

(2022) 10 J&K CK 0001

In the Jammu And Kashmir High Court

Case No : Letters Patent Appeal No. 85 Of 2022

Murtaza Rashid

APPELLANT

Vs

Union Territory Of JK & Ors

RESPONDENT

Date of Decision : 07-10-2022

Acts Referred:

Constitution Of India, 1950 — Article 22, 22(5)

Jammu And Kashmir Public Safety Act, 1978 — Section 8, 13

Citation : (2022) 10 J&K CK 0001

Hon'ble Judges : Pankaj Mithal, CJ; Moksha Khajuria Kazmi, J

Bench : Division Bench

Advocate : G. N. Shaheen, Asif Maqbool

Final Decision : Allowed

Judgement

Pankaj Mithal, CJ

1. The District Magistrate, Pulwama, on being satisfied, on the basis of the letter dated 30th October 2021 and the material produced along-with it in the form of dossier by the Senior Superintendent of Police, Awantipora, ordered for the preventive detention of the petitioner-appellant Murtaza Rashid under Section 8 of the J&K Public Safety Act 1978 (hereinafter referred to as "the Act") to prevent him from acting in a manner prejudicial to the security of the State.
2. The aforesaid detention order was executed on 31st October 2021 and the petitioner-appellant was taken into preventive custody. The detention order was confirmed on 29th November 2021. The petitioner-appellant was supplied with the detention order, detention notice and the grounds of detention and it is said that the contents of the order of detention and the grounds of detention were duly read over and explained to him in the language he understands.
3. The petitioner-appellant invoked the writ jurisdiction of the court to challenge the aforesaid detention order and to set him free on various grounds.

4. The writ petition filed by the petitioner-appellant challenging the detention order was considered by the learned Single Judge in the light of the pleadings exchanged between the parties and was dismissed vide judgment and order dated 12th May 2022.

5. The learned Single Judge on the basis of the pleadings and the arguments advanced by the respective parties considered as many as five points on which the detention order was challenged including the grounds that the detention order is vague; it suffers from non-application of mind as the grounds of detention are nothing but repetition of the police dossier; the detaining authority failed to supply the entire material which formed the basis of his detention; and the petitioner-appellant being an illiterate person was unable to understand the contents of the detention order, the copy of the same was not supplied to him in the language known to him and that no affidavit was filed to substantiate that the grounds of detention were read over and explained to the petitioner-appellant.

6. All the above arguments were repelled by the learned Single Judge while dismissing the petition.

7. The above judgment and order of the learned Single Judge dated 12th May 2022 dismissing the writ petition of the petitioner-appellant is being assailed by him by filing this appeal under Clause 12 of the Letters Patent.

8. We have heard Mr. G. N. Shaheen, learned counsel appearing for the petitioner-appellant and Mr Asif Maqbool, learned Dy. AG appearing for the respondents.

9. Mr. G. N. Shaheen, learned counsel in assailing the judgment and order of the writ court argued that full and complete material which formed the basis of passing the impugned detention order was never supplied to the petitioner-appellant and thus he was deprived of the opportunity to file an effective representation as envisaged under Section 13 of the Act and Article 22 of the Constitution of India. Secondly, the grounds on which the detention order has been passed are vague and on such vague allegations, it was not possible for the petitioner-appellant to submit a proper representation. Lastly, the petitioner-appellant is an illiterate person who knows only kashmiri language and, as such, serving a copy of the notice of detention, order of detention and the grounds of detention which were in English upon the petitioner-appellant were of no consequence. The petitioner-appellant was deprived of his right to file an appropriate representation.

10. Mr Asif Maqbool, learned Dy. AG in defence of the impugned judgment and order submitted that the learned Single Judge has recorded a specific finding on each and every point argued on behalf of the petitioner-appellant. There is no perversity in those findings. The judgment is sound and suffers from no error or illegality. The petitioner-appellant was supplied with the copy of the notice of detention, detention order and the grounds of detention. The Sub-Inspector (SI)

while serving the above documents upon the petitioner-appellant has read out the contents of the detention order and the grounds of detention and even explained the same to the petitioner-appellant in the language he knows and understands. The petitioner-appellant was also specifically informed that he has a right to make representation to the detaining authority or the Government against his detention but he never chose to avail it. The grounds of detention are clear enough and explains the reasons for his detention. The petitioner-appellant is not an illiterate person. He has studied upto 7th Class and he knows English which is evident from the fact that he signs in English. Therefore, it was not necessary to provide him with the translated copy of the above documents.

11. The first ground that was urged before the writ court and has also been reiterated hereinbefore us is that the grounds of detention are vague which rendered it difficult for the petitioner-appellant to file an effective representation.

12. This argument has been considered and dealt with in extenso by the writ court and considering the decision of the Supreme Court in the case of Mohammad Yousuf Rather vs. State of JK & Ors. reported in (1979) 4 SCC 370 as cited on behalf of the petitioner-appellant held that in the instant case, the grounds are very specific and there is no vagueness so as to deny the petitioner-appellant an opportunity of making a representation.

13. The grounds of detention in unequivocal terms states that the petitioner-appellant who is aged about 27 years and is ordinarily resident of village Samboora has studied upto Class 7th and that he is affiliated with The Resistance Front (TRF), an organization with the aim and object to secede the Union Territory of JK from the Union Territory of India so as to annex it with Pakistan. The petitioner-appellant is in contact with various terrorists under whose influence and ideology he is carrying out subversive activities prejudicial to the security of the State. The TRF with which he is connected is an off-shoot of the terror outfit Lashkar-i-Toiba (LeT) and is responsible for recent killing of civilians in District Srinagar and other parts of the valley. The TRF as per the inputs received is acting on the dictates of the pakistani intelligence ISI. The petitioner-appellant in connivance with the terrorists is providing logistic support including transporting of arms for terrorists from one place to another through unconventional and safe passages. The petitioner-appellant has been identified after hard coordinated efforts of the various agencies which revealed his linkage with terrorist outlets. Therefore, it is imperative to detain him to prevent unleashing of terror in the valley and to enable the law enforcing agencies to bring back normalcy for the common good. The petitioner-appellant is not being deterred by the laws of the country and is likely to indulge in anti-national and anti-social activities. Therefore, to prevent him from indulging in such activities which are prejudicial to the security of the State, it is necessary to detain him under the Act.

14. A plain reading of the aforesaid grounds of detention would establish that the allegations made against the petitioner-appellant are very specific and there is

no vagueness. It may be worth noting that nothing more as revealed in the grounds of detention could have been spelt out as it would have been counter-productive to the maintenance of security of the State and normalcy in the valley. The situation in the valley does not permit disclosure of any further confidential or sensitive information which if goes in the hands of the separatist group would certainly be a great threat to the nation. The vagueness of the grounds of detention have to be considered in the fact situation prevailing in the area specially Kashmir which has been greatly affected by militancy in the past. In view of the aforesaid facts and circumstances, we are of a firm opinion that the detention order cannot said to be faulty on the ground of vagueness.

15. Mr. G. N. Shaheen, learned counsel has placed reliance upon *Jahangir Khan Fazal Khan Pathan vs. Police Commissioner, Ahmedabad & Anr.* (1989)AIR (SC) 1812 wherein it has been held that if the grounds of detention are vague, the order of detention would be illegal and bad. There is no second opinion on the above proposition of law, but the vagueness of the ground has to be adjudged on the facts and circumstances of each case. In the said case, the detenu was charged with threatening with Rampuri knife but without disclosing any particulars as to the place or when and to whom such threats were extended. It was in the above background that the detention order was found to be faulty on the ground of vagueness.

16. The other authority in connection with the above point cited by Mr. G. N. Shaheen, is the case of *Mohammad Yousuf Rather vs. State of JK & Ors.* (1979) AIR (SC) 1925. The aforesaid was the case from J&K under Section 8 of the Act. In the said case, the allegations were that thedetenu started campaign in villages asking the inhabitants not to sell their paddy crop to the Government and to manhandle the Government officials. Since the ground failed to mention the names of the villages where the detenu made such a campaign, the grounds of detention were held to be vague. One of the allegations against the detenu was that he was found leading unruly mobs in different villages and instigating them to set fire to the houses of the workers of Jamiat-i-Islami. Again since the names of the villages where he was indulging in such activity was not disclosed the ground was held to be vague.

17. The aforesaid judgment has been elaborately dealt with by the learned Single Judge who has opined that compared with the grounds of detention in that case, the case of the petitioner-appellant is quite different and it cannot be said that the grounds are so vague that he could not have filed any proper representation to the Government or the detaining authority.

18. There is no flaw in the reasoning given by the learned Single Judge and since in our opinion the grounds of detention are not vague rather very specific, the detention cannot be quashed on the vagueness of the grounds.

19. This apart, the petitioner-appellant never made any slightest effort to submit even a simple representation contending that he is submitting it but with a

caveat that it may not be effective as the grounds of detention were vague. The very fact that the petitioner-appellant accepted the grounds of detention and raised no protest by filing any representation alleging it to be vague, it gives a legitimate impression that he was fully satisfied by the grounds of detention and deliberately choose not to file any representation for some other reason.

20. This takes us to the second point of argument of Mr. G. N. Shaheen, that as petitioner-appellant is an illiterate person, he ought to have been supplied with the copy of the documents in the language understood by him and that in the absence of any affidavit of the officer that the detention order and the grounds of detention were read over and explained to him, it would mean that the petitioner-appellant was denied opportunity of filing an effective representation.

21. Let us first examine if the petitioner-appellant is illiterate or not.

22. The petitioner-appellant claims himself to be an illiterate person, but the grounds of detention clearly states that he had studied upto Class 7th and then dropped out. This aspect of the matter was never denied by the petitioner-appellant, not even through the pleadings in the writ petition, meaning thereby that he accepts that he had studied upto Class 7th and is able to read and write. He had even signed the receipt of the documents in English which also indicates that he can write in English.

23. UNESCO defines a literate person as "one who with understanding can both read and write a short simple statement on his/her everyday life.

24. The National Literacy Mission defines literacy as acquiring the skills of reading, writing an arithmetic and the ability to apply them on one's day to day life.

25. Black's Law Dictionary 4th edition (Revised) gives the meaning of "literate" as one who is able to read and write a language. The petitioner-appellant who has studied upto class 7th and signs in English is certainly a person who can read and write at least a simple sentence and is therefore "literate".

26. Law Lexicon describes "literate" as a person who is able to read and write having knowledge of letters of a language. On the anvil of the above definition also the petitioner-appellant who is able to sign in English and has studied upto class 7th is surely a person who has knowledge of English letters.

27. In the background of this above definition of literacy and the fact that petitioner-appellant has studied upto Class 7th and is able to write and sign in English, the petitioner-appellant in the given facts and circumstances, is not a completely illiterate person. He is in a position to understand things and put his signatures in English.

28. A Division Bench of the Calcutta High Court in Steel Authority of India vs. BalBahadur Sharma 1997 SCC Online Calcutta 536 while dealing with the issue of a person possessing a qualification of 7th Class pass held that the plea of

illiteracy is undoubtedly untrue. The application form shows that he had signed it in Hindi and the affidavit in support of the writ petition is in English and yet he claimed himself to be an illiterate which was not accepted.

29. In the instant case, there is no denial to the fact that the petitioner-appellant is Class 7th pass and he had signed the receipt of the document in English. Therefore, in the absence of any material to show that the petitioner-appellant is unable to understand and even read and write a small statement, we are of the opinion that he cannot be held to be a completely illiterate person.

30. Coming to the other aspect of the matter that he ought to have been supplied with the documents in the language understood by him i.e., Kashmiri, it may be noted that the SI while serving the documents upon him has read out the contents thereof and have explained the same to him the language understood by him. There is no denial to the above factual aspect. The petitioner-appellant only contends that the affidavit of the SI ought to have been filed to prove that he has read out and explained the documents to him. The submissions may be attractive but has no force. The requirement of the affidavit is imperative only where there is no documentary proof of serving the documents upon the detenu/petitioner-appellant. It would not be necessary where the SI himself has served the documents and read out and explained the contents thereof to him with further instructions that he has a right to file a representation against it before the authority/State Government and the detenu/petitioner-appellant accepts it by putting his signatures.

31. A perusal of the impugned order reveals that the allegations of the petitioner-appellant was that the grounds of detention were in English which language he was unable to understand. The respondents in the objections stated that the grounds were explained to him in the language known to him. The Police Inspector had personally explained the detenu the order of detention and the grounds of detention on which the same was based.

32. The writ court on the basis of the above pleadings and taking into consideration the case of Smt. Raziya Umar Bakshi vs. Union of India & Ors. (1980) Supp. SCC 195 held that the obligation to supply a copy of the translated version of the grounds of detention arises only in a case where the detenu claims that he does not know the language in which the order of detention or the grounds of detention are passed but that would not be necessary where the detention order and the grounds of detention were read over and explained to the detenu in the language which he fully understood. The execution report prepared by SI contains the signature of the petitioner-appellant in English meaning thereby that he accepts the contents of the report to the effect that the detention order and the grounds of detention has been read over and explained to him by the SI in the language known to him.

33. The writ court in dealing with the issue whether in every case, the officer executing the order of detention must also file an affidavit to substantiate the

fact that not only the orders and the documents were supplied but were also read over and explained to the detenu in the language he understood, observed as under:-

"16. Insofar as the filing of the affidavit of the executing officer is concerned, in my opinion, it is not necessary in every case that such an affidavit be filed as on a reading of the judgment in Umar Bakshi's case, particularly in para 5, it can be seen that even if there is some sort of a certificate on record to show that the grounds had been explained to the detenu in the language which he understood, it would be a sufficient compliance. In the present case, there is on record a certificate of the Executing Officer, SI Sameer Ahmed, which clearly reflects that not only was the relevant material supplied to the petitioner but also the contents were read over to the petitioner in the language which he understood."

34. In *Fazal Husain and Arshad Ahmad vs. the State of Jammu and Kashmir*, 1969 (2) SCC 356, the Apex Court observed as under:-

"9.....The learned counsel for the petitioner contends that the Deputy Superintendent Central Jail, who is alleged to have served the order of detention on the petitioner, should have filed the affidavit. The State has annexed to the affidavit a copy of the Government Detention Order and below the detention order the following endorsement exists:

"The notice of this order has been served upon Shri Fazal Hussain s/o Ayub Khan detenu by reading over the same to him.

Sd/-

Dy. Superintendent Central Jail, Jammu"

In view of this endorsement' the order of detention we do not consider that it was necessary that the Deputy Superintendent, Central Jail, should have filed an affidavit to the effect that he had served the order of detention on the detenu Fazal Hussain."

35. In view of the aforesaid findings and the case law, we are of the opinion that the writ court committed no error in holding that the affidavit of the SI that he has not only served the documents upon the petitioner-appellant but has also read over and explained to him the same in the language he understood, was not at all necessary and the absence of such an affidavit would not vitiate the detention order.

36. Mr. G. N. Shaheen, learned counsel in connection with the above argument had submitted that oral explanation of the detention order and the grounds of detention are not sufficient and that the petitioner-appellant ought to have been supplied with the translated copies of the same in the language known to him i.e., Kashmiri which was not done.

37. In the above context, he has placed reliance upon Full Bench decision of the Supreme Court of India in the case of *Hadibandhu Das vs. District Magistrate and*

Anr. AIR 1969 SC 43.

38. In the aforesaid case, the grounds of detention order were typed in English language and were running into 14 pages. It is thus held oral explanation of such order/grounds was not sufficient unless they are supplied in the language understood by the detainee. In the instant case, the grounds of detention though typed in English were very short hardly in two pages and they were supplied to the petitioner-appellant. Therefore, it cannot be said that he was not supplied with the copy of the detention order and the grounds of detention or that the same was not explained to him in the language known to him in as much as we have previously discussed and held that the same were duly read over and explained to him.

39. It may worth noting that the petitioner-appellant has studied upto Class 7th and is not an illiterate person, rather he is able to write and sign in English from which an inference can easily be drawn that he knows simple English language. This apart, it is only his contention that he knows and understands kashmiri only, but there is no material whatsoever which can justify and establish that he is a kashmiri knowing person only and does not understands English. Therefore, supply of the detention order and the grounds of detention to him in kashmiri language does not appear to be imperative under the above fact situation.

40. The other decision relied upon by Mr. G. N. Shaheen, learned counsel is that of Shri Lallubhai Jogibhai Patel vs. Union of India & Ors AIR 1981 SC 728. In the said case, it was held that though the Police Inspector has filed an affidavit stating that he had fully explained the grounds of detention in Gujarati to the detenu, but that is not sufficient compliance of the mandate of Article 22 (5) of the Constitution. The use of the word "communicated" means that the detention order and the grounds of detention must be handed over and left with the detainee in the language which he understands, otherwise, it would defeat the whole purpose of communicating the grounds to the detainee to enable him to file an effective representation. It was also observed that simply verbal explanation of the grounds of detention to the detainee leaving nothing in writing with him in the language understood by him infringes upon his constitutional right guaranteed by Article 22(5) of the Constitution. The above case law in the first side appears to be in favour of the petitioner-appellant, but on closer scrutiny, we find that in the said case, it was an admitted position that the detenu knew only Gujarati. It is in the said context that this court held that mere explanation of the grounds of detention in Gujarati without leaving a copy of the same with him in the language known to him vitiates the detention order. This is not the situation in the case before us where the petitioner-appellant is an English knowing person with no material on record to establish that he only knows and understands Kashmiri. He has been read over and explained the detention order and the grounds of detention in the language understood by him and the copies of the said documents were handed over to him in English which he is capable to read and write. Thus, the aforesaid decision also does not come

to the rescue of the petitioner-appellant.

41. Now we come to the last submission of Mr. G. N. Shaheen, learned counsel that the petitioner-appellant was not supplied with the complete material, such as, the Dossier which has been relied upon by the District Magistrate in passing the impugned detention order and, as such, vitiates the same.

42. It is an admitted position as is revealed from the plain reading of the detention order that the detaining authority has passed the same on the basis of the dossier supplied by the Senior Superintendent of Police. The copy of the said dossier was never supplied to the petitioner-appellant. Thus, it is contended that he was denied proper opportunity to file an effective and a purposeful representation.

43. In *Ichhu Devi Choraria vs. Union of India & Ors.* 1980 (4) SCC 531, the Supreme Court has taken a view that documents, statements and other material referred to or relied upon in the grounds of detention by the detaining authority in arriving at its subjective satisfaction to detain a person, get incorporated and become part of the detention by reference. Therefore, the right of the detenu to receive copies of the detention order and the grounds of detention necessarily includes the documents, statements and other materials from which the detention order flows, because unless all those material are supplied he would not be in a position to make a meaningful representation.

44. In *Thahira Haris vs. Government of Karnataka & Ors.* 2009 11 SCC 438 while considering the scope of Article 22(5) of the Constitution, the Supreme Court held that non supply of relevant documents, statement and other materials relied upon in the grounds of detention would vitiate the detention order which necessarily has to be quashed in such circumstances.

45. In view of the aforesaid discussion and the facts and circumstances of this case, we are of the opinion that the petitioner-appellant is not an illiterate person; he is an English knowing person and that in the absence of any material to prove that he knows only kashmiri, he cannot be said to be a person having knowledge of kashmiri only; he was read over and explained the detention order and the grounds of detention in the language known to him; he was duly communicated with both the above documents in English, the language known to him; the affidavit of the police official serving and explaining the documents to him is not mandatory in each and every case especially where there is endorsement to the above effect; and that it was not imperative to supply translated copies of the documents to him. Nonetheless as the entire dossier which forms the basis of the detention order was not provided to him, he was denied his constitutional right to make a meaningful and a purposeful representation vitiating the order of detention.

46. Accordingly, the appeal is allowed and the judgment and order of the writ court dated 12th May 2022 is set-aside. The impugned order No. 60/DMP/PSA/21 dated 30th October 2021 passed by respondent No. 2 is quashed.

47. The personal liberty of the petitioner-appellant is directed to be restored if not wanted in any other case.