
(1984) 06 J&K CK 0002
In the Jammu And Kashmir High Court

Mohd. Hafeez

APPELLANT

Vs

State of J. and K. and Others

RESPONDENT

Date of Decision : 11-06-1984

Acts Referred:

Constitution of India, 1950 — Article 22

Citation : (1985) CriLJ 1344

Hon'ble Judges : M.L. Bhat, J

Bench : Single Bench

Judgement

M.L. Bhat, J.—On 2-6-1984 while setting aside the order of detention of the detenu, I could not give reasons for the said order due to

paucity of time. Now, I proceed to give the reasons in support of my said order:

2. The detenu Mohammad Hafeez son of Sher Mohammad r/o Dharana Police Station Mendhar was detained on 13-10-1983 by District

Magistrate, Jammu, u/s 8 of the J. & K. Public Safety Act of 1978. The grounds of detention supplied to the detenu contained in Annexure A to

the petition are enumerated as under:

1. That in the last week of March 1981 you persuaded and motivated one Babu Lal working in Ammunition point Mendhar to procure documents

containing secret information regarding the arms and ammunition and promised him handsome rewards in lieu thereof. You persuaded the said

Babu Lal on the persuasion of one Fakkar Mate, a Pak Agent, and agreed to work as a courier between Babu Lal and Fakkar Mate.

2. That in the 1st week of April 1981, you collected documents from the said Babu Lal and handed them over to Fakkar Mate who in turn

managed to send these documents across the border to the Pak intelligence.

These documents were within your knowledge containing information regarding arms and ammunition.

3. That in the 1st week of May 1981 you procured some more documents from the said Babu Lal and gave them to one Kaka Gujjar who in turn paid Rs. 70/- as remuneration charges.

4. That in 2nd week of July 1981, you again collected documents from Babu Lal and handed over the same to Fakkar Mate who in turn passed on the documents to Pak FIU.

5. That in the 2nd week of March 1982 you took Babu Lal to the residence of Fakkar Mate wherefrom he was taken across where you along with Babu Lal were introduced to Sub. Razak and one Capt. Feter of Pak security.

6. In the month of Aug. 1982 you again sent documents collected from Babu Lal to Pak FIU through Fakkar Mate.

7. That in the month of Jan. 1983 you contacted Babu Lal at Nowshara while he had been transferred from Mendhar and asked him to arrange documents for Pak FIU. During the course of investigation of the case you were arrested and later released on bail.

3. Regarding ground No. 1 it is said by the detaining authority that in the last week of March the detenu had persuaded and motivated one Babu

Lal working in ammunition point Mandhar to procure documents containing secret information regarding the arms and ammunition and had

promised him handsome reward in lieu thereof. It is also alleged that the detenu introduced Shri Babu Lal to one Fakkar Mate, a Pak agent and

himself agreed to be a courier between said Babu Lal and Fakkar Mate. It was contended by the learned Counsel for the petitioner that this

ground of detention was vague and the detenu was prevented to make effective representation against his detention. The vagueness according to

the learned Counsel, is because of absence of date in the last week of March 1981. It should have been pointed out by the detaining authority

specifically as to on what date the detenu had persuaded and motivated Babu Lal and on what date he had acted as a courier between Babu Lal

and Fakkar Mate, a Pak agent. It is further contended that under Article 22(5) of the Constitution as applicable to the State of Jammu and

Kashmir, it is the fundamental right of the detenu to get an opportunity for making a representation against his detention order. The representation

which the detenu chooses to make must be effective and in order to make an effective representation he must be given full details about the date

and of the incidents so that he is able to exercise his right properly. On the basis of vague ground, it is Contended that the detenu was prevented

from making an effective representation.

4. Along with ground No. 1 the learned Counsel for the petitioner has contended before me that the other grounds of detention are also vague

inasmuch as no date is given and only week and the month are mentioned. More serious challenge was made to ground No. 7 which reveals that in

the month of January 1983 the detenu had contacted one Babu Lal at Nowshera where he had been transferred from Mendhar and asked him to

arrange documents for Pak FIU. During the course of investigation of the case the detenu was arrested and later was released on bail. This ground

of detention of the petitioner is also challenged on the ground of vagueness as it has prevented the detenu from making an effective representation

under Article 22(5), of the Constitution and therefore he could not be detained for acting in a manner which is detrimental to the security of the

State.

5. I take grounds Nos. 1 and 7 first. In my opinion ground No. 7 is vague as it also does not disclose the exact date in the last week of March

1981 when the detenu is stated to have persuaded and motivated one Babu Lal to procure documents containing secret information regarding the

arms and ammunition etc. and on what date the detenu had agreed to work as a courier between Babu Lal and Fakkar Mate. Non-disclosure of

exact dates, in my opinion, must have prevented the detenu from making the effective representation against his detention order and this amounts to

denial of an opportunity to the detenu. The fundamental right guaranteed to the detenu provided him an opportunity for making an effective

representation in the instant case is denied to the detenu as he is not told the exact date of his indulging in the acts which are alleged to be

detrimental to the security of the State. It has been held by this Court in *Latifa Misgar v. State of J. & K.* reported in 1977 J. & K. LR 402 : 1978

Cri LJ 93 that vagueness in the grounds of detention might prevent a detenu from making an effective representation and that will amount to

denying him an opportunity of making a representation against the order of

detention. The representation must not be casual but it is to be effective and if there is any vagueness in the grounds of detention, the detenu is bound to be misled and he is denied an opportunity of making an effective representation. The law relating to the detention is to be guided by a set procedure. That procedure is required to be followed by the detaining authority rigorously. Any departure from the procedure will make the detention bad and benefit of such a departure is to be given to the detenu.

Assuming that other grounds do not suffer from vagueness but if one ground is vague, the entire detention order would become bad. In *Prabhu*

Dayal Deorah Vs. The District Magistrate, Kamrup and Others, the Supreme Court has sounded a note of caution in the following words (Para 67):

That when a certain procedure is prescribed by the Constitution or the laws for depriving a citizen of his personal liberty, we think it our duty to see that that procedure is rigorously observed, however, strange this might sound to some ears.

6. In the scale of values personal liberty is more precious than social security. In the name of social security there cannot be subversion of liberty.

An honest attempt on the part of the Detaining Authority to secure maintenance of peace of the State is likely to be frustrated because of non-

compliance with the procedure established by law. There is no scope for the Detaining Authority to deviate from the rigour of procedure. Ground

No. 1, therefore, is held by me to be vague and has prevented the detenu from making an effective representation which amounts to denial of

affording him an opportunity of making a representation in terms of Article 22(5) of the Constitution as applicable to the State of Jammu and

Kashmir.

7. As regards ground No. 7 the Detaining Authority has said that investigation was conducted regarding the incident with which the detenu is said

to be connected along with one Babu Lal in the month of Jan. 1983 and during the course of investigation the detenu is said to have been arrested

and later on released on bail. This ground of detention also suffers from the vice of vagueness. In the first place it is not known as to on what date

in the month of January 1983 the detenu had contacted Babu Lal for arranging documents for Pak FIU as is alleged and on what date investigation

was held and when was the detenu arrested and released on bail. Under what section of the Ranbir Penal Code or any other law the detenu was arrested is also not known. What were the reasons given by the Magistrate granting bail to the detenu are also not known. I am of the opinion that this ground of detention must have positively misled the detenu from making an effective representation against the detention order as opportunity to make an effective representation against the detention order has, therefore been denied to the detenu I am fortified on my view by a decision of the Supreme Court given in Ajit Kumar Kaviraj Vs. District Magistrate, Birbhum and Another, . The Supreme Court has held that if the detenu is unable to make an effective representation it affects his fundamental rights with the grounds which do not suffer from any under Article 22(5) because grounds of detention vagueness the whole detention order is to being since the detenu succeeds on account of the two grounds only, therefore validity of other grounds may not be this ground being vague, it reveals that the Detaining Authority has not applied its mind and the ground of detention framed against the detenu is without the application of mind. The Detaining Authority had to say that notwithstanding FIR and investigation conducted in pursuance thereof, detention order was essential. If the said investigation had culminated into a trial it was incumbent upon the District Magistrate to say that the purpose of Section 8 of the J. & K. Safety Act will not be served by trying the accused in the criminal case about which investigation is said to have been conducted. This omission on the part of the Detaining Authority may appear technical but it seriously affects the detention order as it reveals that the detaining authority has omitted to apply its mind and has not considered the implications of criminal case being pending against the detenu and investigation having been conducted in the said case. Therefore, I declare this ground also to be vague and to have been framed without the application of mind.

8. About other grounds of detention it is also submitted by the learned Counsel for the petitioner that they are also vague and lack in material particulars. I need not consider this submission of the learned Counsel because I have already held two of the seven grounds enumerated in the grounds of detention as vague and framed without application of mind. Therefore/ even if it is argued for the sake of arguments, that the other

grounds are valid, that will not make the detention order valid because when the vague grounds are mixed supplied to him were vague and

uncertain. It is necessary, therefore, that the grounds of detention which are supplied to the detenu must be unambiguous, giving full particulars as

regards date and occurrence which will facilitate him making an effective representation in order to satisfy the detaining authority that the order is

unfounded or invalid Neither the FIR number is given in this ground of detention nor any other particular furnished about the investigation which is

stated to have been conducted by the police and as a consequence of which the detenu is said to have been arrested and later released on bail.

Whether the said case is pending trial or. has been concluded is also not known. Besides considered because the detention order is to be set aside

even if the other grounds are held to be valid.

9. Before parting with this case, I would like to put it on record that the petition was filed in the court on 25-11-1983 and since then it has been

hanging fire in the court. Counter was filed on behalf of the respondents on 3-5-1984 and the disposal of the petition was delayed for one reason

or the other to the detriment of the detenu. The Registry will in future give top priority to such petitions which concern the liberty of a citizen and the

citizens who contend that their detention is bad must be heard on top priority and at least they must have the satisfaction that their case was

considered by this Court.

10. For the reasons mentioned above, I hold that the detention of the detenu is to be set aside and the impugned order of detention passed by

District Magistrate, Jammu, on 13-10-1983 against the petitioner is set aside.