

(2002) 06 J&K CK 0001
In the Jammu And Kashmir High Court
Case No : H.C.P. No. 194/2001

Mohamad Shaffi Sheikh

APPELLANT

Vs

State

RESPONDENT

Date of Decision : 11-06-2002

Acts Referred:

Jammu and Kashmir Criminal Procedure Code, 1989 — Section 161
Public Safety Act, 1978 — Section 13

Citation : (2002) KashLJ 740

Hon'ble Judges : Syed Bashir-Ud-Din, J

Bench : Single Bench

Advocate : R.Q.Gadda, G.N.Shaheen, Advocates appearing for the Parties

Judgement

1. While the subject Mohd. Shafi was in punitive detention detaining authority respondent No. 2 District Magistrate Baramulla passed order No.

77/2000 dated 1732001 under section 8 of the Jammu and Kashmir Public Safety Act 1978 ordering his preventive detention with a view to

prevent him from acting in any manner prejudicial to the security of the State. This order is under challenge in this Habeas Corp. us Petition.

2. Petitioner's Ld. counsel Shri G.N. Shaheen, confines challenge to the order on the grounds pleaded in clause (d) and (e) of para 2 of the

petition. The counsel contends that the detenu who has just read up to 8th standard knows only Urdu and Kashmiri language and is not conversant

with English language. English is not intelligible to him. He was neither provided any translated copy or transcription of the grounds in the language

which he understood, nor was same explained to him in Urdu or Kashmiri, thereby he was prejudiced in making representation against the order.

3. Second, though the subject has been shown involved in number of cases

registered at different Police Stations, copies of FIRs, statements

recorded under Section 161 Cr. P.C., etc in these cases have not been supplied to him, thereby he was prejudiced to make the representation.

4. The Government Advocate Mr. R.Q. Gadda, while contesting the submission of the petitioner's counsel submits his arguments in line with the

averments of counter filed by the detaining authority, District Magistrate Baramulla. Petitioner was communicated order and the grounds of

detention in the language which he understood. Receipt was obtained from him and the detenu has acknowledged receipt thereof with the

endorsement that he fully understood the same and was informed of his right of representation.

5. In *Rustum Wani V. State of J&K & anr*, LPA(HC) No. 57/2001, the Division Bench of this Court in its judgment dated 28/2/2001 observed :

...Now the question arises that whether non supply of copy of grounds of detention in the language which is understood by him would make any

difference because the detenu is an illiterate person. In our view, since admittedly, the detenu is an illiterate person, instead of supplying copy of

the grounds of detention if it is explained properly and fully in the language understood by him, would be the sufficient compliance of the mandate of

Article 22 (5) of the Constitution.

6. He further submits that so far as the FIRs are concerned, they have been referred in the order with a view to show that the detaining authority is

not only aware of arrest/involvement of detenu in substantive offences, but also to give the background facts leading to the detention in question.

7. Perusal of the counter shows that the subject detenu is allegedly a trained militant of Hizbul Muhahideen and is involved in militant activities. He

took active part in subversive activities and the 3 FIRs registered against the detenu are instances of his deep involvement in terrorist

activities. He is not only involved in motivating the youths to impart training, but has also taken part in operation against the security forces. He is

involved in terrorist arms acts, and ammunition, have been recovered from him. It was in this background that the detaining authority got a feel that

the detenu may succeed to arrange bail in the FIRs and thereby come out of the punitive detention & his remaining at large would be

prejudicial/detrimental to the security of the State. The record shows that the

detaining authority while supplying the whole information and grounds to the detainee, has explained same to him in the language which he understood, namely kashmiri/Urdu language. Detenue has even personally appeared before the Advisory Board constituted under the Jammu and Kashmir Public Safety Act. Detenue has executed receipt of his being supplied copy of the order as also the grounds and the same being read over and explained to him. In the facts and circumstances of the case, detenue cannot be said to be prejudiced on the count. Besides, it is also seen that the detenu's involvement in FIRs 264/97 registered at Police Station Bandipora, 10/2001 registered at Police Station Bandipora and FIR 20/2000 registered at Police Station Baramulla also finds reference with clarity in grounds. Besides, the require relevant details thereof are also given in the grounds. The Government Advocate has rightly submitted that the FIRs are meant for activating the criminal law process, of which the detainee is fully and well, aware. In the facts and circumstances of the case, the detainee cannot be said to be prejudiced by nonsupply of FIRs. Petitioner cannot be said to be prejudiced by nonsupply of the statements recorded under Section 161 Cr. P.C., when the detainee knows fully well the incriminatory proceedings against him and also the FIRs in which he is involved, with recoveries of arms and ammunition.

8. In *Kamarunnissa vs. Union of India*, reported in AIR 1991 SC : 1640, the following observation of the Supreme Court applies on all fours to this case.

...it is not sufficient to say that the detainee were not supplied the copies of the documents in time on demand but it must be shown that the nonsupply has impaired the detenu's right to make effective and purposeful representation. Demand of any or every document, however, irrelevant it may be for the concerned detainee, merely on the ground that there is a reference thereto, in the grounds of detention cannot vitiate an otherwise legal detention order. No hard and fast rule can be laid down in this behalf but what is essential is that the detainee must show that the failure to supply the documents before the meeting of the Advisory Board had impaired or prejudiced his right, however, slight or insignificant it may be. In the present case, except stating that the documents were not supplied before the meeting of the Advisory Board, there is no pleading

that it had resulted in the impairment of his right nor could counsel for the petitioner point out any such prejudice.

9. In result, for the aforesaid reasons, the petition is not merited and therefore in that view of the matter, dismissed. Record shall be handedover to

Mr. R.Q. Gadda, against proper receipt.