
(2004) 04 J&K CK 0017
In the Jammu And Kashmir High Court
Case No : H.C.P. No. 122 of 2003

Haroon Majid Dhobi

APPELLANT

Vs

State of J. and K. and Another

RESPONDENT

Date of Decision : 27-04-2004

Acts Referred:

Citation : (2005) CriLJ 1055 : (2010) 4 JKJ 424

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

Bench : Single Bench

Advocate : M.A. Qayoom, for the Appellant; N.H. Shah, Dy. A.G., for the Respondent

Final Decision : Allowed

Judgement

R.C. Gandhi, J.—Petitioner seeks to quash the detention order No. DMS/PSA/28, dated 8-7-2003 passed by respondent No. 2, District

Magistrate, Srinagar, in exercise of his power u/s 8 of the Public Safety Act (hereinafter "the Act") directing preventive detention of the detenu,

Haroon Majid Dhobi s/o Abdul Majid Dhobi R/o Tankipora near D. C. Office, Srinagar, for a period of 24 months.

2. The detention order has been challenged on various grounds including that the grounds of detention have not been communicated to the detenu.

The detenu was taken in preventive custody on 13-3-2003 whereas it has been shown in the grounds of detention to have been taken in custody

on 20-3-2003 in the grounds of detention. The detenu was released on bail on 26-3-2003 which has not been noticed by the detaining authority

while arriving at the subjective satisfaction for directing preventive detention of the detenu.

3. Respondents have not filed counter-affidavit despite having granted time. Record has been produced by learned counsel for the respondents.

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

5. Mr. Qayoom, learned counsel for the petitioner has submitted that on 13-3-2003 the detenu was taken in custody from his house by some

unknown security forces operating in the area. FIR was lodged in this respect in Police Station. Shaheed Gunj, Srinagar bearing No. 25 of 13-3-

2003. Copy of the Roznamcha has been placed on record. The detenu was released on bail by Judicial Magistrate, Srinagar on 26-3-2003. In the

grounds of detention it is stated that the detenu was arrested by the police on 20-3-2003 during Naqa Checking operation at Fruit Mandi. Record

of arrest of the detenu by the security forces on 13-3-2003 and then shown on 20-3-2003 is at variance. The detention order has been passed on

8-7-2003 and on the said date, the detenu was not in the custody of the respondents.

6. The specific submission of Mr. Qayoom is that the detaining authority has not applied his mind and without application of mind has passed the

detention order, which is evident from the record, placed by him with the petition. His specific submission is that the detenu was released on bail on

26-3-2003 and on the date of issuance of detention order, i.e. 8-7-2003, the detenu was not in custody of the respondents and the detaining

authority has not made this mention in the grounds of detention which shows that the detaining authority was not aware of it, rather the detaining

authority has shown the awareness that the detenu pursuant to his arrest on 20-3-2003 was in the custody of the respondents and his remaining at

large will be threat to the security of the State.

7. The detaining authority must show awareness by application of mind particularly to the facts of the case while directing preventive detention as

by his action the liberty of a citizen is curtailed. The law enjoins upon the detaining authority to be alive to all facts and circumstances of the case

and on application of mind to all those facts and circumstances, the detaining authority has to be subjectively satisfied that the detenu is required to

be put in preventive detention. In case all the facts are not brought before the detaining authority or the detaining authority is not aware of all the

facts and circumstances, and without considering it, derives subjective

satisfaction, it amounts to non-application of mind which is a patent

incurable defect to sustain the detention order. Similar plea was before Apex Court in the case titled Anant Sakharam Raut Vs. State of

Maharashtra and Another, while dealing with this plea of the petitioner therein, the Court observed in para 5 as under :--

5. We do not think it necessary to go into all the grounds urged before us by the petitioner's counsel in support of his prayer to quash the order of

detention. The one contention strongly pressed before us by the petitioner's counsel is that the detaining authority was not made aware at the time

the detention order was made that the detenu had moved applications for bail in the three pending cases and that he was enlarged on bail on 13-1-

1986, 14-1-1986 and 15-1-1986. We have gone through the detention order carefully. There is absolutely no mention in the order about the fact

that the petitioner was an under-trial prisoner, that he was arrested in connection with the three cases, that applications for bail were pending and

that he was released on three successive days in the three cases. This indicates a total absence of application of mind on the part of detaining

authority while passing the order of detention.

8. The detaining authority must be alive to the facts attending to the case while arriving at the subjective satisfaction for directing preventive

detention. The detenu has been granted bail on 26-3-2003 and his fact appears to have not been brought to the notice of the detaining authority.

Had this been brought to the notice of the detaining authority, what would have been the subjective satisfaction, is ought to be known. Under such

circumstances the detention order cannot be maintained and is accordingly quashed, solely on the ground that the detention order suffers from non-

application of mind of the detaining authority.

9. For the aforesaid reasons, the petition is allowed. Respondents are directed to release the detenu Haroon Majid Dhobi s/o Abdul Majid Dhobi

R/o Tankipora near D. C. Office, Srinagar, from preventive detention, if not required in any other case.