
(2004) 06 J&K CK 0005
In the Jammu And Kashmir High Court
Case No : HCP No. 208 of 2003

Ghulam Nabi Shah

APPELLANT

Vs

State of Jammu & Kashmir and Others

RESPONDENT

Date of Decision : 01-06-2004

Acts Referred:

Jammu and Kashmir Public Safety Act, 1978 — Section 8

Citation : (2004) 2 JKJ 565

Hon'ble Judges : R.C. Gandhi, J

Bench : Single Bench

Advocate : B.A. Misri, for the Appellant; Moksha Qazmi, G.A., for the Respondent

Judgement

R.C. Gandhi, J.—Detenu Ghulam Nabi Shah Son of Abdul Jabar Shah R/o Sogam, Kupwara through his wife seeks to quash the detention

order No. 8.DMK/PSA of 2003 dated 12.9.2002 passed by District Magistrate, Kupwara in exercise of powers u/s 8 of the J&K Public safety

Act 1978 (for short"" the Act"") directing preventive detention of the detenu.

2. The detention order has been challenged on the ground that the detenu being already in the custody of the respondents has been taken in

preventive custody without application of mind. The detaining authority has not drawn subjective satisfaction in terms of Section 8 of the Act and

also failed to explain as to why the detenu could not be put to trial.

3. Respondents have filed the counter affidavit controverting the averments of the petition. It is stated therein that the detenu was arrested in Fill

No. 85/2002 of Police Station Sogam for commission of alleged offence. The detention order has been approved in terms of Section 8 of the Act

by the Government on 22.9.2003. The detenu has been explained the grounds of

detention in Urdu and Kashmiri which he understood. The

detention order has also been confirmed by the Government u/s 17 of the Act.

4. Heard learned counsel for the parties and perused the record.

5. Learned counsel for the petitioner has submitted that this Court has settled the proposition of law that a citizen can be detained by the detaining

authority on the grounds mentioned in Section 8 of the Act. The detention of the detenu has been directed on the ground that ordinary law of the

land is not enough as a corrective measure. According to the learned counsel from the petitioner this ground does not fall within Section 8 of the

Act for arriving of subjective satisfaction by the detaining authority. Relying upon the judgment of this Court delivered in Ghulam Nabi Dar v. State

of J&K and Ors., reported in 2002 KLJ 637. Learned has submitted that the detention order deserves to be quashed. Dealing with the argument

of the learned counsel therein that ordinary law of land is no ground for directing preventive detention, the Court observed as under :

The compelling reasons spelled out by the detaining authority are, that ordinary criminal law is not enough to prevent detenu from such subversive

activities. Similar proposition of law was also in HCP No. 97/2000 titled Bilal Ahmad Bhat v. State and Ors. wherein while dealing with it,

satisfaction and the reasons disclosed by the detaining authority while directing the preventive detention of the detenu is that the ordinary law of the

land is not sufficient to deter the detenu from his activities. This cannot be accepted either as a ground of detention. While dealing with a similar

proposition on facts and law, the Supreme Court in ""Surya Prakash Sharma v. State of U.P. reported in 1994 SCC 169 in para 5 has held that:

The question as to whether and in what circumstances and order for preventing detention can be passed against a person who is already in

custody has had been engaging the attention of this Court since it first came for consideration before a Constitution Bench in ""Rameshwar Shaw v.

District Magistrate, Burdan."" To eschew prolixity we refrain from dealing all those cases except that the Dharmandra Suganchand Chelwat v.

Union of India wherein three Judge Bench, after considering all the earlier relevant directions including Rameshwar Shaw answered the question in

the following words:

The decisions referred to above lead to the conclusion that an order for detention

can be validly passed against a person in custody and for that purpose must show that:

(i) the detaining authority was aware of the fact that the detenu was already in detention and

(ii) there were compelling reasons justifying such detention despite the fact that the detenu is already in detention. The expression ""compelling

reasons"" in the context of making an order for detention of a person already in custody implies that there must be cogent material before the

detaining authority on the basis of which it may be satisfied that:

(a) the detenu is likely to be released from custody in the near future and

(b) that it is likely that his release from custody he would indulge in prejudicial activities and it is necessary to detain him in order to prevent him

from engaging in such activities."" The detaining authority has to disclose the compelling reasons if the reasons are not disclosed the impugned order

suffers for non-application of mind. Grounds of detention indicate the awareness of the detaining authority that the detenu was in custody of the

respondent any cogent material that ordinary law of the land is not sufficient to deter the detenu from such activities. Such subjective satisfaction of

the detaining authority cannot, therefore, be said to be proper and justified.

The case of the detenu is fully covered by the judgment (supra). Respondents have not shown any material to make out that the ordinary law is not

enough to prevent the detenu despite the fact that the detenu was already taken into custody for alleged commission of offence u/s 13 of the

Unlawful Activities Act. The subjective satisfaction arrived at under such circumstances cannot be said to be proper and justified. The detention

order therefore, deserves to be quashed.

The above reported judgment applies fully to the case of the detenu and the detention order thus, cannot be maintained.

6. For the aforesaid reasons this petition is allowed and the detention order No. CMK/PSA/82 of 2003 dated 25.5.2003 is set aside. The

respondents are directed to release the detenu forthwith from the preventive detention, provided he is not required in any other offence.