
(2003) 04 J&K CK 0018
In the Jammu And Kashmir High Court
Case No : HCP No. 117 of 2002

Mohd. Iqbal Sheikh

APPELLANT

Vs

State of Jammu & Kashmir

RESPONDENT

Date of Decision : 29-04-2003

Acts Referred:

Jammu and Kashmir Public Safety Act, 1978 — Section 8

Citation : (2003) 3 JKJ 534

Hon'ble Judges : Syed Bashir-Ud-Din, J

Bench : Single Bench

Advocate : Mir Shafaqat, for the Appellant; Tasaduq Khawaja, GA, for the Respondent

Judgement

Syed Bashir-Ud-Din, J.—The subject Mohd. Iqbal Sheikh has been detained u/s 8 of J&K P.S.Act, 1978 by District Magistrate, Srinagar

(Respondent No. 2) under his order No. DMS/PSA/37 dated 28.12.2001. This order and consequent detention is under challenge in this petition.

Counter filed by the detaining authority is on file.

2. Ld. Counsel for the petitioner Mr. Mir Shafaqat confines his submission only to two grounds notwithstanding number of grounds he has taken to

challenge the detention. First the counsel submits that the order of detention was passed on 28.12.01 when the detenu was facing trial in sessions

case No. 37/4th before 4th Additional District & Session Judge, Srinagar (in FIR No. 147/01 of P/SKhanyar). The subject was given bail by the

trial court on 29.11.2001. While on bail the above detention order was passed. Detenu was taken in preventive detention pursuant to the

impugned order on 28.12.02 as even admitted by the detaining authority in para two of the counter on record. In grounds of detention the

detaining authority has stated that the detenu is in custody in the said FIR and may get bail and his being at large is threat to the security of State

and therefore in conjunction with other circumstances the order of detention is clamped on the subject. The counsel further submits that this

statement in the grounds is false and not true, in as much as, the detenu was already on bail and enjoying his freedom when the detention order was

passed. This circumstance decisively shows that the detention order is vitiated, for non-application of mind.

2. Next the counsel contends that the respondents have taken at least one month to implement the order of detention when the detenu was

regularly attending the trial in the said FIR before 4th Additional District & Session Judge, Srinagar and was easily available for being taken in

custody. Even so there is no explanation or reason in the counter as to why detenu was not taken into preventive custody all along during this

period. It again speaks of non-application of mind and the cavalier attitude on the part of concerned to show that the detention has been ordered in

routine when the proximate and live link between the order and the purpose of detention is wholly missing.

3. Mr. Tasaduq Khamja, GA submits that looking to the record of the case and the counter filed by the detaining authority,

It is true that the detention order has been passed on 28.12.01 I/when the detenu was on bail in FIR No. 147/01 of P/S Khanyar and there is no

mention about this circumstance in the grounds, rather in the grounds, it is stated that the detenu is continuing in punitive detention in oblivion of the

above facts on record. But even so Mr. Khawaja submits that the other grounds are there which the court may consider for sustenance of the

detention order. In reply to other raised contention the Ld. Counsel submits that it is born by record that the detenu has been taken in punitive

detention on 28.1.02 after the detention order was passed on 28.12.01 . However, counsel submits that after passing of the order it was referred

for approval to the Govt. and also placed before the Advisory Board constituted u/s 14 of the P.S.Act. The process took some time and after the

action was approved and the board also confirmed the order and detention, subject was taken in custody, therefore, there is no explanation and no

intentional delay to implement the order.

4. The record including the detention file reveal that in the grounds of detention in last para it is stated :-

It is clear that your activities are highly prejudicial to the security of the State. You may get bail from the court. Your remaining at large will be a

threat to the security of the State. Under such compelling circumstances, it has become imperative to detain you under public safety Act, 1978 for

which separate order has been issued.

5. Annexure P-I, (order dated 29.11.01 of 4th Additional District Session Judge in Session case 37 of 2001) shows that during the trial of

session's case in FIR 147/01 of P/S Khanyar, the subject alongwith two other accused was being tried for offence u/s 7/25 of Indian Arms Act.

He was enlarged on bail in the sum of Rs. 20,000/- with personal recognized bound in the like amount. This order is of 29.11.01. A combined

reading of paras 4 and 6 of the petition further show that the detenu was released from this punitive detention pursuant to this order in court. This

avermment is not at all refuted in the counter by the detaining authority. Omnibus statement and evasive denials are no substitute to reply specifically

and precisely the allegations in the petition. Even the detention file does not show that the question of moving the bail application and order on bail

by the Session judge is referred in detention record.

6. In such circumstances obviously the only conclusion to be drawn is that either the detaining authority is not aware of this circumstance or it has

omitted to mention the circumstance in the grounds. In either case the detention order stands vitiated in as much as, in the first eventuality the order

suffers from non-application of mind and in the second the case suffers from want of bonafide.

7. In Anant Sakham Raut Vs. State of Maharashtra and Another, it is observed :-

There is absolutely no mention in order about the fact the petitioner was an under trial prisoner, that he was arrested in connection with the tree

cases that applications for bail were pending and that he was released on three successive days in the three cases. This indicates a total absence of

application of mind on the part of detaining authority while passing the order of detention ... We hold that there was clear non-application of mind

on the part of the detaining authority about the fact that the petitioner was

granted bail when the order of detention was passed. In the result we set aside the judgment of the Bombay High Court under appeal, quash the order of detention and direct that the petitioner be released forthwith.

8. In *Shakeel Ahmed Mir v. State of J&K* 2000 SLJ 414 in the above context it is observed:-

Clearly a case of non application of mind on the part of the detaining authority while passing the detention order is writ large on record. The order

cannot be said to have been passed after deriving subjective satisfaction from relevant material/documents as required under law. The detention is

vitiated on this ground.

9. In almost like circumstances this court vide judgment dated: 27.11.2002 in *Suhail Ahmad Baba v. State of J&K* (HCP No. 92/02) and order

dated 10.9.02 in *Mohd. Ashraf Rather v. State of J&K*, quashed the detention orders and released the detenu(s).

10. In the above view of the matter, to address the other raised contention here of delayed execution of the detention order, is not necessary, as

even conceded by the counsels for the parties.

11. For the aforesaid reasons in my opinion, the detention order is vitiated and therefore, quashed. Respondents/authority/officer having physical

corpus of Detenu Mohd. Iqbal Sheikh (aged 21Yrs.) S/o Gh. Rasool Sheikh R/o Bugar Budgam is directed to release this detenu and set him as

liberty forthwith provided not required in any other case, offence or matter.

Copy of this order be given to petitioner free of cost. Registrar Judicial to take up follow up action.