
(2011) 08 J&K CK 0038
In the Jammu And Kashmir High Court
Case No : HCP No. 162 of 2011

Jahangir Ahmad Malla

APPELLANT

Vs

State of Jammu & Kashmir and others

RESPONDENT

Date of Decision : 24-08-2011

Acts Referred:

Arms Act, 1959 — Section 25, 7

Citation : (2011) 08 J&K CK 0038

Hon'ble Judges : Hasnain Massodi, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Hasnain Massodi, Judge

1. Challenge to order No. 159/DMB/PSA/10 dated 21.12.2010, of District Magistrate, Baramulla respondent No. 2 herein, whereby one Shri

Jahangir Ahmad Malla son of Nazir Ahmad Malla resident of Botingoo Sopore Tehsil Sopore District Baramulla (herein after referred to as

'detenue') has been placed under preventive detention, must succeed for following reasons:

The respondent No. 2 has intriguingly mentioned that 'on the basis of grounds of detention placed before me', the detenue is placed under

preventive detention to prevent him from acting in any manner prejudicial to the security of the State. The Detaining Authority may get inputs from

different agencies including 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.

2. The grounds of detention make reference to case - FIR No. 559/2010 u/s 7/25 A. Act at Police Station Sopore, to have been registered against

the detainee. The involvement of detainee in the aforementioned case appears to have heavily 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 detainee. The

endorsement on the reverse of the detention order made by the Executing Officer Shri Bashir Ahmad ASI No. 19/PC of Police Station Sopore, 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 cases, were ever supplied to detainee. It is pertinent to point out that the detaining authority, in grounds of detention after detailing

background in which aforesaid case was registered against detainee, proceeds to opine. 'It is manifest from factual position as at pre-pares(pre-

paras) that your activities are highly pre-judicial to the maintenance of public order'. 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) 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 (S.L.J. 2009 (I) 219)*; and *Thahira*

Haris etc. Vs. Government of Karnataka and Others, .

3. Article 22(5) of Constitution 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), 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.

4. In the instant case the detainee is alleged to be strong hard core 'HM' militant. The word/expression like 'HM', is 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. The reference

to the activities of 'HM' outfit is rendered meaningless in view of non-description of organization with which the detainee is alleged to be associated. To sum up, 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 respondent No. 2. The detainee has been kept guessing about the facts and events that weighed with respondent No. 2 and prompted 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 2009 219.

5. The Detaining Authority respondent No. 2 did not inform the detainee that the detainee, independent of his right to file representation against his detention to the Government, has also a right to submit a representation to the Detaining Authority till the detention was considered by the Government and the Government accorded its approval to the detention. The respondent No. 2 has thus violated Constitutional and Statutory rights of the detainee, guaranteed under Article 22(5) of the Constitution of India and Section 13 of J&K Public Safety Act. It would be apt to make a reference in this regard to the law laid down in State of Maharashtra and Others Vs. Santosh Shankar Acharya, .

6. Viewed thus, the petition is allowed and detention order No. 159/ DMB/PSA/10 dated 21.12.2010, passed by the District Magistrate, Baramulla respondent No. 2, directing detention of Shri Jahangir Ahmad Malla son of Nazir Ahmad Malla resident of Botingoo Sopore Tehsil

Sopore District Baramulla, quashed.

7. The respondents, in view of quashment of detention order, are stripped of any authority to detain the detainee under order No. 159/

DMB/PSA/10 dated 21.12.2010. Resultantly, the respondents are directed to release the detainee from preventive detention, ordered vide order

No. 159/DMB/PSA/10 dated 21.12.2010.

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

Disposed of.