
(2005) 09 J&K CK 0022

In the Jammu And Kashmir High Court

Case No : Habeas Corpus Petition No. 355 Of 2005

Gulzar Ahmad Wani

APPELLANT

Vs

State of J&K and Anr.

RESPONDENT

Date of Decision : 14-09-2005

Acts Referred:

Public Safety Act, 1978 — Section 13, 8

Citation : (2005) JKJ 260 Supp

Hon'ble Judges : Mansoor Ahmad Mir, J

Bench : Single Bench

Advocate : M.A.Wani, G.N.Shaheen, Advocates appearing for the Parties

Judgement

1. Subject, Gulzar Ahmad Wani, son of Ghulam Hassan Wani, resident of Nowpora, Tehsil Tral District Pulwama, through his father, Ghulam

Hassan Wani, seeks to quash the detention order bearing No. 39/DMP/PSA/04 dated 10.11.2004 passed by respondent No. 2 District

Magistrate, Pulwama in exercise of powers in terms of Section 8 of Jammu & Kashmir Public Safety Act, 1978, whereby the detainee stands

detained for a period upto 12 months and lodged in District Jail Kathua on various grounds taken in the memo of petition.

2. The respondents have filed reply and have resisted the petition. It is averred in the grounds of detention that detainee was apprehended by 42

RR on 23.10.2003 and FIR No. 170/2004 under Section 7/25 of Arms Act came to be registered. And later on the detainee was detained under

Public Safety Act in terms of order 39/DMP/PSA/04 dated 10.11.2004.

3. Considered. In terms of annexure A, i.e., impugned order, the detaining authority, District Magistrate, Pulwama has detained the detainee in

terms of Public Safety Act for a period of 12 months. It is profitable to reproduce the impugned order herein;

1. Whereas, on the basis of grounds of detention placed before me by Superintendent of Police Pulwama/Awantipora/CID CIK Srinagar vide

No: CS/D23,24 and 25/2004/413638 dated 29102004, I am satisfied that with a view to prevent Shri Gulzar Ahmad Wani S/o Gh. Hassan Wani

R/o Nowpora Tehsil Tral, District Pulwama from acting in any manner which is prejudicial to the security of the State, it is necessary so to do.

2. Now, therefore, in exercise of powers conferred by clause (a) of Section 8 of J&K Public Safety Act, 1978, I, District Magistrate, Pulwama

hereby direct that the said Shri Gulzar Ahmad Wani S/o Gh. Hassan Wani R/o Nowpora Tehsil Tral, District Pulwama be detained and lodged in

District Jail Kathua for a period upto 12 months.

4. Whether the grounds of detention were furnished by SSP, Pulwama or Awantipora or by CID CIK Srinagar is not spelled out in the impugned order.

5. It appears that the detaining authority has passed the order without application of mind and in a routine manner.

6. In terms of letter dated 10.11.2004, contained in page2 of the record, the detinue was asked to make a representation in terms of Public Safety

Act and reference has been made to the dossier 02.11.2004 but neither such communication has been referred in the impugned order nor such

communication is available on the record. This also suggests that detaining authority has passed the impugned order without application of mind. It

was for the detaining authority to inform the detinue in order to enable the detinue to make representation. Thus the detinue has been deprived of

making representation.

7. It is also averred in the petition that the grounds of detention and other material was not supplied to the detinue. There is nothing on the file

suggesting the fact that same were supplied to the detinue except a Photo stat copy of the report of serving officer which discloses that the

grounds of detention and contents of detention warrant were read over to the detinue in Urdu and Kashmiri language. It has not been explained in

which language the same have been explained to the detinue. The serving officer should have filed affidavit explaining the actual facts, but that has

not been done.

8. In *Sophia Ghulam Mohammad Bham v. State of Maharashtra and Ors.* (AIR 1999 SC.3051), the Apex Court has held as under;

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

grounds are based flows from the right given to the detenu to make 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 detenu 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

9. The Apex Court in case *Mrs. Nutan J. Patel v. S.V. Prasad and another*, reported in Crimes XII1995(4) has observed as under;

2 In relation to the detention of the detenues in Criminal Appeal Nos.850 and 915 of 1994 under PIT NDPS Act, the Madras High Court

allowed the writ petition and set aside the order of detention on the ground that the detenu was not informed of his constitutional right to make a

representation to the detaining officer and it vitiates the right guaranteed under Article 22(5) of the Constitution. The Court had upheld the above

view. It is seen that the detenu was informed on April 20, 1992 that he was at liberty to make a representation to the State Government, Central

Government and to the Advisory Board. It was asserted that he made a representation through the prison authorities to the Government of Andhra

Pradesh. In other words, from these facts, it would be clear that the detenu was not informed of his constitutional right to make a representation to

the specified Officer for reconsideration of his detention. In view of the law laid down by this Court, the failure on the part of the Specified Officer

to inform the detenu that he has a constitutional right to make representation to the Specified Officer against the order of detention, violates

Articles 22(5) of the Constitution. The order of detention gets vitiated." Apply the test to the case in hand the detention order needs to be quashed.

10. It was for the detaining authority to give compelling reasons while keeping in view the fact that detenu was already in custody in FIR No.

170/2004 under Section 7/25 of Arms Act. While going through the impugned order, the District Magistrate has not assigned compelling reasons

for detaining the detainee.

11. The Apex Court in a judgment reported in AIR 1995 SCW 1841 has held as under;

When the above principles are applied to the facts of the instant case, there is no escape from the conclusion that the impugned order cannot be

sustained. Though the grounds of detention indicate the detaining authority awareness of the fact that the detainee was in judicial custody at the time

of making the order of detention the detaining authority has not brought on record any cogent material nor furnished any cogent ground in support

of the averments made in grounds of detention that if the aforesaid Surya Prakash Sharma is released on bail he may again indulge in serious

offences causing threat to public order. To put it differently, the satisfaction of the detaining authority that the detainee might indulge in serious

offences causing threat to public order, solely on the basis of a solitary murder cannot be said to be proper and justified".

12. In another case Amrit Lal and others v. Union of India, reported in (2001)1 SCC 341, their Lordships of the Supreme Court observed;

6. The requirement as noticed above in Binod Singh case that there is likelihood of the petitioners being released on bail however is not available

in the reasoning as provided by the officer concerned. The reasoning available is the "likelihood of his moving an application for bail" which is

different from "likelihood to be released on bail". This reasoning, in our view, is not sufficient compliance with the requirements as laid down.

13. It appears that detainee was arrested on 23.10.2003 whereas the detention order has been passed on 10.11. 2004.

14. While applying the test to the instant case, the detaining authority has passed the impugned order without application of mind. Thus the

impugned order needs to be quashed.

15. Accordingly, the petition is allowed. The detention order is hereby quashed with the command to the State to release the detainee forthwith

provided he is not required in any other case. Record of the case be returned to Mr. M.A. Wani, Dy. AG.