

(2008) 10 J&K CK 0022
In the Jammu And Kashmir High Court
Case No : HC(W) No.23 Of 2008

Mohd.Zulaf	Vs	APPELLANT
State & Ors.		RESPONDENT

Date of Decision : 29-10-2008

Acts Referred:

Jammu and Kashmir Public Safety Act, 1978 — Section 8

Citation : (2009) 1 JKJ 459

Hon'ble Judges : Sunil Hali, J

Bench : Single Bench

Advocate : Swati Gupta, S.C.Gupta, A.V.Gupta, Advocates appearing for the Parties

Judgement

1. Through this Habeas Corpus Petition, the petitioner seeks quashment of detention Order No. 05 of 2008 dated 17.05.2008 passed by District

Magistrate, Rajouri under Section 8 of the J&K Public Safety Act, 1978.

2. The grounds of detention reveal that the petitioner remained associated with the local terrorists of HM outfit known with code name Jannisar

and HM Commander AbSaqib. The main object of this organization is to spread separatist feelings among the public at large in J&K State and in

India. The petitioner being an over ground worker of HM terrorist, was found involved in aiding and abetting terrorism by financing and providing

food and shelter to the militants. The detention order reveals that in March, 2008 he received a consignment of Rs.1.24 lac from his associate

karamat Ullah near Ansi Nallah for further delivery to the code Jannisar functioning as Commander of HM outfit. On March 2008 he and in

association with Qadir purchased valuable items including mobile phone, hand sets sim cards, cloths and shoes for the terrorist residing in hideouts.

He received another consignment of Rs.13,000/ from his associate Karamat Ullah. He and his two associates collected mobile phones hand sets, sim cards from Mohd. Din another OGW from Gujjar Market, Rajouri and delivered the same to the terrorists in their hideouts in Kandi area.

3. The detention order also reveals that the petitioner was arrested in case FIR No.17/2008 under Sections 121/122/120B/216 RPC and 3/EAO

of Police Station, Kandi and Rs.1.34 lacs India currency, two sim cards, two pairs of shoes and two shirts were recovered from his possession.

As a consequence of that he was detained under the provisions of J&K Public Safety Act.

4. The petitioner has questioned the order of detention on the following grounds:

(c) That there is no application of mind by the District Magistrate while framing order of detention;

(d) That no copy of dossier was provided to the petitioner which prevented him from making an effective representation against the order of detention.

5. Respondents have filed the objections stating therein that the petitioner detenue was taken in custody on 24.05.2008 and lodged in District Jail, Rajouri. The detention order and the grounds of detention were read over and explained to him in the language which he understands. The said

detention was approved vide Order No. Home/PBV/1229/2008 dated 26.05.2008 and the detenue did not represent against the said order. It is

also stated by the respondents that the action of the District Magistrate was approved by the Advisory Board.

6. I have heard learned counsel for the parties and perused the record.

7. The grounds of detention reveal that the petitioner was an associate of HM commander. The detention order also makes mention of the dates

on which he contacted the other over ground workers and the dates on which he contacted the HM Commander as also number of phone calls

which he made from his mobile to the HM Commander. However, it is revealed that the material on the basis of which dossier has been prepared,

has not been supplied to the petitioner, though the grounds of detention clearly mentioned his role and the illegal activities committed by him. The

dossier on the basis of which such grounds of detention were prepared, was required to be supplied to the petitioner so that he could be able to

make representation.

8. I have examined the record produced by the respondents. There is no mention of the fact that the dossier/material, on the basis of which the petitioner was detained, was not provided to him. Thus in my view it prejudiced the petitioner from making any effective representation. This court while exercising powers under the scope of judicial review is not to sit in appeal over the detention order nor the court is to reappraise the materials which were the basis of detention order. However, the court is required to see whether there was proper application of mind on the part of the detaining authority and that all the relevant and vital materials for the purpose, were noticed adverted to and considered by it.

9. In the present case, the order of detention is based upon the material which was not supplied to the petitioner. The material is in the shape of FIR, CID report and other such material which became the basis of his detention under the Public Safety Act. The object of supplying this material to him is to ensure that he could be made aware of the grounds of detention alongwith the material. This safeguard is provided under Article 22(5) of the Constitution of India. There are two types of detention. One is preventive detention and other is where the person detained can apply for bail as per the law of the land. Under the preventive detention the man is detained without any trial. There should be sufficient material on the basis of which his detention could be ordered.

10. The petitioner has relied upon the judgment of this court reported in SLJ 2002 (II) 527 entitled Ghulam Mohammad Dar Vs. State of J&K and others. In this case, the court has held that nonsupplying of grounds of detention and the material relied upon by the detaining authority to the detenu amounts to depriving him of an opportunity of making a representation against the order of detention.

11. For the reasons stated hereinabove, I allow this petition and quash detention Order No.06 of 2008 dated 17.05.2008 issued against the petitioner.

12. Before parting with this judgment, I find that the order of detention was issued by the District Magistrate, Rajouri without supplying the material to the petitioner/detenu on the basis of which his detention order was issued which has become a ground for ordering his release. Why such

material was not supplied to him, is a matter of great concern, when the order has the effect of detaining a person without trial. It seems that the

District Magistrate before issuing the order of detention did not look into this aspect of the matter that whether there had been sufficient compliance

of the provisions of law. In such circumstances even the persons against whom there are sufficient evidence for their having been involved in

antinational activities go scot free impinging on the security of the State. I do not want to further comment on this but the fact of the matter is that

invariably orders of detention are issued without complying with the requirement of law advertently or inadvertently. I hope that the concerned

District Magistrate will ensure that in future such lapses are not committed by him. Disposed of along with connected CMP(s)/if any.