
(2004) 04 J&K CK 0044
In the Jammu And Kashmir High Court
Case No : HCP No. 54 2003

Mushtaq Ahmed Mir

APPELLANT

Vs

State

RESPONDENT

Date of Decision : 03-04-2004

Acts Referred:

Arms Act, 1959 — Section 7(25)
Constitution of India, 1950 — Article 22(5)
Jammu and Kashmir Preference Shares Act, 1978 — Section 13, 8

Citation : (2004) CriLJ 2997 : (2010) 3 JKJ 464

Hon'ble Judges : Bashir-Ud-Din, J

Bench : Single Bench

Advocate : I. Sofi, for the Appellant; M.A. Beg, Dy.AG, for the Respondent

Final Decision : Dismissed

Judgement

Syed Bashir-Ud-Din, J.—Subject Muhstaq Ahmed Mir is placed under preventive detention by District Magistrate Srinagar U/s 8 of J&K

P.S.Act, 1978 under his order No. DMS/PSA/108 of 2003 dated 3.3.2003 while he was in custody in FIR No. 21/03 U/s 7/25 Arm Act

registered at P/s Ram Munishi Bagh, Srinagar. The detention order is under challenge.

2. Ld. Counsel, notwithstanding number of grounds taken in the petition, has urged two grounds to assail the detention as under:-

First, that the detenu has not been provided copy of the detention order.

Second, that the copy of FIR and other material referred in the grounds of detention has not been supplied to detenu and further grounds have not

been explained to him in Kashmiri language which alone he understood and no copy of the grounds has been translated in such language to him.

Copy of the grounds is furnished to him in English language which he is not able to understand. The detenu has been prejudiced to make effective representation against the detention.

Para 3 (iv), (v) & (xii) of the petition reads as under:-

That from the perusal of the grounds of detention it is clear that the respondent No.2 has assumed satisfaction on the basis of the allegations leveled

in the FIR referred in the grounds of detention. It also appears that there was some other material also before the respondent No.2 while passing

the impugned order. Thus the material referred and relied by the respondent No.2 in the grounds of detention is the basis for passing the impugned

order. The respondents were bound under law to provide the said material and copies of FIR and seizure memo and record referred and relied in

the grounds of detention of the detenu. The respondents have not provided the copies of the said documents and the material referred and relied in

the grounds of detention which has rendered him unable to make representation much less effective one against the said order of detention. This has

also violated the rights of the detenu as guaranteed to him by law.

3. That the detenu has also not been provided with the copy of the detention order which has rendered him unable to make a representation against the detention order.

4. That the detenu is Kashmiri. The detenu does not understand English Language well. He understands only Kashmiri language. The detenu has

been provided the grounds of detention in English Language which he does not understand. The detenu has not been provided the copy of grounds

of detention in Kashmiri. He has also not been explained the grounds of detention in the language he understands i.e. Kashmiri despite requests in

this behalf to the executing authorities. In this way the detenu has been rendered unable to understand the grounds of detention and to make

representation against the detention order.

5. In counter in para 3 it is stated that the grounds of detention as also the order of detention has been handed over to the detenu against proper

receipt. However, it is stated that the detention order issued by the Detaining authority is based on the material which has been furnished to the

detenu against proper receipt. The grounds of detention have been read over and explained to him in Urdu/Kashmir language. This is even so on

record.

The detention order reads as under:-

Whereas I District Magistrate Srinagar am satisfied on the basis of records received from SSP Srinagar that with a view to prevent Shri Mushtaq

Ahmad Mir @ Maulvi S/o Shri Khazir Mohd. Mir R/o Quil-Muqam Bandipora from acting in any manner prejudicial to the Security of the State it

is necessary to do so.

6. The receipt of grounds of detention on record attested by Dy. Superintendent Central Jail, Jammu which also bears signautre of the detenu

shows that the grounds of detention alongwith copies of FIR, Dossier, report and letter has been communicated to the detenue. Besides the

contents of the grounds of detention have been read over and explained to him in the language which he understood. It also stated that the detenu

has been informed of his right to make representation against the detention to the Government. All this is forthcoming from detention record.

7. On the aforesaid counter and material/documents the allegation of non-communication of the grounds with basic material and prejudiced to

make representation against the detention within the meaning of Article 22(5) of the Constitution and Section 13 of the P.S. Act is not made out.

8. In Rustum Wani Vs. State of J&K in LPA (HC)57/01 a Division Bench of this court observed:-

Now the question arises that whether non-supply of copy of grounds of detention in the language which is understood by him would make any

difference because the detenu is an illiterate person. In our view, since admittedly, the detenu is an illiterate person, instead of supplying copy of the

grounds of detention if it is explained properly and fully in the language understood by him, would be the sufficient compliance of the mandate of

Article 22(5) of the Constitution.

9. In the aforesaid view of the matter the detention is in order and not shown vitiated consequently petition is dismissed.

Srinagar

Syed Bashir-ud-din, J.