
(2011) 08 J&K CK 0035
In the Jammu And Kashmir High Court
Case No : HCP No. 210 of 2011

Mst. Qasim Jan

APPELLANT

Vs

State of Jammu & Kashmir and others

RESPONDENT

Date of Decision : 25-08-2011

Acts Referred:

Jammu and Kashmir Public Safety Act, 1978 — Section 8(1), 8(4)

Citation : (2011) 08 J&K CK 0035

Hon'ble Judges : Hasnain Massodi, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Hasnain Massodi, Judge

1. Challenge in this petition is to order No. 21/DMK/PSA/10 dated 01.11.2010, whereby District Magistrate, Kulgam respondent No. 2 herein,

has ordered preventive detention of Mst. Qasim wife of Mohd Bashir Deeded resident of Gudev Tehsil Bakoori District Rajouri (herein after

referred to as 'detenue') for a period of 24 months and directed her lodgment in District Jail, Kathua, must succeed for the following reasons:

The respondent No. 2 has, at the very threshold, ordered detention of detenue for a period of 24 months. The respondent No. 2 a senior officer in

the State Administration, is expected to be aware that the detention order made u/s 8(1) of J&K Public Safety Act 1978 read with Sub Section

(1) is to survive in terms of Section 8(4) of J&K Public Safety Act, 1978, for a period of 12 days, unless within said period detention order finds

approval of the Government. The respondent No. 2 by placing the detenue under preventive detention for a period of 24 months in one go has not

only trespassed over the powers of the Government but closed all doors for the detainee to make a representation against preventive detention. It

needs no emphasis that a detainee, under Article 22(5) Constitution of India and Section 13 of the J&K Public Safety Act, has a valuable right to

make a representation against her detention to the detaining authority, immediately after the detention is made and thereafter to the Government.

The detainee has a right to convince the detaining authority that the activities attributed to her and apprehended are devoid of any substance; that

the detainee is a peace loving citizen and there is no reason to apprehend that her acts of omission and commission in any manner are prejudicial

and detrimental to the security of the State. Once the detaining authority orders detention for 24 months, the detainee would be right in nursing an

apprehension that the whole matter has been prejudged and there is no use in making a representation against her preventive detention. The

detaining authority, by deciding on the period of detention at the initial stage, has violated Constitutional and Statutory rights of the detainee

guaranteed under Article 22, Constitution of India and Section 13, J&K Public Safety Act.

2. It is pertinent to point out that the detaining authority intriguingly has referred to the grounds of detention to have been prepared by

Superintendent of Police and placed before the detaining authority. The detaining authority may get inputs from different agencies, including

Superintendent of Police of the concerned District. Responsibility to formulate grounds of detention, however, rests with the detaining authority. It

is detaining authority, who has to go through the reports and other inputs received by him from concerned police and other agencies and on such

perusal arrive at a subjective satisfaction that the subject is to be placed under preventive detention. It is thus for the detaining authority to

formulate grounds of detention and satisfy itself that grounds of detention so formulated warrant passing of preventive detention. The detention

order, for the said reasons, exhibits total non-application of mind by the detaining authority. The detention order is liable to be quashed on this

ground alone.

3. The Constitutional and Statutory safeguards, guaranteed to a person detained under preventive detention law, are meaningless unless and until

the detenue is made aware of and furnished all the material that weighed with the detaining authority while making detention order. In the instant

case grounds of detention make mention of case FIR No. 101/2010 u/s 16-B, 18, 19, 20, 21 ULA (P) Act, 7/25 A. Act registered at Police

Station D.H. Pora against the detenue. It appears that the said case have weighed with the respondent No. 2 at the time detention order in

question was made. Copies of First Information Reports, statements recorded u/s 161 Cr.P.C. and other material collected in connection with

investigation of aforesaid case has not been furnished to detenue. The endorsement on the reverse of the detention order made by the Executing

Officer ASI Mohd Ramzan No. 54/KP of P/S D.H. Pora, Kulgam, at the time of execution of detention order, does not make a reference to the

documents in question and does not record that such documents were supplied to detenue at the time of execution of detention order or

immediately thereafter. It is pertinent to point out that the detaining authority, in grounds of detention after detailing background in which aforesaid

case was registered against detenue, proceeds to opine 'It is manifest from factual position as at pre-pares that your activities are highly pre-judicial

to the security of the State'. The material, mentioned above, thus assumes significance in the facts and circumstances of the case. The Constitutional

and Statutory Safeguards are meaningless unless and until the material on which the detention order is based is supplied to the detenue. It is only

after the detenue has all said material available that the detenue can make an effort to convince the detaining authority and thereafter the

Government that their apprehensions as regards activities of the detenue are baseless and misplaced. If the detenue is not supplied the material on

which the detention order is based, the detenue would be in a position to make an effective representation against her detention. The failure on the

part of detaining authority to supply the material relied at the time of making detention order, renders detention illegal and unsustainable. It is not

necessary to burden this judgment with the detailed reference to the case law on the subject. A reference to the reported cases, mentioned

hereinafter, would suffice. The principle of law, finds expression in Dhananjay Das Vs. District Magistrate, Darrang and Another, ; Sophia Gulam

Mohd. Bham Vs. State of Maharashtra and Others, ; Union of India (UOI) Vs. Ranu Bhandari, ; Syed Aasiya Indrabi versus State of Jammu and

Kashmir and Others (2009 (I) S.L.J 219); and Thahira Haris etc. Vs. Government of Karnataka and Others, .

4. Article 22(5) of Constitution provides a precious and valuable right to a person detained under preventive detention law - J&K Public Safety

Act 1978, to make a representation against her detention. It needs no emphasis that a detainee, on whom preventive detention order is slapped, is

held in custody without a formal charge and trial. The detainee is held in custody on a mere suspicion that her apprehended activities may be

prejudicial to the maintenance of public order or security of the State. Article 22(5), Constitution of India and Section 13 of the Act, thus make it

obligatory for Detaining Authority to provide detainee an earliest opportunity of making an effective and meaningful representation against her

detention. The object is to enable detainee to convince Detaining Authority and Government, as the case may be, that all apprehensions regarding

her activities are grossly misplaced and her detention is unwarranted. To make the Constitutional and Statutory right available to detainee

meaningful, it is necessary that detainee be informed with all possible clarity what is/are apprehended activity/ies that persuaded Detaining Authority

to make detention order. In case grounds of detention are vague, ambiguous and confusing, the detainee cannot be expected to make a

representation against her detention.

5. In the instant case the detainee is alleged to be close associate of 'HM' outfit. The words/expressions like 'HM' and 'OGW' are too vague to

make the detainee aware of the exact accusation levelled against her. The detaining authority has not to work on assumptions and presumptions that

whatever acronyms it is aware of must be necessarily known to the detainee. The detainee is also alleged to have provided information to the

militants with regard to movement of security forces. The militants, to whom the information was being allegedly transmitted by the detainee, are not

identified nor their identity disclosed. The detainee is also alleged to have been facilitating the militants in transporting arms/ ammunition from one

place to another. The detainee is not informed regarding the place/places, from which she helped to transport Arms /Ammunition or destination of

alleged consignments or to whom such help was extended by the detainee. The detainee, in absence of such details, could not be expected to have

been in a position to give her side of story and persuade respondent No. 2 and other respondents that the allegations against the detainee were

bereft of any basis. To sum up, the grounds of detention that constitute basis for the detention order in question are ambiguous, vague, uncertain

and hazy. A person of ordinary prudence would not be in a position to explain her stand in reply to the grounds of detention detailed by

respondent No. 2. The detainee has been kept guessing about the facts and events that weighed with the respondent No. 2 and prompted

respondent No. 2 to record subjective satisfaction regarding sufficiency of the material to warrant preventive detention of the detainee. These are

only few instances to illustrate that the grounds of detention are vague and ambiguous and bound to keep the detainee guessing about what really

was intended to be conveyed by the detaining authority. It is well settled law that even where one of the grounds relied upon by the detaining

authority to order detention is vague and ambiguous, Constitutional and Statutory right of the detainee to make a representation against her

detention are taken to have been violated. Reference in this regard may be made to Dr. Ram Krishan Bhardwaj Vs. The State of Delhi and

Others, ; Chaju Ram Vs. The State of Jammu and Kashmir, ; Mohd. Yousuf Rather Vs. State of Jammu and Kashmir and Others, ; and Syed

Aasiya Indrabi Vs State of J&K and others, 2009 (I) SLJ 2009 219.

6. The Detaining Authority respondent No. 2 did not inform the detainee that the detainee, independent of her right to file representation against her

detention to the Government, has also a right to submit a representation to the Detaining Authority till the detention was considered by the

Government and accorded approval. The respondent No. 2 has thus violated Constitutional and Statutory rights of the detainee, guaranteed under

Article 22(5) of the Constitution of India and Section 13 of J&K Public Safety Act. It would be apt to refer to the law laid down in State of

Maharashtra and Others Vs. Santosh Shankar Acharya, .

7. Viewed thus, the petition is allowed and detention order No. 21/ DMK/PSA/10 dated 01.11.2010, passed by the District Magistrate, Kulgam

respondent No. 2, directing detention of Mst. Qasim wife of Mohd Bashir Deeded resident of Gudev Tehsil Bakoori District Rajouri, quashed.

8. The respondents, in view of quashment of detention order, are stripped of any

authority to detain the detainee under order No. 21/

DMK/PSA/10 dated 01.11.2010. Resultantly, the respondents are directed to release the detainee from preventive detention, ordered vide order

No. 21/DMK/PSA/10 dated 01.11.2010.

9. Detention record be returned to the counsel for respondents.

10. Disposed of.