
(2010) 04 J&K CK 0048
In the Jammu And Kashmir High Court

Mohammad Yaseen Bohru	Vs	APPELLANT
State and Others		RESPONDENT

Date of Decision : 30-04-2010

Acts Referred:

Arms Act, 1959 — Section 25, 7
Constitution of India, 1950 — Article 22

Citation : (2010) 2 JKJ 648

Hon'ble Judges : Hasnain Massodi, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Hasnain Massodi, J.—Challenge is to order No. DMR/PSA of 2009/21 dated 17.3.2009 whereby the District Magistrate Ramban -

respondent No. 2 herein has ordered preventive detention of Sh. Mohammad Yaseen Bohru Son of Mohammad Ibrahim Bohru Resident of

Village Tabella, Chamalvas Tehsil Banihal District Ramban (herein after referred to as ""detenue"") and directed him to be lodged at Central Jail

Kotbalwal Jammu.

2. The detention order is assailed on the grounds that the order is not in accordance with law and procedure laid down under Public Safety Act,

1978; that the respondent No. 2 has not supplied the relevant material and documents to the detenue on the basis of which detention order has

been made and in absence of such material/documents the detenue has been deprived of his right to make a representation to the Government

against his detention. It is averred, that the detention order exhibits non-application of mind on the part of Detaining Authority in as much as the

detenue was said to have been keen to get the bail in case FIR 09/2009 u/s

121/122 RPC, 7/25 Arms Act, little realizing that the material appended to the grounds of detention was order of Learned JMJC Batoate rejecting the bail application and thus the likelihood of detainee getting bail was misplaced. It is also averred, that the grounds of detention are vague and general in nature again depriving the detainee of making a representation against the detention order.

3. The respondents 2 and 3 in their Counter Affidavits have refuted the grounds pleaded in the petition and insisted that the detainee was not only an active worker of LET terrorist outfit but was also engaged in inciting dissatisfaction amongst the masses, and the Government of Jammu and Kashmir established by law. The detainee is said to have plunged into militancy way back in the year 1990 and thereafter continued with militant activities till the detainee was arrested in connection with case FIR 09/2009 Police Station Batoate u/s 7/25 Arms Act, 121/122 RPC. The Counter Affidavits however, do not deal with the specific averments as regards non-supply of material, vagueness and ambiguity of the grounds of detention.

4. Heard and Considered.

5. A closer look on the grounds of challenge set out in the petition against the back drop of detention record made available by Learned Senior Additional Advocate General as also the material on the file lead to the inescapable conclusion that the detention order has been made and given effect to in violation of Constitutional and statutory safeguards laid down in Article 22(5) Constitution of India and Section 13 of Jammu and Kashmir Public Safety Act, 1978. The challenge to the detention order is thus to succeed on the following grounds:

1. The detention order makes mention of "material record" such as Dossier and "other connected documents" relied upon by the Detaining Authority while making the detention order. The detention order also make reference to a communication received from Senior Superintendent of Police Ramban vide No. CB/09/PSA/1358 dated 16th March 2009. The detention record reveals that none of the documents referred to in the detention order were ever supplied to the detainee. The endorsement on the reverse of the detention order made by the Executing Officer Sh.

Ratan Singh No. 7787/NGO Police Station Ramban, 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 the detainee at the time of execution of detention order or immediately thereafter. The grounds of detention make a reference to case FIR No. 09/2009 to have been registered against the detainee. The involvement of the detainee in aforementioned case appears to have primarily weighed with the Detaining Authority while making the detention order. The record does not indicate that copy of the aforementioned FIR or material collected during investigation of the said case was ever supplied to the detainee. It needs no emphasis, that the detainee can 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 then the detainee can make an effort to convince the Detaining Authority and thereafter the Government that their apprehension as regards activities of the detainee are baseless and misplaced, If the detainee is not supplied the material on which the detention order is edified the detainee can not be in a position to make an effective representation against his detention order. The failure on the part of Detaining Authority to supply, the material relied at the time of making the detention order to the detainee renders the 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 v. State of Jammu and Kashmir and Ors.* 2009 (I) S.L.J 219; and *Thahira Haris etc. Vs. Government of Karnataka and Others*, .

2. The Detaining Authority in order to make Constitutional and statutory right to file representation against the detention order meaningful and effective for the detainee, is expected to spell out grounds of detention with utmost clarity, so that the detainee is aware of the factors that lead the Detaining Authority to arrive at a subjective satisfaction that the apprehended activities of the detainee warranted the detainee be placed under preventive detention so that he was rendered incapacitated from acting in a

manner prejudicial to the security of the state or public order, If the grounds of detention are vague and unspecific the detainee indisputably is deprived of making an effective representation against the detention order. In the present case the detainee is alleged to have been a "trusted, dedicated and devoted" OGW militant of LET outfit. This does not tell the detainee any thing not what was meant by OGW or what the alphabet LET stood for. The detainee is informed that he "always incites disaffection amongst masses and against the Government" and that he is "hell-bent to strike terror amongst masses" without being informed of the details of the attributed activities i.e. when and how did the detainee "incite disaffection amongst masses" or was "hell-bent upon to strike terror amongst masses". Again the detainee is informed that he is providing information regarding movement of the security force in Ramban district without telling him what, when and to whom did he transmit such information. The detainee is alleged to have allowed the militants of various Organizations to stay at his residence and to have planed with such militants to target security forces and plant IED on National Highway. The detainee is not made aware of the names and other details of the militants whom he allowed to stay at his residence and when they were allowed to stay at his residence and what installations were intended to be targeted. 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 amongst various grounds of detention is vague and ambiguous, the detention order is bound to be set aside. A reference in this regard may be made to Dr. Ram Krishan v. The State of Delhi and Ors. 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 v. State of J&K and Ors. 2009 (I) SLJ 2009 219.

3. The Detaining Authority - respondent No. 2 otherwise 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 approved. 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, .

6. In the circumstances the petition is allowed and the detention order No. DMR/PSA/09 dated 17.03.2009, passed by the respondent No. 2,

directing preventive detention of Mohammad Yaseen Bohru Aged 37 Son of Mohammad Ibrahim Bohru Resident of Village Tabella, Chamalvas

Tehsil Banihal District Ramban, is quashed. Resultantly, the detenue is directed to be let off, unless of course the detenue is required in any other

case(s), justifying his continued custody/detention.