

(2021) 03 J&K CK 0042

In the Jammu And Kashmir High Court

Case No : Letters Patent Appeal No. 128 Of 2020

Mohammad Abass Bhat

APPELLANT

Vs

State Of J&K And Others

RESPONDENT

Date of Decision : 16-03-2021

Acts Referred:

Jammu And Kashmir. Public Safety Act, 1978 — Section 8(A), 10A, 13
Jammu And Kashmir State Ranbir Penal Code, 1989 — Section 120B, 302, 364
Unlawful Activities (Prevention) Act, 1967 — Section 13, 16, 18, 19, 39
Arms Act, 1959 — Section 7, 27

Citation : (2021) 03 J&K CK 0042

Hon'ble Judges : Rajnesh Oswal, J;Dhiraj Singh Thakur, J

Bench : Division Bench

Advocate : Mukhtar Ahmad Makroo, Asifa Padroo, Afroza Hassan

Final Decision : Dismissed

Judgement

1. The instant Letters Patent Appeal (LPA) has been preferred against the judgment and order dated 10th September, 2020, whereby the petition, challenging the order of detention dated 4th July 2019, has been dismissed.

2. Briefly stated, the detailed facts are as under:-

3. That the District Magistrate, Kulgam, in exercise of powers vested in him under Section 8 (A) of the Jammu and Kashmir Public Safety Act, 1978, (for short "Act"), ordered the detention of Mohammad Abass Bhat S/O, Ghulam Mohammad Bhat, R/O, Arreh, District Kulgam, the appellant herein, with a view to prevent him from acting in any manner prejudicial to the sovereignty and security of the State.

4. The allegations as emerge from the grounds of detention are that the appellant was a member of Harkat-ul-Mujahideen terrorist outfit since 2002 and was an over ground worker for the said terrorist outfit. The appellant is stated to have been apprehended by the security forces in Surankoot Poonch, while

attempting to cross the Line of Actual Control (LoC) for obtaining illegal arms training but was released after sometime.

It was alleged that the appellant/detenu started a normal life for livelihood but started working yet again for the banned terrorist organization by way of providing logistic support for carrying their illegal activities. The appellant is also said to have been providing support for management and distribution of funds, identification of sympathizers and their motivation to work for terrorists.

It is further alleged that the appellant was involved in FIR No. 177/2018, Under Section 364,302,120-B, RPC, 13,16,18,19, 39 ULA (P) Act, 7/27 Arms Act, registered with Police Station Kulgam.

It is also alleged that one Sheeraz Ahmad Bhat had been kidnapped on gunpoint on 27th October, 2018, with an intention to kill him and that an encounter subsequently ensued, leading to the elimination of 03 terrorists and in connection whereof, FIR No. 177/2018, was registered in Police Station, Kulgam. It is also stated that during course of investigation it transpired that the terrorists had murdered the said Sheeraz Ahmad Bhat, after brutally torturing him with the help of appellant/detenu and other over ground workers of the banned terrorist outfit, JeM. It was on the basis of the above said material that the District Magistrate, Kulgam, after being satisfied had ordered the detention of the appellant.

5. The order of detention was challenged before the Single Bench of this Court in WP (Crl) No.234/2019, which was dismissed, vide judgment dated 10th September, 2020, hence the present LPA.

6. One of the grounds on which the judgment and order impugned has been questioned is that the learned Single Judge had failed to notice that there was a blatant violation of the provisions of Section 13 of the Act inasmuch as the grounds of detention had not been communicated to the appellant/detenu within the prescribed 05 days period.

7. Section 13 of the Act, envisages that when a person is detained in pursuance of a detention order, the authority making the order shall, as soon as may be, but ordinarily not later than 05 days in exceptional circumstances and for reasons to be recorded in writing, not later than ten days from the date of detention, communicate to the detenu, the grounds on which the order has been made, and shall afford him the earliest opportunity of making a representation against the order to the Government.

8. The argument of learned counsel for the appellant was that order of detention was passed on 4th July, 2019 and that same was executed on 10th July 2019, and there was, thus, a delay of one day in communication of the grounds of detention to the appellant/detenu. It was also urged that since no reason had been expressed in writing for the purposes of explaining the delay of one day in communication of grounds of detention, the order was unsustainable in law,

being contrary to the mandate of Section 13 of the Act.

9. From the record, it transpires that the District Magistrate, Kulgam, vide his communication No. DMK/JC/2019-20/68-74 dated 4th July, 2019, informed the appellant that he had been detained vide order dated 4th July, 2019, and that in terms of provisions of Section 13 of the Act, he was informed that the appellant could make a representation either to the detaining authority or to the Government against the order of detention.

10. Admittedly, the order of detention was executed on 10th July, 2019, on which date, as per the execution report on record, the grounds of detention and other material had been served upon the appellant/ detenu. In addition to this, the same was read over the detenu/appellant in English and explained him in Kashmiri language which he understood fully and appended his signature thereto reflected execution report.

11. It thus becomes clear that the relevant material including the grounds of detention had been communicated to the appellant/detenu on the date of execution of the order itself and thus it cannot be inferred that there was any delay muchless delay of one day in communicating to him the grounds of detention.

12. The second ground urged was that the order of detention suffered from non-application of mind inasmuch as the appellant had been ordered to be released on bail by the Trial Court vide order dated 24th June 2019, which fact was not brought to the knowledge of the detaining authority, reflecting total non-application of mind.

This factual assertion is found to have been made in the petition, filed by the appellant/detenu before the learned Single Judge, but not specifically denied by the respondents in their response. In case there was any order passed by the Trial court on 24th June 2019, in FIR No.177/2018, of Police Station, Kulgam, in the ordinary course, that fact ought to have been brought to the notice of detaining authority to show its awareness regarding all material facts with a view to enable the detaining authority to take a conscious decision.

In the ordinary course this would have been sufficient to quash the order of detention.

At this stage, it may be worthwhile to refer to the majority view of the Apex Court in *Vijay Narayan vs. State of Bihar*, 1984 (3) SCC-14. In paragraph 32 of the judgment, the Court observed as follows:-

"When a person is enlarged on bail by a competent criminal court, great caution should be exercised in scrutinising the validity of an order of preventive detention which is based on the very same charge which is to be tried by the criminal court."

13. However, on a perusal of the grounds of detention, it can be seen that the

order of detention was not based only upon the involvement of the appellant in FIR No.177/2018, for which appellant had obtained bail, but it can be seen from the grounds of detention that the appellant was also found to have been involved in providing logistic support to the terrorists and was stated to have been actively involved in management and distribution of funds, identification of sympathizers and their motivation for terrorist activities in the area. This would constitute an independent ground for detention of the appellant.

14. In the present case while the order of bail was obtained by the appellant/ detenu in FIR No.177/2018, vide order dated 24th June 2019, passed by the court below, yet in our opinion, the detention order could still be sustained on other grounds which found mention in the grounds of detention, independent of FIR No. 177/2018, of Police Station, Kulgam, when tested on the touchstone of section 10-A of the Act.

15. For the reasons discussed hereinabove, we cannot persuade ourselves to reach a conclusion different from the one which has been expressed by the learned Single Judge. The order of detention is, valid and cannot be interfered with. The appeal, is accordingly, dismissed.

16. Record produced by the respondents be remitted back.