
(2011) 02 J&K CK 0005
In the Jammu And Kashmir High Court
Case No : HCP No. 379 of 2010

Mustafa Ali Makroo

APPELLANT

Vs

State of Jammu & Kashmir and others

RESPONDENT

Date of Decision : 28-02-2011

Acts Referred:

Ranbir Penal Code, 1989 — Section 148, 149, 336

Citation : (2011) 02 J&K CK 0005

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. 45/DMP/PSA/10 dated 20th November 2010, of District Magistrate, Pulwama respondent No. 2

herein, whereby one Shri Mustafa Ali Makroo son of Ali Mohd. Makroo resident of Jawbrara New Colony Tehsil Awantipora District Pulwama

(herein after referred to as 'detenue') has been placed under preventive detention and his lodgment directed in District Jail, Kathua.

2. The petitioner's case is that the detenue was, without any cause or justification, apprehended and detention order No. 45/DMP/ PSA/10 dated

20th November 2010, slapped on him. The respondents, it is insisted, have ignored to provide detention order and material, relied upon by

Detaining Authority to order detention and thus deprived detenue of his Constitutional and Statutory right to represent against his detention.

Grounds of Detention are stated to be vague, non-existent and unfounded.

3. The respondents have, in their Counter Affidavit, disputed the averments

made in the petition and insisted that the activities of detainee were prejudicial to the security of state. The detention order is said to have been approved by the State Advisory Board and also by Government vide order No. Home/PB-V/44/2011 dated 05.01.2011. The Learned Deputy Advocate General has made available detention record to lend support to the case set up in the counter affidavit.

4. I have gone through the petition and counter affidavit as also detention record. I have heard learned counsel for the petitioner and learned

Deputy Advocate General, appearing for respondents.

5. The Detention Order is liable to be quashed for the following reasons:-

I) The detention order as also grounds of detention make mention of 'dossier' received from Superintendent of Police Awantipora vide No.

Pros/PSA/10/957-60 dated 09.09.2010, relied upon by the Detaining Authority while making the detention order. The detention record reveals

that none of the documents referred to in the detention order was ever supplied to the detainee. The endorsement on the reverse of the detention

order made by the Executing Officer ' HC Gh. Ahmad 11D/Avt, P/S Awantipora, 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 detainee at the time of execution of detention

order or immediately thereafter. The grounds of detention make reference to case - FIR No. 137/2010 u/s 148,149,336, 332,427 RPC, P/S

Awantipora, to have been registered against the detainee. The involvement of the detainee in aforementioned case appears to have heavily weighed

with detaining authority while making detention order. The record does not indicate that copies of aforementioned First Information Report,

statements recorded u/s 161 Cr.P.C. and other material collected in connection with investigation of aforesaid case, were ever supplied to

detainee. It is pertinent to point out that the respondent No. 2 in grounds of detention, after detailing the background, in which aforesaid case was

registered against detainee, proceeds to opine ' your persistent involvement in the activities is prejudicial to maintenance of public order, peace and

tranquility and constant threat to the maintenance of law and order.' The material, mentioned above, thus assumes significance in the facts and

circumstances of the case. The respondents in their counter affidavit have not

controverted the plea that the said material was not furnished to
detenue. The detention record made available by Learned Deputy Advocate
General reveals that none of the documents referred to in the
detention order was ever supplied to the detenue. It needs no emphasis, that the
detenue cannot be expected to make a meaningful exercise of his
Constitutional and Statutory rights guaranteed under Article 22(5) of the
Constitution of India and Section 13 of Jammu and Kashmir Public Safety
Act, 1978, 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 such
material available, that the detenue can make an effort to convince Detaining
Authority and thereafter Government, that their apprehensions as
regards activities of the detenue are baseless and misplaced. If the detenue is
not supplied material, on which detention order is based, the detenue
cannot be in a position to make an effective representation against his detention
order. The failure on the part of Detaining Authority to supply
material relied at the time of making detention order to detenue, renders
detention order illegal and unsustainable. While holding so, I draw support
from *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*, .

II) Article 22(5) 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 his detention. It needs no emphasis that
a detenue, on whom preventive detention order is slapped, is held
in custody without a formal charge and a trial. The detenue is held in custody on
a mere suspicion that his apprehended activities may be prejudicial
to maintenance of public order or security of State. Article 22(5) of the
Constitution and Section 13 of the Act, thus make it obligatory for
Detaining Authority to provide detenue an earliest opportunity of making an
effective and meaningful representation against his detention. The
object is to enable detenue to convince Detaining Authority and Government, as
the case may be, that all apprehensions regarding his activities are
grossly misplaced and his 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 his detention.

In the instant case detainee is alleged to be ""affiliated with APHC (G)"". The detainee is not informed with sufficient clarity the organization with which the detainee is allegedly affiliated. The word/ expression like ""APHC (G)"" is too vague to make the detainee aware of the exact accusation(s) leveled against him. 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 reference to the activities of ""APHC (G)"" is rendered meaningless in view of non-description of the organization with which the detainee is alleged to be affiliated. The detainee alongwith his 'accomplices' are alleged to be responsible for indulging in stone pelting ""upon the Police/CRPF personnel which resulted in injuries to many Jawans"". The detainee is not informed with sufficient clarity the exact allegations leveled and furnished the particulars of 'accomplices', who are stated to be responsible for indulging in stone pelting, nor the particulars of police and security personnel, who are alleged to have been attacked and injured by the detainee by pelting stones on them. The counter affidavit as also detention record, do not reveal that the detainee is furnished the necessary details of occurrence(s) attributed to him and his unnamed and unidentified accomplices. Moreover, grounds of detention do not contain details of ""Government and Private Property"" or their exact locality, which are alleged to be damaged by the protest demonstrations lead by detainee. The detainee, in absence of such details, could not be expected to have been in a position to give his side of the story and persuade the 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 his stand in reply to the grounds of detention detailed by the respondent No. 2. The detainee has been kept guessing about the facts and events that weighed with the respondent No.

2 and prompted the respondent No. 2 to record subjective satisfaction regarding sufficiency of the material to warrant preventive detention of the

detenue. These are only few instances to illustrate that the grounds of detention are vague and ambiguous and bound to keep the detenue 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 detenue to make a representation

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

others, AIR, 1953,; Chaju Ram Vs. The State of Jammu and Kashmir, ; Mohd. Yousuf Rather Vs. State of Jammu and Kashmir and Others, ;

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

III) The respondent No. 2 in the concluding para of the grounds of detention claims to be satisfied that the activities of the detenue are ""prejudicial

to maintenance of public order, peace and tranquility and a constant threat to the maintenance of law and order."" However, the respondent No. 2

in his counter affidavit has averred that the detenue was placed under preventive detention as in the opinion of respondent no. 2 the activities of the

detenue were ""prejudicial to the security of the state."" There is thus conflict between the detention order, impugned in the petition, and the counter

affidavit sworn by the detaining authority. The conflict is indicative of non-application of mind by detaining authority. The detaining authority

appears to be not sure about the exact ground that persuaded it to make the detention order. It is pertinent to point out that the detaining authority

can slap prevention detention if the activities of the person proposed to be detained under the Act are prejudicial to the security of the state or

public order. Once the detaining authority has not been able to spell out the exact ground in the detention order that led to detention of detenue,

non-application on the part of detaining authority is writ large on the detention order. The detention order merits to be quashed on this ground

alone.

6. Viewed thus, the petition is allowed and detention order No. 45/ DMP/PSA/10 dated 20th November 2010, passed by the District Magistrate,

Pulwama respondent No. 2, directing detention of Shri Mustafa Ali Makroo son of

Ali Mohd. Makroo resident of Jawbrara New Colony Tehsil

Awantipora District Pulwama, quashed.

7. The respondents, in view of quashment of detention order, are stripped of any authority to detain the detainee under order No. 45/

DMP/PSA/10 dated 20th November 2010. Resultantly, the respondents are directed to release the detainee from preventive detention, ordered

vide order No. 45/DMP/PSA/10 dated 20th November 2010.

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

9. Disposed of.