
(2016) 05 J&K CK 0013
In the Jammu And Kashmir High Court
Case No : HC No. 34 of 2016

Mohd. Ayoub Sheikh

APPELLANT

Vs

State of J&K

RESPONDENT

Date of Decision : 10-05-2016

Acts Referred:

Jammu and Kashmir Public Safety Act, 1978 — Section 8

Citation : (2016) 4 JKJ 103

Hon'ble Judges : Mr. Mohammad Yaqoob Mir, J.

Bench : Single Bench

Advocate : Mr. Allaudin Ganai, Advocate, for the Appellant/Petitioner; Mr. Asif, GA, for the Respondent

Final Decision : Allowed

Judgement

Mr. Mohammad Yaqoob Mir, J. (Oral) - Pursuant to Order No. 22/DMS/PSA/16, dated 16-02-2016, passed by the District Magistrate,

Shopian, detenue has been detained in view of his activities being prejudicial to the security, integrity, peace and tranquility of the State. The said

order has been confirmed by the Government as is clear from the Govt. Order No. Home/PB-V/144 of 2016, dated 26-02-2016. Period of

detention has been fixed as six months in the first instance. Petitioner seeks quashment of the said order of detention.

2. The first ground projected by the learned counsel for the petitioner is that the order of detention smacks non-application of mind. His submission

carries weight because in the initial order of detention, it has been recorded that the activities of the detenue were prejudicial to the security,

integrity, peace and tranquility of the state. Same position is reflected in the ground of detention. In the counter affidavit as filed, at para 5, it has

been stated that the activities of the detainee have been recorded in the ground of detention and the same were highly prejudicial to the preservation

of public order and his remaining at large would have caused more damages to the public property and public order. In order to curb his activities,

the detainee was detained under the provisions of the Jammu and Kashmir Public Safety Act, 1978.

3. Lucid language of Section 8(1)(a) of the Public Safety Act, 1978 is that the authority has to be satisfied that the activities of a person are such

which are prejudicial to the security of the State or the maintenance of the public order. Learned detaining authority without looking into purport of

the Act and the phraseology used has passed the order totally in a confused state of mind.

4. It appears that the basic difference between the two positions i.e. security of the State or the maintenance of the public order has not been

noticed. The non-application of the mind is further supported by the material available on the record of the detaining authority. The detainee is

shown to have been involved in the offence in the year 2012 for which the case has been registered as FIR No. 219/2012, Police Station Shopian

under Sections 147, 148, 149, 307, 336, 436 RPC. If thereafter, detainee would have been involved in any type of unwarranted activities, then

report would have been lodged anywhere in the police, no such report is lodged against the petitioner after the year 2012, thereby suggesting that

the conduct of the petitioner is good.

5. For passing the order of detention, there should have been something available on the record attributable to the petitioner for the period 2012 to

year 2016, as the order of detention has been passed in the year 2016. When there is no case registered against the petitioner, how could the

activities of the detainee be treated as prejudicial to the security of the state or even to the maintenance of the public order.

6. The second ground projected by the learned counsel for the petitioner is that the District Magistrate, has simply relied on the dossier as was

placed before him by the Senior Superintendent of Police, Shopian and same has been styled as ground of detention with small variation of words

here and there.

7. The learned Magistrate was required to be satisfied on to whether petitioner

was involved in the activities prejudicial to the security of the State or to the maintenance of the public order.

8. There can be no leniency viz-a-viz persons who are threat to the security of the State or to the public order, such persons are required to be dealt with iron hand. Preventive action, should not appear to be punitive.

9. The sole objective of the preventive order is to deter a person from indulging in activities which shall be prejudicial to the security of the state or to the maintenance of the public order or to other situation as are made mention of in section 8 of the Public Safety Act, 1978.

10. To detain a person is to curb his liberty which is permissible but. only when reasonable grounds are available. Otherwise it offends the

guarantee to liberty which is safeguarded by the Constitution itself If' from the year 2012 to 2016, no activities are attributable to the petitioner then

what could be the cause for his detention at least police or CID agencies or other agencies should have placed something on the record which

would persuade that the detention was imperative.

11. Some other grounds projected by the learned counsel for the petitioner are not required to be looked into because on the aforesaid grounds as dealt with the order of detention does not survive, as such is set aside.

12. Petition succeeds as indicated above.

13. Detenue is directed to be released provided he is not involved in any other case.

14. The detention record be returned to learned GA.