
(2011) 12 J&K CK 0022
In the Jammu And Kashmir High Court
Case No : HCP No. 46 of 2011

Irshad Ahmed

APPELLANT

Vs

State of Jammu & Kashmir and Others

RESPONDENT

Date of Decision : 15-12-2011

Acts Referred:

Constitution of India, 1950 — Article 22(5)

Citation : (2012) CriLJ 4031 : (2011) 4 JKJ 294

Hon'ble Judges : Hasnain Massodi, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Hasnain Massodi, Judge

1. Challenge to order No. DMK/PSA/41-47/2011 dated 14.05.2011, of District Magistrate, Kishtwar-respondent No. 2 herein, whereby one

Shri Irshad Ahmed son of Ghulam Mustaffa Akhoon resident of Village Lidri Pinjrari Dachhan Tehsil Marwah District Kishtwar (herein after

referred to as ""detenue"" has been placed under preventive detention, must succeed for following reasons:

1. Article 22(5) Constitution of India provides a precious and valuable right to a person detained under preventive detention law-J&K Public

Safety Act 1978, to make a representation against his detention. It needs no emphasis that a detenue, on whom preventive detention order is

slapped, is held in custody without a formal charge and trial. The detenue is held in custody on a mere suspicion that his apprehended activities may

be prejudicial to the maintenance of public order or security of the State. Article 22(5), Constitution of India and Section 13 of the Act, thus make

it obligatory for Detaining Authority to provide detainee an earliest opportunity of making an effective and meaningful representation against his detention. The object is to enable detainee to convince Detaining Authority and Government, as the case may be, that all apprehensions regarding his activities are grossly misplaced and his detention is unwarranted. To make the Constitutional and Statutory right available to detainee meaningful, it is necessary that detainee be informed with all possible clarity what is/are apprehended activity/ies that persuaded Detaining Authority to make detention order. In case grounds of detention are vague, ambiguous and confusing, the detainee cannot be expected to make a representation against his detention. In the instant case the detainee is alleged to be OGW of ""HM"" outfit. The words/expressions like ""OGW"" and ""HM"", are too vague to make the detainee aware of the exact accusation levelled against him. The detaining authority has not to work on assumptions and presumptions that whatever acronyms it is aware of must be necessarily known to the detainee. In the instant case the detainee is alleged to have closed association with ""Subash @ Wasif and ""Amir Kamal @ Akram"". The detainee was not provided the particulars of ""Subash @ Wasif and Amir Kamal @ Akram"", and the detainee thus has been prevented from explaining that the detainee had nothing to do with ""Subash @ Wasif' and Amir Kamal @ Akram. The detainee, in absence of such details, could not be expected to have been in a position to give his side of story and persuade the detaining authority and other respondents that the allegations against the detainee were bereft of any basis. The grounds of detention that constitute basis for the detention order in question are ambiguous, vague, uncertain and hazy. A person of ordinary prudence would not be in a position to explain his stand in reply to the grounds of detention detailed by the detaining authority. The detainee has been kept guessing about the facts and events that weighed with the detaining authority and prompted detaining authority to record subjective satisfaction regarding sufficiency of the material to warrant preventive detention of the detainee. These are only few instances to illustrate that the grounds of detention are vague and ambiguous and bound to keep the detainee guessing about what really was intended to be conveyed by the detaining authority. It is well settled law that even where one of the grounds relied upon by the Detaining Authority to order detention is vague and ambiguous, Constitutional and Statutory

right of the detainee to make a representation against his detention are taken to have been violated. Reference in this regard may be made to Dr.

Ram Krishan Bhardwaj Vs. The State of Delhi and Others, ; Chaju Ram Vs. The State of Jammu and Kashmir, ; Mohd. Yousuf Rather Vs. State

of Jammu and Kashmir and Others, ; and Syed Aasiya Indrabi v. State of J&K and others (SLJ 2009 (I) 219, (2009 (3) JKJ 707 [HC])).

2. The Constitutional and Statutory safeguards, guaranteed to a person detained under preventive detention law, are meaningless unless and until

the detainee is made aware of and furnished all the material that weighed with the detaining authority while making detention order. In the instant

case, grounds of detention as well as detention order in question make mention of case-FIR No. 242/2010 u/s 363/120B RPC, 13/18ULA Act,

Police Station Kishtwar, to have been registered against the detainee. The involvement of detainee in the aforementioned case appears to have

heavily weighed with detaining authority while making detention order. The detention record reveals that none of the documents referred to in the

detention order was ever supplied to detainee. The endorsement on the reverse of the detention order made by the Executing Officer-SI Rajeev

Kumar of P/S Kishtwar, at the time of execution of detention order does not make a reference to the documents in question and does not record

that such documents were supplied to detainee at the time of execution of detention order or immediately thereafter. The detention record does not

indicate that copies of aforementioned First Information Report, statements recorded u/s 161 Cr.P.C. and other material collected in connection

with investigation of aforesaid case, were ever supplied to detainee. The material, mentioned above, thus assumes significance in the facts and

circumstances of the case. It needs no emphasis that the detainee cannot be expected to make a meaningful exercise of his Constitutional and

Statutory rights guaranteed under Article 22 (5), Constitution of India and Section 13, J&K Public Safety Act, 1978, unless and until the material

on which the detention order is based, is supplied to detainee. It is only after the detainee has all said material available, that the detainee can make

an effort to convince Detaining Authority and thereafter Government that their apprehension as regards activities of detainee are baseless and

misplaced. If the detainee is not supplied material, on which detention order is based, the detainee cannot be in a position to make an effective

representation against his detention order. The failure on the part of Detaining Authority to supply material relied at the time of making detention

order to detainee, renders detention order illegal and unsustainable. While holding so, I draw support from *Dhananjay Das Vs. District Magistrate,*

Darrang and Another, ; Sophia Gulam Mohd. Bham Vs. State of Maharashtra and Others, ; Union of India (UOI) Vs. Ranu Bhandari, ; Syed

Aasiya Indrabi v. State of Jammu and Kashmir and Others (S.L.J. 2009 (I) 219, 2009 (3) JKL 707 [HC]); and Tahira Haris etc. Vs.

Government of Karnataka and Others, .

2. Viewed thus, the petition is allowed and detention order No. DMK/PS/41-47/2011 dated 14.05.2011, passed by the District Magistrate,

Kishtwar-respondent No. 2, directing detention of Shri Irshad Ahmed son of Ghulain Mustaffa Akhoon resident of Village Lidri Pinjrari Dachhan

Tehsil Marwah District Kishtwar, quashed.

3. The respondents, in view of quashing of detention order, are stripped of any authority to detain the detainee under order No. DMK7PSA/41-

47/2011 dated 14.05.2011. Resultantly, the respondents are directed to release the detainee from preventive detention, ordered vide order No.

DMK/PSA/41-47/2011 dated 14.05.2011.

4. Detention record be returned to the counsel for respondents. Disposed of.