
(2007) 12 J&K CK 0010
In the Jammu And Kashmir High Court

Gulshad Ahmad	Vs	APPELLANT
State of Jammu & Kashmir and Others		RESPONDENT

Date of Decision : 31-12-2007

Acts Referred:

Arms Act, 1959 — Section 25, 7
Constitution of India, 1950 — Article 22

Citation : (2008) 1 JKJ 503

Hon'ble Judges : Jai Pal Singh, J

Bench : Single Bench

Final Decision : Allowed

Judgement

J.P. Singh, J.—Gulshad Ahmad Bhagwan detained u/s 8 of the Jammu and Kashmir Public Safety Act, 1978 by District Magistrate,

Kupwara vide his Order No. 33 DMK/PSA of 2006 dated 23.10.2006 has filed this petition through his father Ghulam Ali seeking quashing of

the detention order, setting him to liberty and for paying him compensation for his illegal detention.

2. Mrs. Surinder Kour, learned Counsel for the petitioner, submits that the detents had not been supplied the material which the District Magistrate

had relied upon while directing his detention In preventive custody. This omission, according to the learned Counsel, violates Section 13 of the

Jammu and Kashmir Public Safety Act, 1978, rendering petitioner's detention illegal besides being unconstitutional. She says that despite

dã@tentes being in. police custody in F.I.R No. 55/2006 registered u/s 7/25 Arms Act at Police Station Sogam, the Districts Magistrate had

procedure to issue the detention order without thorn being any compelling necessity there for. Learned Counsel submits that similar detention order

passed in respect of Tariq Ahmed Hajam has been quashed by this Court in HCP No. 536/2006 and in that view of the matter, petitioner's

detention is unjustified.

3. Mr. B.S. Salathia, Learned State Counsel, while producing the detention records, relies upon the grounds of detention to justify petitioner's

detention in preventive custody.

4. I have considered the submissions of learned Counsel for the parties and perused the records made available by the State Counsel.

5. Perusal of Order No. 33 DMK/PSA of 2006 dated 23.10.2000 indicates that,, the District Magistrate had recorded his satisfaction on the

basis of dossier and other connected documents which Superintendent of Police, Kupwara, had produced before him vide his letter No.

PROS/DET/06/2006/377-80 dated 07.10.2006.

6. The official records, however, reveal that what was supplied to the detainee was only one page document containing the grounds of detention.

7. Non-supply of the copy of F.I.R No. 55/2006, mentioned in the grounds of detention, police dossier and other connected documents relied

upon by the District Magistrate while issuing the detention order, to the detainee thus deprives him of his statutory right to make nil effective

representation against his detention because no effective representation as contemplated by Article 22(5) of the Constitution of India may be

conceived unless the material which had formed the basis for the detention of the detainee had been supplied to him.

8. Supplying of all the material relied upon by the detaining authority to the detenu is the mandate of law except, however in those case where

detaining authority, in exercise of its power u/s 13(2) of the Public Safety Act considers it against the public interest to disclose the facts, on the

basis whereof, it had proceeded to record his satisfaction.

9. No such case as contemplated by Section 13(2) of the Public Safety Act has been projected in the present case.

10. Such being the case, non-supply of material relied upon by District Magistrate to the detenu, renders his detention unsustainable being in

violation of Section 13 of the Public Safety Act.

11. Learned District Magistrate, as it so appears from the grounds of detention as also from Order No. 33 DMK/PSA of 2006 dated 23.10.2006

was aware of petitioner's being in police custody in F.I.R. No 55/2006 u/s 7/25 Arms Act, registered at Police Station Sogam. Yet without

disclosing any compelling necessity/reasons for detaining him in preventive custody, he has which cannot be justified, for the law is well settled that

the detaining authority, while issuing a detention order in respect of a person who is already in custody is required to spell out the reasons, on the

basis whereof, despite his being in police custody, his detention in preventive custody way warranted.

12. No such case has been projected by the District Magistrate nor do the records on the file indicate about the existence of any such material, on

the basis whereof, the petitioner could have been validly detained under the Jammu and Kashmir Public Safety Act.

13. That apart, perusal of the grounds of detention too indicates that the grounds are vague and ambiguous, in that, there is no reference to any

date, month or year of the activities which had been attributed to the petitioner in the grounds of detention.

14. For all what has been said above, I am constrained to hold that the learned District Magistrate had named the detention order without

application of mind and on the grounds which did not make out a case for detaining him in preventive custody. Petitioner has been deprived of his

statutory right to make an effective representation against his detention unwarranted and illegal.

15. Allowing this petition, I would, accordingly, quash Order No. 33 DMK/PSA of 2006 dated 23.10.2006 and direct the respondents to release

the petitioner-detenu from custody forthwith, if not required, in any other case.