
(2011) 09 J&K CK 0014
In the Jammu And Kashmir High Court
Case No : HCP No. 230 of 2011

Mohammad Ahsan Lone

APPELLANT

Vs

State of Jammu & Kashmir and others

RESPONDENT

Date of Decision : 29-09-2011

Acts Referred:

Ranbir Penal Code, 1989 — Section 153

Citation : (2011) 09 J&K CK 0014

Hon'ble Judges : Hasnain Massodi, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Honble Mr. Justice Hasnain Massodi

1. Challenge to order No. 03/DMB/PSA/2011 dated 21.04.2011, of District Magistrate, Baramulla respondent No. 2 herein, whereby one Shri

Mohd Ahsan son of Wali Mohd resident of Nadihal Tehsil Sopore District Baramulla (herein after referred to as 'detenue') has been placed under

preventive detention, must succeed for following reasons:

The Detaining Authority 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. 06/2011 u/s under section 10 C.L. A. Act, 13 U.L. Act and 153 RPC of Police

Station Panzalla, to have been registered against the detainee. The involvement of detainee in the aforementioned case appears to have heavily

weighed with 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 ' HC Abdul Majeed

No. 19/Spr of Police Station Panzalla, 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 Reports, statements recorded u/s 161 Cr.P.C. and other material

collected in connection with investigation of aforesaid cases, were ever supplied to detainee. 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 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 the detainee to convince the 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 worker of 'LeT' outfit. The words/expressions like 'JEI' and 'LOC' are too vague to make the

detainee aware of the exact accusations 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 alleged to have been in contact with 'Abdullah Uni', of

LeT outfit. The detainee was not provided the particulars of 'Abdullah Uni' and the detainee thus has been prevented from explaining that the

detainee had nothing to do with 'Abdullah Uni'. The detainee is also alleged to have been providing logistic support and information about movement

of police/security forces to the militants. The grounds of detention as also detention record do not reveal that the identification of militants, to whom the logistic help and information regarding movement of police/security forces was being allegedly provided/transmitted by the detainee, has been disclosed to detainee. The detainee along with his associates is also alleged to be responsible for motivating the local youths to join militancy. The detainee is not informed with sufficient clarity the exact allegations levelled and furnished the particulars of his associates as also youths, who are stated to have been motivated by the detainee and his unidentified associates to join the militancy. 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 the detaining authority 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 detaining authority. The detainee has been kept guessing about the facts and events that weighed with detaining authority and prompted him 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. Viewed thus, the petition is allowed and detention order No. 03/ DMB/ PSA/2011 dated 21.04.2011, passed by the District Magistrate, Baramulla ' respondent No. 2, directing detention of Shri Mohd Ahsan son of Wali Mohd resident of Nadihal Tehsil Sopore District Baramulla,

quashed.

6. The respondents, in view of quashment of detention order, are stripped of any authority to detain the detainee under order No. 03/

DMB/PSA/2011 dated 21.04.2011. Resultantly, the respondents are directed to release the detainee from preventive detention, ordered vide

order No. 03/DMB/PSA/2011 dated 21.04.2011.

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

Disposed of.