
(2021) 07 J&K CK 0021
In the Jammu And Kashmir High Court
Case No : Writ Petition (Crl) No. 658 Of 2019

Imtiyaz Ahmad Sheikh

APPELLANT

Vs

UT Of J&K And Another

RESPONDENT

Date of Decision : 26-07-2021

Acts Referred:

Jammu And Kashmir Public Safety Act, 1978 — Section 8(a)
Code Of Criminal Procedure, 1973 — Section 161

Citation : (2021) 07 J&K CK 0021

Hon'ble Judges : Sanjeev Kumar, J

Bench : Single Bench

Advocate : Wajid Haseeb, AsifaPadroo

Final Decision : Allowed

Judgement

Sanjeev Kumar, J

1) Imtiyaz Ahmad Sheikh (the detenué) has filed this petition through his father seeking to quash his detention ordered by the District

Magistrate, Baramulla (the Detaining Authority) vide its order No.09/DMB/PSA/2019 dated 04.07.2019.

2) By virtue of the impugned detention order passed by the Detaining Authority in exercise of the powers conferred under Clause (a) of Section 8 of

the J&K Public Safety Act, 1978 (hereinafter the Act), the petitioner has been taken in preventive custody with a view to prevent him from

acting in any manner prejudicial to the maintenance of security of the State. The impugned detention has been ordered on the basis of material

supplied by the Senior Superintendent of Police, Sopore vide his communication dated 03.05.2019. As per the grounds of detention, claimed to have

been served upon the detenué, the detenué after completion of graduation went

to Deoband (U.P.) to complete his Fazil degree. He also completed his M.A. degree from Moulana Azad University, Hyderabad. While working in Cotton Textile Company, Srinagar as manager, the detainee came in contact with local militant, namely, Reyaz Ahmad Dar resident of Naseerabad, Sopore in the month of July, 2018 at Darul-ul-Uloom. The said militant motivated the detainee to work with militants as over ground worker. On being motivated, the detainee started working as OGW and after killing of Reyaz Ahmad Dar during an encounter with the security forces, the detainee developed his contacts with the militants of JeM/LeT and started working with them. The detainee started providing food and shelter to foreign and local militants of the aforesaid organizations. The detainee also became a close associate of one foreign militant MosaBahi of Pakistan, who was sheltered by the detainee in his house. There are allegations against the detainee that he was instrumental in strengthening militant activities in Sopore area.

3) Keeping in view the prejudicial activities of the detainee he was apprehended by the police on 17.04.2019 along with other associates during a naka checking at Takyabal Crossing, Sopore. On the disclosure made by the detainee, two UBGL Grenades were recovered from MET, Sopore ground near PWD building. In this regard an FIR No.29/2019 was registered in Police Station, Tarzoo. The petitioner was arrested in the aforesaid FIR and while he was in custody and on remand, it was comprehended that he could succeed in getting bail from the Court and on being enlarged he will again indulge in militancy related activities prejudicial to the security of State. The Detaining Authority, thus, arrived at the satisfaction that it was necessary to place the petitioner in preventive detention with a view to preventing him from indulging in activities prejudicial to the security of the State.

4) The impugned detention order is assailed by the petitioner inter alia on the ground that while the petitioner was in custody of the respondents having been arrested in case FIR No.29/2019 registered in Police Station, Tarzoo, yet the detention order passed by the Detaining Authority on 4th July, 2019 was executed and the petitioner taken in preventive custody only on 27.11.2019. There is, thus, unexplained delay of more than four months in execution of the impugned detention order and placing of the petitioner in preventive custody. Reliance in this regard is placed by the learned counsel

for the petitioner on a three-Judge Bench judgment of the Supreme Court in KPM Basheer v. State of Karnataka and another, AIR 1992 SC 1353.

5) Learned counsel for the petitioner also urges that the impugned order would not sustain for the reason that the relevant record viz. dossier supplied

by the police, copy of the FIR, site plan, seizure memo, arrest memo, discloser memo and statements recorded under Section 161 Cr.P.C. was not

provided to the petitioner, which prevented him from making an effective representation to the Government against his preventive detention.

6) Having heard learned counsel for the parties and perused the record, I am of the view that the impugned order of detention is not sustainable in law

and, therefore, deserves to be quashed.

7) Admittedly, pursuant to the material supplied by the Senior Superintendent of Police, Sopore vide his communication dated 03.05.2019, the

impugned detention order was passed by the Detaining Authority on 04.07.2019. There is admittedly a delay of two months in passing the order. Even

if, we ignore this delay, the respondents, in particular the Detaining Authority, has not explained the delay of more than four months in executing the

impugned order of detention, more so, when the detenue was already in custody of the respondents having been arrested in FIR No.29/2019. This

unexplained delay of more than four months vitiates the impugned order of detention.

8) The observations of the Supreme Court made in paragraph No.15 of the judgment in the case of Adishwar Jain v. Union of India and another,

(2006) 11 SCC 339 are noteworthy and are reproduced hereunder: -

â??15. Delay, as is well known, at both stages has to be explained. The court is required to consider the question having regard to the overall picture.

We may notice that in Sk. Serajul v. State of West Bengal [(1975) 2 SCC 78], this Court opined:

There was thus delay at both stages and this delay, unless satisfactorily explained, would throw considerable doubt on the genuineness of the

subjective satisfaction of the District Magistrate, Burdwan recited in the order of detention. It would be reasonable to assume that if the District

Magistrate of Burdwan was really and genuinely satisfied after proper application of mind to the materials before him that it was necessary to detain

the petitioner with a view to preventing him from acting in a prejudicial manner,

he would have acted with greater promptitude both in making the order of detention as also in securing the arrest of the petitioner, and the petitioner would not have been allowed to remain at large for such a long period of time to carry on his nefarious activities...

9) From the judgment aforesaid, more particularly the observations made in paragraph No.15, it is abundantly clear that the delay at both stages has to be explained and unless this delay is satisfactorily explained, it will throw considerable doubt on the genuineness of the subjective satisfaction derived by the Detaining Authority. Delay, whether it is in making the detention order or it pertains to its execution, both are required to be satisfactorily explained. To the similar effect is the legal position summed up in para 11 of the judgment in KPM Basheer (supra). For ready reference, para 11 of the judgment is reproduced hereunder: -

11. Under these circumstances, we are of the view that the order of detention cannot be sustained since the 'live and proximate link' between the grounds of detention and the purpose of detention is snapped on account of the undue and unreasonable delay in securing the appellant/detenu and detaining him. As we have now come to the conclusion that the order of detention is liable to be set aside on this ground alone we are not dealing with other contentions raised in the Memorandum of Appeal as well as in the writ petition.

10) In the instant case, though, very detailed reply affidavit has been filed by the Detaining Authority, yet no attempt seems to have been made to explain the delay of two months in passing the order of detention and more than four months in executing the impugned order of detention. The petitioner was all along in the custody of the respondents. He was arrested in FIR No.29/2019 and was on remand when the order of detention was made and had not been released on bail or otherwise when the detention order was executed. The judgments referred to herein above support the contention of the learned counsel for the petitioner and render the order impugned bad in the eye of law.

11) Since the ground on which the order of detention is rendered unsustainable goes to the legitimacy of the subjective satisfaction of the Detaining Authority and, therefore, this Court need not dwell and consider other grounds of challenge urged by the petitioner.

12) For the foregoing reasons, this petition is allowed, the impugned order of detention is quashed. The respondents are directed to release the

petitioner from preventive custody forthwith, provided he is not required in any other case.

13) Detention record be returned back to the learned counsel for the respondents.