
(2020) 02 J&K CK 0074

In the Jammu And Kashmir High Court

Case No : WP(Crl) No. 42 Of 2019, CM No. 7084, 4701, 9205 Of 2019

Najmussaquib

APPELLANT

Vs

State Of J&K And Others

RESPONDENT

Date of Decision : 28-02-2020

Acts Referred:

Jammu And Kashmir State Ranbir Penal Code, 1989 — Section 120(B), 124(A)
Unlawful Activities (Prevention) Act, 1967 — Section 13
Jammu And Kashmir Public Safety Act, 1978 — Section 17

Citation : (2020) 02 J&K CK 0074

Hon'ble Judges : Sanjeev Kumar, J

Bench : Single Bench

Advocate : M.A.Bhat, F.A.Natnoo

Final Decision : Disposed Of

Judgement

1. Impugned in this petition is an order No.02/PSA/DM/DODA/2019/16-23 dated 22.05.2019 passed by the District Magistrate, Doda-respondent

No.2 (for short the detaining authority) whereby the petitioner-Najmussaquib (hereinafter referred to as the detenu), who has filed this

petition through his father, has been placed under preventive detention with a view to prevent him for acting in any manner prejudicial to the

maintenance of public order. The order is, purportedly, issued under Jammu and Kashmir Public Safety Act, 1978 on the grounds mentioned in the

grounds of detention.

2. The case set up by the detenu in this petition is that the petitioner is a resident of village Nawabad Chakka, Tehsil Bhaderwah, District Doda and

earns his livelihood from a spare parts shop opened by him near his house and his family consisting of his wife, girl child and ailing parents is fully

dependent on him. It is submitted that for unknown reasons, the Police has always been after him, looking for an opportunity to implicate him in a false and imaginary case, but, they have not been able to collect any prima-facie evidence to involve him. Having failed in their endeavour to take the

detenu in custody in substantive law, the detaining authority has slapped the impugned order of detention. The impugned order of detention has been

challenged by the detenu primarily on the following grounds:-

(i) That the order of detention is illegal, unfair and unconstitutional and therefore, cannot sustain;

(ii) That the order of detention is reproduction of the dossier submitted by the Police and there is no independent application of mind by the detaining

authority to arrive at the satisfaction that it is necessary to put the detenu in preventive detention to prevent him from acting in any manner prejudicial

to the maintenance of the public order.

(iii) That the detaining authority has not shown its awareness of the fact that the detenu despite having been booked in substantive offences in FIR

No.75/2016 for the offences under Sections 120-B/124-A RPC and Section 13 of the Unlawful Activities of Prevention Act registered at Police

Station, Bhaderwah, has not been arrested. The detaining authority has not indicated any compelling reason to place the detenu under detention when

he could have been taken into custody in the aforesaid FIR, had there been material to prima-facie substantive the allegations contained in the

aforesaid FIR.

(iv) That the order of detention is based on totally extraneous and irrelevant material and the material relied upon by the detaining authority has not

been supplied to the detenu so as to enable him to make effective representation against his detention order.

(v) That the representation made by the father of the detenu against the detention has not been considered by the Government and the detenu has

been continued in detention illegally and without any authority of law.

3. The District Magistrate, i.e, the detaining authority has filed its counter-affidavit and has justified the order of detention on the ground that the

material submitted by the Senior Superintendent of Police, Doda in the shape of dossier was sufficient to arrive at satisfaction that the activities, the

detenu has been indulging in, had the potential of disturbing the public order

and, therefore, with a view to prevent him from doing so it was necessary to place him under detention. The detaining authority has further averred in the counter-affidavit that registration of FIR No.75/2016, FIR 168/2018, FIR No. 15/2019 and FIR 67/2019 against the detenu is clear indication of the fact that the detenu is incorrigible offender and has been constantly creating terror/fear amongst the minority community of the area and has been making inflammatory speeches mostly during Friday prayers to motivate the youth to take law in their own hands and create and disturb the public tranquillity and order. It is urged that the detention order against the detenu has been issued after complying with all the safeguards as provided under Jammu and Kashmir Public Safety Act and has the approval of the Government.

4. Having heard learned counsel for the parties and perused the record, it is found that, undoubtedly, the activities, the detenu has been alleged to be indulging in have the potential of disturbing even tempo of life and are prejudicial to the maintenance of public order. The material relied upon by the detaining authority is sufficient for any person of ordinary prudence to arrive at the satisfaction that the activities, detenu is indulging in, are prejudicial to the maintenance of public order and it is necessary to put him under the preventive detention to prevent him from continuing with such activities.

The plea of the petitioner that he is innocent and is only involved in one FIR is completely belied by the records. In the grounds of detention, the details of the activities of the detenu and the number of FIRs registered against him have been clearly delineated. Right from the year 2016 till as late as 16.05.2019, the detenu has been constantly indulging in activities calculated to create fear in the minds of the local public, particularly, the minority community. The activities of the detenu, if not prevented by putting him under detention, have the potential of disturbing peaceful atmosphere in Tehsil Bhaderwah.

5. I am, therefore, not in agreement with the learned counsel for the detenu that the detenu has been detained on the basis of extraneous and irrelevant material. The plea of learned counsel for the detenu that since the grounds of detention are only reproduction of dossier submitted by the Police, as such, it has to be inferred that there is no independent application of mind by the detaining authority is also without any substance.

Admittedly, the detaining authority has to base its satisfaction on some relevant material collected by the Police or other Intelligence Agencies. It has no independent mechanism to collect material against such individual, who has become threat to the maintenance of public order or security of the State. The dossier submitted by the Police is nothing, but, a detail of the activities the detenu has indulged in over a period of time. The dossier is, thus, an important material before the detaining authority to arrive at its satisfaction. From the perusal of the grounds of detention, it clearly transpires that the detaining authority has not only reproduced the detail of the activities of the detenu as indicated in the dossier, but, has independently applied its mind and come to the conclusion that the detention of the detenu is absolutely necessary to prevent him from continuing with the criminal activities, which are potentially hazardous and detrimental to the public order.

6. Even after holding that the material before the detaining authority was sufficient to put the detenu under preventive detention, I am unable to uphold the order of detention for the following reasons:-

(a) That the record of detention submitted by the respondents does not indicate as to whether the case of the detenu was placed before the Advisory Board and if so what was the opinion rendered by such Board. There is nothing on record to show as to whether pursuant to the opinion of the Advisory Board, the Government has confirmed the detention under Section 17 of the Jammu and Kashmir Public Safety Act or not.

(b) That apart, from the perusal of the record, particularly, the detention order and subsequent communication issued to the detenu clearly reveal that the detenu was never made aware of his right to make representation against the detention order to the detaining authority. The communication of the detaining authority dated 22.05.2019 addressed to the detenu only advises him to make the representation to the Government against the detention order and not to the detaining authority. As is well settled that omission of the detaining authority to inform the detenu that he has a right to make the representation to the detaining authority also till the order is approved by the Government also vitiates the detention order. (See- 2000 (7) SCC 463 State of Maharashtra and others Vs. Santosh Shankar Acharya)

7. For the foregoing reasons the order of detention, which as per the records produced before me is neither approved by the Advisory Board and nor

confirmed by the Government, cannot sustain in law and the same is, accordingly, quashed. The respondents are directed to release the detenu forthwith, provided he is not required in any other case.

8. Disposed of along with connected Crl(s), if any.