62 of 2011

Ghulam Mohammad Bangi

APPELLANT

Vs

State of Jammu & Kashmir and others

RESPONDENT

Date of Decision : 29-09-2011

Acts Referred:

Ranbir Penal Code, 1989 — Section 148, 153A, 336

Citation : (2011) 09 J&K CK 0015

Hon'ble Judges : Hasnain Massodi, J

Bench : Single Bench

Judgement

Hasnain Massodi, Judge

1. Challenge to order No. 01/DMB/PSA/2011 dated 02.04.2011, of District Magistrate, Baramulla respondent No. 2 herein, whereby one Shri

Gh Mohd Bangi son of Gh Ahmad Bangi resident of Gania Hamam Baramulla (herein after referred to as 'detenue') has been placed under

preventive detention, must succeed for following reasons:

The respondent No. 2 has intriguingly mentioned that 'on the basis of grounds of detention placed before me', the detenue is placed under

preventive detention to prevent him from acting in any manner prejudicial to the security of the State. The Detaining Authority may get inputs from

different agencies including Superintendent of Police of the concerned District. Responsibility to formulate grounds of detention, however, rests

with the Detaining Authority. It is Detaining Authority, who has to go through the reports and other inputs received by him from concerned police

and other agencies and on such perusal arrive at a subjective satisfaction that the subject is to be placed under preventive detention. It is thus for

the Detaining Authority to formulate grounds of detention and satisfy itself that grounds of detention so formulated warrant passing of preventive

detention. The detention order, for the said reasons, exhibits total non-application of mind by the detaining authority. The detention order is liable

to be quashed on this ground alone.

2. The grounds of detention make reference to case - FIR No. 39/1984 u/s 153-A, 336, 148, 149, 427 RPC; FIR No. 147/1996 u/s 7/25 A.

Act, 3/5 Exp. Subs Act; FIR No. 62/2006 u/s 212, 121 RPC; FIR No. 152/2010 u/s 148, 149, 336, 427, 323 RPC; FIR NO.153/2010 u/s

148, 149, 336, 332, 427 RPC; FIR No. 233/2010 u/s 148, 149, 336, 427 RPC at Police Station Baramulla, to have been registered against the

detenue. The involvement of detenue in the aforementioned cases appears to have heavily weighed with detaining authority while making detention

order. The detention record reveals that none of the documents referred to in the detention order was ever supplied to detenue. The endorsement

on the reverse of the detention order made by the Executing Officer ' SI Abdul Hamid No. 8218/NGO of P/S Baramulla, 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 detenue at

the time of execution of detention order or immediately thereafter. The detention record does 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 detenue. It is pertinent to point out that the detaining authority, in grounds of detention after detailing background in which

aforesaid cases were registered against detenue, proceeds to opine 'It is manifest from factual position as at pre-pares(pre-paras) that your

activities are highly pre-judicial to the security of the State".'. The material, mentioned above, thus assumes significance in the facts and

circumstances of the case. It needs no emphasis that the detenue 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 the detenue. It is only after the detenue 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 (S.L.J. 2009 (I) 219); and Thahira Haris etc. Vs. Government of

Karnataka and Others, .

3. Article 22(5) of Constitution 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 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), Constitution of India 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 the 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 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.

4. In the instant case the detainee along with his associates is also alleged to be responsible for pelting stones upon police officials, damaging

vehicles and injuring police/CRPF personnel. The detainee is not informed with

sufficient clarity the exact allegations leveled and furnished the particulars of youths/associates, who are stated to be responsible for indulging in stone pelting, nor the particulars of police/CRPF personnel, who are alleged to have been attacked by detainee and his associates by pelting stones on them nor the details of vehicles alleged to have been damaged. 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 respondent No. 2 and other respondents that the allegations against the 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 respondent No. 2. The detainee has been kept guessing about the facts and events that weighed with respondent No. 2 and prompted respondent No. 2 to record subjective satisfaction regarding sufficiency of the material to warrant preventive detention of the 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 the 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 2009 219.

5. Viewed thus, the petition is allowed and detention order No. 01/DMB/PSA/2011 dated 02.04.2011, passed by the District Magistrate, Baramulla ' respondent No. 2, directing detention of Shri Gh Mohd Bangi son of Gh Ahmad Bangi resident of Gania Hamam Baramulla, quashed.

6. The respondents, in view of quashment of detention order, are stripped of any authority to detain the detainee under order No. 01/DMB/PSA/2011 dated 02.04.2011. Resultantly, the respondents are directed to release the detainee from preventive detention, ordered vide

order No. 01/DMB/PSA/2011 dated 02.04.2011.

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

Disposed of.