

(2011) 02 J&K CK 0004

In the Jammu And Kashmir High Court

Case No : HCP No. 320 of 2010 and CMP No. 134 of 2010

Jahangeer Ahmad Dar

APPELLANT

Vs

State of Jammu & Kashmir and others

RESPONDENT

Date of Decision : 28-02-2011

Acts Referred:

Constitution of India, 1950 — Article 22(5)
Jammu and Kashmir Public Safety Act, 1978 — Section 13

Citation : (2011) 02 J&K CK 0004

Hon'ble Judges : Hasnain Massodi, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Hasnain Massodi, Judge

1. Challenge in this petition is to order No. 16/DMK/PSA/010 dated 26th August 2010, of District Magistrate, Kulgam respondent No. 2 herein,

whereby one Shri Jahangeer Ahmad Dar son of Mohd Yousuf Dar resident of Frisal Tehsil and District Kulgam(herein after referred to as

detenue) has been placed under preventive detention and his lodgment directed in District Jail Kathua.

2. The preventive detention of the detenue is questioned on the grounds that the respondents while detaining the detenue have violated his

Constitutional and Statutory rights guaranteed under Article 22(5), Constitution of India and Section 13, J&K Public Safety Act 1978.

3. The respondents have, in their counter affidavit, disputed the averments made in the petition. The detention order is said to have been approved

by State Advisory Board and also by the Government vide No. Home/PB-V/2427/2010 dated 21.10.2010.

4. Heard, perused and considered.

5. The detention order is liable to be quashed for the following reasons

1. The respondent No. 2 has, at the very threshold, ordered detention of detainee for a period of 12 months. The respondent No. 2 a senior officer

in the State Administration, is expected to be aware that the detention order made u/s 8(1) of J&K Public Safety Act read with Sub Section (1) is

to survive in terms of Section 8 (4) of J&K Public Safety Act, 1978, for a period of 12 days, unless within said period detention order finds

approval of the Government. The respondent No. 2 by placing the detainee under preventive detention for a period of 12 months in one go has not

only overstepped his authority and trespassed over the powers of Government but closed all doors for detainee to make a representation against

preventive detention. It needs no emphasis that a detainee, under Article 22(5) Constitution of India and Section 13 of the J&K Public Safety Act,

has a valuable right to make a representation against his detention to the Detaining Authority, immediately after the detention is made and thereafter

to the Government. The detainee has a right to convince the Detaining Authority that the activities attributed to him and apprehended by the

Authority are devoid of any substance; that the detainee is a peace loving citizen and there is no reason to suspect that his acts of omission and

commission in any manner are prejudicial and detrimental to the security of the State. Once the Detaining Authority orders detention for 12 months,

the detainee would be right in nursing an apprehension that the whole matter has been prejudged and there is no use in making a representation

against his preventive detention. The illegality committed is bound to dissuade the detainee from making use of an important Constitutional and

Statutory right. The Detaining Authority, by deciding on the period of detention at the initial stage, has violated Constitutional and Statutory rights of

the detainee guaranteed under Article 22, Constitution of India and Section 13, J&K Public Safety Act.

2. It is pertinent to point out that the Detaining Authority intriguingly has referred to the grounds of detention to have been prepared by

Superintendent of Police, Kulgam, and placed before the Detaining Authority. The Detaining Authority may get inputs from different agencies,

including Senior Superintendent of Police of the concerned District. Responsibility

to formulate grounds of detention, however, rests with the Detaining Authority. It is Detaining Authority, who has to go through the reports and other inputs received by him from concerned police and other agencies and on such perusal arrive at a subjective satisfaction that the subject is to be placed under preventive detention. It is thus for the Detaining Authority to formulate grounds of detention and satisfy itself that grounds of detention so formulated warrant passing of preventive detention. The detention order, for the said reasons, exhibits total non-application of mind by the detaining authority. The detention order is liable to be quashed on this ground alone.

3. 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. The detention record reveals that none of the documents referred to in the detention order was ever supplied to the detainee. The endorsement on the reverse of the detention order made by the Executing Officer ' Parvaiz Ahmed SI No. 7833/ NGO P/S Yaripora Kulgam, 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 grounds of detention make reference to case ' FIR No. 75/2010 u/s 307 RPC, 7/27 A. Act; and FIR No. 79/2010 u/s 7/25 A. Act, 10/18 ULA(P) Act at P/S Yaripora, to have been registered against detainee. It appears that the said case(s) have weighed with respondent No. 2, at the time detention order in question was made. Copies of First Information Report(s), statement(s) recorded u/s 161 Cr.P.C. and other material collected in connection with investigation of aforesaid case(s) has not been furnished to detainee. It is pertinent to point out that the respondent No. 2 in grounds of detention, after detailing the background, in which aforesaid cases were registered against detainee, proceeds to opine It is manifest from factual position as at pre-para that your activities are highly prejudicial to the security of the state'... The material, mentioned above, thus assumes significance in the facts and circumstances of the case. The respondents in their counter affidavit have not controverted the plea that the said material was

not furnished to detainee. The material, mentioned above, thus assumes significance in the facts and circumstances of the case. The respondents, in their counter affidavit, have not controverted the plea that the said material was not furnished to detainee. The detention record reveals that none of the documents referred to in the detention order was supplied to the detainee. 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) of the Constitution of India and Section 13 of Jammu and Kashmir Public Safety Act, 1978, unless and until the material on which the detention order is based, is supplied to the 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 the 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 versus State of Jammu and Kashmir and Others* (2009 (I) S.L.J. 219); and *Thahira Haris etc. Vs. Government of Karnataka and Others*, .

4. 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 detainee, on whom preventive detention order is slapped, is held in custody without a formal charge and a trial. The detainee 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) of the Constitution 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 the 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 his 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.

6. In the instant case the detainee is alleged to be affiliated with HM outfit and thereafter collected and transported the arms/ ammunition from one Bilal Ahmad, who exfiltrated to PAK. The detainee is not informed with sufficient clarity the organization with which the detainee is allegedly affiliated. The word/ expression like HM, PAK, MRM, and FORES is too vague to make the detainee aware of the exact accusation(s) leveled 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 detainee. The reference to the activities of HM is rendered meaningless in view of non-description of the organization with which the detainee is alleged to be affiliated. The detainee is alleged to have delivered the arms consignment to different couriers/militants. But the detainee has not been furnished the particulars of couriers/militants, to whom the detainee is alleged to have delivered arms consignment nor the seizure memo, vide which the alleged recoveries were made. The counter affidavit as also detention record, do not reveal that the detainee is furnished the necessary details of occurrence(s) attributed to him and his unnamed and unidentified accomplices. The detainee, in absence of such details, could not be expected to have been in a position to give his side of the story and persuade detaining authority that the allegations against the detainee were bereft of any basis. To sum up, the grounds of detention that constitute basis for 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 detaining authority. The detainee has been kept guessing about the facts and events that weighed with the respondent No. 2 and prompted the respondent No. 2 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 Versus The State of Delhi and others, AIR, 1953,,; Chaju Ram Vs. The State of Jammu and Kashmir, ; Mohd. Yousuf Rather Vs. State of Jammu and Kashmir and Others, ; and Syed Aasiya Indrabi Versus State of J&K and others, 2009 (I) SLJ 219.

7. Viewed thus, the petition is allowed and detention order No. 16/ DMK/PSA/010 dated 26th August 2010, passed by the District Magistrate,

Kulgam respondent No. 2, directing detention of Shri Jahangeer Ahmad Dar son of Mohd Yousuf Dar resident of Frisal Tehsil and District

Kulgam, quashed. The respondents in view of quashment of detention order are stripped of any authority to detain the detainee under order No.

16/DMK/PSA/010 dated 26th August 2010. Resultantly, the respondents are directed to release the detainee from preventive detention, ordered

under order No. 16/DMK/PSA/010 dated 26th August 2010.

8. Detention record be returned to the counsel for respondents.

9. Disposed of with connected CMP.