

(2011) 08 J&K CK 0036
In the Jammu And Kashmir High Court
Case No : HCP No. 238 of 2011

Manzoor Ahmad Lone

APPELLANT

Vs

State of Jammu & Kashmir and others

RESPONDENT

Date of Decision : 25-08-2011

Acts Referred:

Constitution of India, 1950 — Article 22(5)

Citation : (2011) 08 J&K CK 0036

Hon'ble Judges : Hasnain Massodi, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Hasnain Massodi, Judge

1. Challenge to order No. 08-DMK/PSA/2011 dated 30.05.2011, of District Magistrate, Kulgam respondent No. 2 herein, whereby one Shri

Manzoor Ahmad Lone son of Mohd Maqbool Lone resident of Razloo Kund Tehsil & District Kulgam (herein after referred to as 'detenue') has

been placed under preventive detention, must succeed for following reasons:

The detaining authority has intriguingly referred to the grounds of detention to have been prepared by Superintendent of Police Kulgam and placed

before him. 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 the 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. 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 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.

3. In the instant case the detainee is alleged to be 'OGW' of 'OGW' Network. The words/expressions like 'OGW', 'PAK', 'POK' 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. The detainee is also alleged to have provided

logistic support to the militants to carry out subversive activities. The militants, to whom logistic support was being allegedly provided by the

detainee, are not identified nor their identity disclosed. It was incumbent upon the detaining authority to give adequate information regarding identity

of militants, with whom the detainee was alleged to have associated to indulge in

subversive activities. 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 respondent No. 2 and other respondents that the allegations against the detainee were bereft of any basis. 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 the 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.

4. 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 right to submit a representation to the Detaining Authority till the detention was considered by the Government and accorded approval. The respondent No. 2 has in effect 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. Reference in this regard may be made to the law laid down in State of Maharashtra and Others Vs. Santosh Shankar Acharya, .

5. Viewed thus, the petition is allowed and detention order No. 08-DMK/PSA/2011 dated 30.05.2011, passed by the District Magistrate, Kulgam respondent No. 2, directing detention of Shri Manzoor Ahmad Lone son

of Mohd Maqbool Lone resident of Razloo Kund Tehsil &
District Kulgam, quashed.

6. The respondents, in view of quashment of detention order, are stripped of any authority to detain the detainee under order No. 08-

DMK/PSA/2011 dated 30.05.2011. Resultantly, the respondents are directed to release the detainee from preventive detention, ordered vide
order No. 08-DMK/PSA/2011 dated 30.05.2011.

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

8. Disposed of.