

(2006) 07 J&K CK 0023
In the Jammu And Kashmir High Court

Hilal Rashid Wagay

APPELLANT

Vs

State of Jammu & Kashmir and Another

RESPONDENT

Date of Decision : 31-07-2006

Acts Referred:

Constitution of India, 1950 — Article 22

Citation : (2007) 1 JKJ 20

Hon'ble Judges : Jai Pal Singh, J

Bench : Single Bench

Judgement

J.P. Singh, J.—Hilal Rashid Wagay questions his detention, ordered vide District Magistrate, Anantnag's Order No. Det/PSA/05/95 dated

26.12.2005, urging that he has been deprived of his right to make representation against his detention because the material relied upon by the

District Magistrate in directing his detention was not supplied to him nor was it so reflected in the grounds of detention.

2. It is pleaded on behalf of the detenu by Sh. G. N. Shaheen, learned Advocate, that the detenu was already in jail at the time of his detention

and this fact had not been considered by the detaining authority. Learned Counsel submits that neither the detaining authority had any material

before him nor has he recorded any such satisfaction that the detenu was likely to indulge in activities prejudicial to the security of the State, which

omission according to the learned Counsel, renders the detention order illegal. Learned Counsel argues that the grounds of detention were stale,

remote in time besides being ambiguous, on the basis whereof, no meaningful representation could have been made by the detenu.

3. On the appearance of the respondents through their counsel, they were granted four weeks time to file counter affidavit in terms of order dated

09.05.2006. Two weeks' further last and final opportunity was granted to the respondents to file counter affidavit and it was indicated to the respondents that in case the counter affidavit was not filed, the case would be taken up for final hearing by the Court on 04.07.2006. Respondents have opted not to file any counter affidavit despite that. They have, however, produced the detention records through the State counsel at the time of hearing of this petition.

4. I have considered the submissions of learned Counsel for the parties and perused the detention records produced by Sh. M. A. Wani, Dy. AG.

5. The detention order in its opening paragraph, records that the District Magistrate had perused the material record such as dossiers and other connecting documents stated to have been produced by Superintendent of Police, Kulgam, vide his No. Pros/Dett/05/3312 dated 19.12.2005.

What were these connecting documents, which were produced by the Superintendent of Police, Kulgam, is not recorded in the grounds of detention. Neither the dossiers nor theses alleged connecting documents, on the basis whereof the District Magistrate had recorded his satisfaction for detaining the petitioner, were supplied to the petitioner. This, in my opinion, is not the requisite compliance contemplated by Section 13 of the J&K Public Safety Act, 1978.

6. All the material relied upon by the detaining authority unless, of course the one, in respect of which the detaining authority may exercise its jurisdiction, not to disclose the grounds or facts, which it may consider to be against the public interest to so disclose in terms of Section 13(2) of the J&K Public Safety Act, 1978, is required to be supplied to the detainee to facilitate him to make representation against his detention in compliance to Article 22(5) of the Constitution of India. Supplying of grounds of detention, shorn of the material, wherefrom the grounds have been culled out, will not, in my opinion, be sufficient compliance of Section 13 of the J&K Public Safety Act, 1978.

7. Records produced by Sh. M.A. Wani do not indicate that the material relied upon by the District Magistrate including dossiers and the other connecting documents were supplied to the detainee. Non-supply of the material, thus, vitiates the detention of the petitioner.

8. Yet another circumstance, which has not been explained by the respondents,

is that the petitioner-detenué was already under arrest and there was no material, muchless satisfaction of the detaining authority that the detenué despite his arrest, was likely to indulge in activities prejudicial to the security of the State. In the absence of any such material, the non-application of mind by the District Magistrate, Anantnag, becomes quite apparent.

9. For all what has been said above, the detention of the petitioner cannot be upheld as it violates Sections 8 & 13 of the J&K Public Safety Act,

1978, and is in violation of Article 22(5) of the Constitution of India. Detention Order No. Det/PSA/05/95 dated 26.12.2005 of District

Magistrate, Anantnag, is hereby quashed and a writ is issued to the respondents to release Hilal Rashid Wagay, S/O Ab. Rashid Wagay, R/o

Ganaiepora Akhran, Tehsil Kulgam, District Anantnag, from preventive custody forthwith. Release of petitioner from preventive custody will not,

however, entitle him to his release if he is under custody or required in any case for the infraction of penal law(s).

10. The detention records be handed over to Sh. M A. Wani, Dy. AG.