
(2010) 02 J&K CK 0003

In the Jammu And Kashmir High Court

Case No : Habeas Corpus Petition No. 246 of 2009

Ghulam Nabi Sumji

APPELLANT

Vs

State & Ors.

RESPONDENT

Date of Decision : 03-02-2010

Acts Referred:

Constitution of India, 1950 — Article 22(5)

Citation : (2010) 1 SriLJ 151

Hon'ble Judges : Mohd.Yaqoob Mir, J

Bench : Single Bench

Advocate : S.A.Vakil,AAG, M.A.Qayoom, Advocates appearing for the Parties

Judgement

1. Impugned is the third detention order bearing No.DMS/PSA/52/2009 dated 14.11.2009 passed under the provisions of the Jammu and

Kashmir Public Safety Act.

2. The first detention order dated 30.10.2008 has been revoked by the Detaining Authority itself. Thereafter vide detention order dated

11.6.2009, the detainee was detained. Said detention order became the subject matter of the petition bearing IICP No. 117/2009. Same has been

quashed vide judgement dated 14.9.2009 but again detainee has been detained pursuant to the detention order under challenge.

3. Learned counsel for the petitioner would contend that without any material different to that of the material based on which detention order dated

11.06.2009 was passed, the impugned detention order has been passed when the earlier detention order passed on the same material was

quashed.

4. In opposition to the said contention learned counsel for the respondents would

contend that the detention order is based on a different material

as the respondents have been receiving information to the effect that after release detainee has been indulging in anti national activities. The modus

operandi of said activities is so subtle and well crafted that things will go wrong if not checked well in time.

5. On perusal of the grounds of detention, it is quite explicit that all the earlier actions taken against the detainee have been narrated. It has also

been narrated that the detainee was earlier detained vide detention order dated 8.6.2009 which detention order was quashed and the detainee was

released but subsequent to the release, there have been the reports about the activities of the detainee. It shall be quite appropriate to quote

relevant portion of the grounds of detention:

.....However, the report coming after your release indicates that you continue indulging in antinational activities which are prejudicial to the

maintenance of security of state. The modus operand of such activities is BO subtle and well crafted that things will go wrong if not checked well in

time. Your programme of creating trouble includes instigating the general public to resort to violent protests a program which you have already

initiated and is being implemented in phased manner.

The allegation as recorded in the grounds of detention would indicate that the detention order under challenge is not based on the material which

had formed basis for the detention order dated 8.6.2009 but the important question which emerges for consideration is as to whether the allegation

as quoted above shall be sufficient to form basis for passing the order of detention impugned. The reply has to be in negative. The allegation as

quoted above from the grounds of detention is totally vague. In an arbitrary and ambiguous manner without any basis allegation has been recorded.

There is no record which would substantiate such allegation. What were the reports received after the release are not borne out by the records.

That apart, whatever be the material forming basis for receipt of such reports or details, the reports itself should have been furnished to the detainee

in order to enable him to represent against such allegations/reports. From the records it is nowhere shown that any such report or material has

been furnished to the detainee when furnishing of the same was imperative so as to safeguard rights as guaranteed to the detainee under Article

22(5) of the Constitution of India.

6. The detention record as has been produced docs not contain any such report or material except the dossier prepared by the SSP. Whatever

details are given in the dossier, same are reproduced in the grounds of detention. The allegation as quoted hereinabove is also recorded in the

dossier but no other material in the form of report or any other document supporting the said position is available on the detention record. The

question of furnishing said material on such premise does not arise at all.

7. If the detainee would have been involved in any such activity after his release pursuant to quashment of the detention order dated 8.6.2009, then

at least a case would have been registered in any police station against him. Nothing in thing direction has been placed on record.

8. In case there would have been any such material, then same was required to be supplied to the detainee. Firstly there is no such material which

could be supplied to the detainee. even otherwise non supply of the material forming base for the detention would deprive the detainee from making

a representation so as to show his innocence. The infringement of such valuable right renders the order of detention as invalid. In this connection it

shall be quite useful to quote the following para from the judgment report in MR 1000 SC 3051 (Sophia Gulam Mohammad Vs. State of

Maharashtra):

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

grounds are based flows from the right given to the detainee to make a representation against the order of detention. 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.

Analyzing the facts and features of the present case, it would surface that neither there has been any material to support the allegation as quoted

above so as to pave way for passing the preventive orders nor there is any such material wherefrom it could be gathered that the detainee has been

indulging in any such activity.

9. The security of the State definitely is a prime concern. A person who affords to

cause any type of insecurity has to be deterred by having resort to preventive laws but before having resort to preventive laws, it has to be born in mind that as a necessary corollary while passing preventive orders, a cherished right to liberty gets curtailed. The curtailment of liberty can be imperative but only when it shall be reasonable and shall be warranted on the basis of cogent material. Human right has to be respected. Respect for such right can be ensured only when safeguards provided for respecting such right as envisaged by the preventive laws itself in tune with the constitutional mandate are strictly complied with by the concerned authorities. The duty is cast on the Detaining Authority both to issue preventive orders and also to safeguard the human rights. The authority has to balance the two. The authority has to shun the path of the casualness and arbitrariness. The jugglery of words used in the grounds of detention or the order of detention shall not be a substitute for exercise of valuable powers vested in the authority. Impugned preventive detention order is found to be bereft of any legal sanctity. Only option available is to quash the same and order release of the detenu.

10. Petition, as such, is allowed. Detention order impugned bearing No. DMS/PSA/52/2009 dated 14.11.2009 is quashed and the detenu, namely, Ghulam Nabi Sumji ordered to be released forthwith provided he is not required in connection with any of case.

11. Detention record as produced shall be returned back to the counsel for the respondents.

Disposed of as above.