

(2007) 12 J&K CK 0005
In the Jammu And Kashmir High Court

Mohd. Yaqoob

APPELLANT

Vs

State of Jammu & Kashmir and Others

RESPONDENT

Date of Decision : 31-12-2007

Acts Referred:

Constitution of India, 1950 — Article 22

Citation : (2008) 2 JKJ 255

Hon'ble Judges : Jai Pal Singh, J

Bench : Single Bench

Final Decision : Allowed

Judgement

J.P. Singh, J.—Petitioner has questioned District Magistrate Jammu's Order No. 15/PSA of 2006 dated 06.09.2006, detaining him in

preventive custody u/s 8 of the Jammu and Kashmir Public Safety Act raising various grounds in support thereof.

2. Learned Counsel appearing for the petitioner submits that petitioner's detention is liable to be quashed on the short ground that the material

relied upon by the District Magistrate had not been supplied to the detenu thereby depriving him of his right to make an effective representation

against his detention.

3. Records produced by Mr. Salathia, learned State Counsel reveal that the police dossier and the copy of F.I.R. No. 87/2006 registered u/s

120B/121/122/216/212, registered at Police Station, Jajjar Kotli, which had been relied upon by the District Magistrate while issuing the detention

order, had not been supplied to the detenu, who according to the records had been supplied only two leaves which were the grounds of detention.

4. Omission of respondents in not supplying the documents, which had been

relied upon by the District Magistrate at the time of passing of detention order, to the detenu, offends Section 13 of the Jammu and Kashmir Public Safety Act because absence of the material which had weighed with the District Magistrate in issuing the detention order, would deprive the detenu of his right to make an effective representation against his detention.

5. Records relied upon by the District Magistrate and information derived there from has not been stated to be such an information, disclosure

whereof to the detenu, would not have been in public interest. Such being the case, the detention of the petitioner cannot be justified for it offends

Section 13 of the Jammu and Kashmir Public Safety Act, 1978, besides the mandate of Article 22(5) of the Constitution of India.

6. Perusal of the grounds of detention further indicates that the grounds are vague and ambiguous and do not refer to any date, month or year of

the activities which have been attributed to the petitioner. Detention in preventive custody on the basis of such vague and ambiguous grounds of detention cannot be justified.

7. The grounds of detention indicate that the petitioner was in police custody when the learned District Magistrate had issued the detention order

on the ground that in the event of his release on bail or otherwise he was likely to revive his anti-national activities in future also which would pose a

serious threat to the security of the State. The detention records, however, do not contain any material on the basis whereof it may be said that

there was likelihood of the release of petitioner on bail or otherwise and if so released he would indulge in activities which would be detrimental to

the security of the State.

8. Before detaining a person who is already in custody, the detaining authority is required to spell out the reasons, on the basis whereof, satisfaction

had been recorded that the detenu was likely to be released from police custody and when so released would indulge in activities detrimental to the

security of the State. Such satisfaction has to be recorded on some material and not on mere ipsit dixit. The records of the District Magistrate do

not support existence of any such material, on the basis whereof, it could be said that there was likelihood of the petitioner's release from custody

and when so released he was likely to indulge in activities prejudicial to the

security of the State. Absence of the material in this respect thus renders petitioner's detention unsustainable on this ground as well.

9. For all what has been said above, Order No. 15/PSA of 2006 dated 06.09.2006 of District Magistrate, Jammu, detaining the petitioner in preventive custody is found to be unwarranted and illegal.

10. Allowing this petition, the petitioner's detention is, accordingly, quashed and he is ordered to be set to liberty forthwith, if not required, in any other case.

11. Records to be returned to the State Counsel.