
(2008) 02 J&K CK 0029
In the Jammu And Kashmir High Court

Javed Iqbal

APPELLANT

Vs

State and Others

RESPONDENT

Date of Decision : 28-02-2008

Acts Referred:

Penal Code, 1860 (IPC) — Section 120B
Unlawful Activities (Prevention) Act, 1967 — Section 13, 18

Citation : (2008) 2 JKJ 44

Hon'ble Judges : J.P. Singh, J

Bench : Single Bench

Final Decision : Allowed

Judgement

J.P. Singh, J.—Javed Iqbal has filed this petition through his father, seeking quashing of District Magistrate Jammu's order No. 03/PSA of

2007 dated 23.6.2007 besides a direction to the respondents to pay him Rs. Two lacs as compensation for his illegal detention.

2. Learned Counsel appearing for the petitioner submits that despite quashing of petitioner's earlier detention order No. 09/PSA of 2006 dated

24.5.2006 issued by District Magistrate Jammu by this Court on 18.5.2007, the petitioner was not released from custody and was rather taken in

custody by Police Station Joint Interrogation Centre Jammu in FIR No. 1 of 2007 under Sections 18 of Unlawful Activities (Prevention) Act

120B, and Section 121 RPC. While he was in custody with the police, the District Magistrate issued yet another order for his preventive detention.

The grounds on the basis whereof this second detention order had been issued, while reiterating all the earlier grounds, added an additional ground

in the grounds of detention, which course, according to learned Counsel, was impermissible, in that neither was there any material justifying

petitioner's detention on the additional ground, and nor was any material or this additional ground even supplied to the petitioner, facilitating him to exercise his right to make an effective representation against his detention.

3. Learned Counsel relies on Kshetra Gogoi Vs. The State of Assam, , and Amritlal and Ors. v. Union Government and Ors. reported as (2001)

1 SCC 341 to support his submission besides a judgment of this Court in case jatinder Singh Sirolia v. State and Ors. reported as 2007(1) J&K 586 (HC).

4. Mr. Salathia, learned State counsel, submitted that the detention of the petitioner was justified in view of his activities which had been noticed during the period of his earlier detention, he submitted that there was enough material on records to justify the petitioner's detention for his activities which were prejudicial to the security of the State.

5. During the course of hearing of this petition, petitioner's counsel had not raised any plea regarding payment of compensation to the petitioner for his alleged illegal detention.

6. I have gone through the detention records and the judgments cited by learned Counsel for the petitioner.

7. Before considering the submission made by learned Counsel for the petitioner, reference needs to be made to the additional ground on which the petitioner was detained for the second time. This ground reads thus:

You were earlier detained under Public Safety Act. The detention order has been quashed by the Hon'ble High Court on technical grounds but as

per reports received even during your detention period you constantly involved in hatching conspiracies with other jailed militants of banned outfit

as well as those outside the jail premises to keep the pot of subversive and disruptive activities boiling. Presently you have been arrested in case

FIR No. 1/2007 P/S -JIC, Jammu.

In view of the above mentioned considerations as well as your contacts, association and activities, it is evident that you are working for terrorist

and facilitating their anti-national activities in the State thereby endangering the security of the State, You are Co-ordinating between terrorist of

different outfits in transaction of money and carrying messages of one terrorist to another. You have also used to arrange/supply a number of SIMs

for militant cadres (Local as well foreigners) and pass on sensitive information's to the terrorists as and when required. As such, your activities are highly detrimental to the security of the State. Though at the moment, you are in custody, but in the event of your release on bail or otherwise you are likely to revive your anti-national activities in future also which will pose a serious threat to the security of the State. Hence, in view of your antecedent activities, it is imperative to deter you from indulging in such anti national activities which are highly detrimental and prejudicial to the security of the State in present scenario, therefore, in order to prevent you from such anti national activities which are highly prejudicial to the security of the State. You Javed Iqbal S/o Makhna Gujjar R/o Thuroo Slukh, Tehsil Mahore, District Reasi are hereby ordered to be detained under the Provisions of J&K Public Safety Act, 1978.

8. Perusal of the additional ground of detention demonstrates that the allegations appearing in the additional ground are vague, in that, particulars of the reports, which are stated to have been received during the period of petitioner's detention have not been mentioned in the grounds of detention and likewise there is no mention as to with whom and in what respect the petitioner had been hatching conspiracy to keep the pot of subversive and disruptive activities boiling. The additional ground is significantly silent about the particulars and names of the contacts with whom the petitioner is stated to have been in touch with during his alleged working for terrorists and facilitating the anti-national activities in the State. This vague allegation, in my opinion, does not furnish sufficient material to a person detained on these grounds to effectively exercise his Constitutional right to making a meaningful representation against his detention.

9. Effective representation cannot be contemplated on the basis of vague and ambiguous grounds of detention, for the detinue is required to be apprised of the material on the basis whereof these grounds had been drawn. He is further required to be supplied the material on the basis whereof these grounds had been pressed into service for his detention.

10. The detention records do not contain any material on the basis whereof it may be said that petitioner had been supplied the material on the basis whereof these vague grounds had been drawn by the learned District Magistrate. The detention of the petitioner on these vague grounds

must, therefore, fail. I am supported in taking this view by Kshetra Gogol's case (Supra), where, while dealing with a similar situation, Hon'ble

Supreme Court of India held as follows:

In the present case, we have compared the grounds of detention served in pursuance of the order dated 28th August, 1969, with the grounds of

detention which were served on the petitioner in pursuance of the second detention order dated 29th August, 1968, and we find that the two are

identical, except that two small paragraphs have been added when serving the grounds of detention in respect of the detention order dated 28th

August, 1969. These paragraphs are as follows:

That though in preventive custody, he has been maintaining links with Shah Syed Hussain and other associates, who went underground in

Nagaland, through his friends and relatives. Shah Syed Hussain and his gang since received some arms and explosives from Naga rebels for

committing acts of sabotage and creating large-scale disturbances, particularly in the plains areas along Assam-Nagaland border.

That, in the circumstances, Shri Kshetra Gogai's being at large will jeopardise the security of the State and the maintenance of public order in this

region.

The first one of these two paragraphs is the only one that purports to mention some ground in addition to the grounds which were included

amongst the grounds which were the basis of the order dated 29th August, 1968. We have found it very difficult to appreciate how a person in

preventive custody could continue to maintain links with his associates outside jail who had gone underground even through his friends and

relatives. If the present petitioner was able to maintain such links, it casts a sad reflection on the persons in charge of him while he was in custody

and, in any case, it would appear that his detention could serve no useful purpose. It appears to us to be, in fact, very doubtful whether any such,

contacts could possibly have been maintained. However, even if we accept that such links were maintained, this additional ground mentioned does

not satisfy the requirements of Section 13(2) of the Act, because the only allegation is that the links were maintained during the period of preventive

detention. u/s 13(2) what is required is that fresh facts should have arisen after the expiry of the previous detention. Facts arising during the period

of detention are, therefore, not relevant when applying the provisions of Section 13(2). In the present case, the fresh order was passed on 28th

August 1969, a day before the expiry, and it is obvious that no fresh facts could by that date arise and yet be held to have arisen after the date of

expiry. The order dated 28th August, 1969 was therefore, not at all justified u/s 13(2) of the Act and that order being in violation of the provisions

of the Act has to be held to be invalid, so that the detention under that order is illegal.

11. In view of the judgment of Hon'ble Supreme Court of India and this Court's judgment in Jetinder Singh Sirohi's case, dealing with the similar

question, the detention of the petitioner cannot be justified.

12. I would, accordingly, while allowing this petition, quash Order No. 03/PSA of 2007 dated 23.6.2007 of Learned District Magistrate, Jammu.

13. A direction shall, accordingly, issue to the respondents to set Javed Iqbal Son of Makhana resident of Thuroo Sulkh Tehsil Mahore District

Reasi, to liberty forthwith in case lie is not involved in any other case'

14. Detention Records be returned to the State Counsel.