

(2017) 05 J&K CK 0028
In the Jammu And Kashmir High Court
Case No : 53 of 2017

Ghulam Rasool Najar

APPELLANT

Vs

State of J&K & Ors.

RESPONDENT

Date of Decision : 05-05-2017

Acts Referred:

[5988](#) Maharashtra Prevention of Dangerous Activities of Slumlords, Bootleggers, Drug Offenders and Dangerous Persons Act, 1981, [5988-3](#) Section 3(2), [5988-8](#) Section 8(1) - Power to make orders detaining certain person

Citation : 2017 0 CriLJ 3138

Hon'ble Judges : Ramalingam Sudhakar

Bench : SINGLE BENCH

Advocate : M. Tufail, Asif Maqbool

Final Decision : Allowed

Judgement

1. The instant Habeas Corpus Petition has been filed challenging the order of Detention bearing No. 237/DMB /PSA/2017 dated 21.01.2017,

contending therein that the detention is bad inasmuch the documents relied upon for the purpose of detaining the detainee under the Provisions of

the J&K Public Safety Act, 1978.

2. The detention has been slapped on the detainee on the ground that his activities are prejudicial to the maintenance of security of the State and to

ensure that he does not indulge in such activities which are prejudicial to the security of the State, provisions of Clause (a) of Section 8 of J&K

Public Safety Act, 1978 have been invoked.

3. In the grounds of detention, it is stated that the detainee is 45 year old, carpenter, working as Upper Ground Worker (OGW) with LeT outfit

and is providing logistic and other support to the militants. On 16.12.2016, the detainee was apprehended in case FIR No. 497/2016 under

section 10-13 ULA Act by police Station Sopre when he was carrying the letter pads of the LeT outfit. It is stated that the detainee is a hard core

OGW at Zaingeer area and is motivating the youth of the area towards terrorism/militancy. On the same day, on the basis of information that the

detainee along with one Waseem Ahmad was found pasting letters/pamphlets of LeT outfit. He was apprehended at Dangerpora crossing.

4. In this case, it appears that the detainee has been let out by the Court on bail on 03.01.2017.

5. Challenging the detention order, Habeas Corpus petition has been filed, inter-alia on the grounds as under:-

(i) The letter dated 21st January 2017, intimating that the detainee that he has a right to make a representation to the Government,

Home Department against the detention order as well as to the Advisory Board does not clearly states that such an opportunity has

been given to the detainee to make a representation to the Detaining Authority.

(ii) Next contention, raised is that the documents relied upon in the grounds of detention were not furnished to the detainee so he was

unable to make an effective representation.

6. The counter affidavit, filed by the respondents reveals that the detainee has been given a right to file a representation to the Government but there

is no mention that the detainee has a right to make a representation to the Detaining Authority. This issue was already considered by this Court in

HCP No. 634/2016, 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 and 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 this 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 petitioner 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 this 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, was 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 there, 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.

1. On the next issue, the original record produced and perused shows that the execution warrant states that the copies of detention order have

been handed over to the Jail Authorities to be served on the detainee. There is no reference to service of the relied upon documents. The receipt

shows nine leaves of grounds of detention but there is nothing to show that the copies of FIR relied upon in the grounds of detention have been

served on the detainee. The counter, affidavit is also silent on the documents furnished to the detainee. Therefore, on both the issues, raised,

detention order is liable to be quashed.

2. This issue of non-supply of relied upon documents was considered in HCP No.522/2016 dated 28th February 2017, wherein this Court has

observed, "" that 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 FIR registered

against the detainee are primarily the reason 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".

3. Further reliance has been placed on Paragraph Nos. 27 & 28 of the decision of the Hon"ble Supreme Court in case Titled "" Thahira Haris 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 supply the relied upon documents, continue detention of the detainee become 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 detenu at the earliest opportunity to make effective and meaningful representation against his

detention."

15. On both the aforesaid grounds, the impugned detention order is liable to be set aside. Accordingly, the Habeas Corpus petition is allowed,

detention order bearing No. 237/DMB/PSA/2017 dated 21.01.2017, is hereby quashed and the respondents are directed to release the detainee,

namely, Gh. Rasool Najar S/o Abdul Ahad Najar R/o Harwan Noor Abad Bomai, District Baramulla from preventive custody forthwith, if not

required in any other case.

16. Record is returned to learned GA in the open Court.