
(2002) 01 J&K CK 0011
In the Jammu And Kashmir High Court

Mushtaq Ahmad Ganai	Vs	APPELLANT
State of J&K and another		RESPONDENT

Date of Decision : 01-01-2002

Acts Referred:

Public Safety Act, 1978 — Section 11

Citation : (2002) KashLJ 635

Hon'ble Judges : R.C.Gandhi, J

Bench : Single Bench

Advocate : G.N.Shaheen, G.Mustaffa, Advocates appearing for the Parties

Judgement

1. Petitioner by means for this petition seeks to quash the detention order No. F193/DMA/PSA/DET/2001/13136 dated 11.08.2001 passed by

the District Magistrate, Anantnag, in exercise of powers under Section 8 of J&K Public Safety Act, 1978, (hereinafter "the Act") direct ing

preventive detention of the detenu Mushtaq Ahmad Ganai S/o Ab. Salam Ganai R/o Wanpoh Tehsil Kulgam District Anantnag. The respondent

No. 1 in exercise of powers under Section 17 of the Act has confirmed the detention of the detenu for the period of 24 months.

2. The detention order has been challenged on various grounds including that the Detaining Authority has passed the order without application of

mind. To elaborate this plea his submission is that the detenu was in custody of the respondents in FIR No. 232/2001 for alleged commission of

offence under Section 10 Criminal Law Amendment Act registered with Police Station Anantnag, and on the date of passing of detention order the

detenu stood released by a bail order by Chief Judicial Magistrate, Anantnag, and this fact has not been noticed by the Detaining Authority either

in the grounds of detention or in the detention order, which according to him is nonapplication of mind and the impugned order thus according to him is not sustainable.

3. Respondents have filed counter affidavit controverting the averments of the petition. It is admitted by the respondents in the grounds of detention

that the detenu was apprehended by the Security Forces during search operation on 1.7.2001 in connection with FIR No. 232/2001.

4. Heard learned counsel for the parties and perused the record made available by learned counsel for respondents.

5. Learned counsel for the petitioner, reiterating the submissions of the petition, has submitted that the detaining authority was not aware of the fact

that the detenu has been directed to be released in FIR No. 232/2001 which is evident from the grounds of detention wherein is incorporated

detenu has been apprehended in the said FIR. The detaining authority must show awareness by application of mind particularly to the facts of the

case while directing preventive detention as by his action the liberty of a citizen is curtailed. The law enjoins on the detaining authority to be alive to

all facts and circumstances of the case and on application of mind to all those facts and circumstances, the detaining authority has to be subjectively

satisfied that the detenu is required to be put in preventive detention. In case all the facts are not brought before the Detaining Authority or not

considered, it amounts to nonapplication of mind which is a patent incurable defect to sustain the detention order. Similar plea was before Apex

Court in the case titled Leena Anant Raut V. State for Maharashtra and Ors reported in AIR 1987 S.C. 137. While dealing with this plea of the

petitioner therein, the Court observed in para 5 as under :

5. We do not think it necessary to go into all the grounds urged before us by the petitioner's counsel in support of his prayer to quash the order of

detention. The one contention strongly pressed before us by the petitioner's counsel is that the detaining authority was not made aware at the time

the detention order was made that the detenu had moved applications for bail in the three pending cases and that he was enlarged on bail on

13.01.1986, 14.1.1986 & 15.1.1986. We have gone through the detention order carefully. There is absolutely no mention in the order about the

fact that the petitioner was an under trial prisoner, that he was arrested in

connection with the three 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." The judgement supra applies to the facts of this case in to. The Chief Judicial Magistrate granted bail to the detenu on 18.7.2001, whereas, the detention order was passed on 11.8.2001. It appears that the fact of granting bail by Chief Judicial Magistrate, Anantnag, has not been brought to the notice of the detaining authority. Had this been brought to the notice of the detaining authority, what would have been subjective satisfaction, is ought to be known. Under such circumstances the detention order cannot be maintained and is accordingly quashed. Solely on the ground that the detention order suffers for nonapplication of mind by the detaining authority.

6. Petition is allowed. Respondents are directed to release the detenu Mushtaq Ahmad Ganai S/o Ab. Salam Ganai R/o Wanpoh Tehsil Kulgam

District Anantnag from preventive detention, If not required in any other case.