

**(2017) 05 J&K CK 0024**  
**In the Jammu And Kashmir High Court**  
**Case No : 510 of 2016**

Nasir Ahmad Mir

APPELLANT

Vs

State of JK & Anr.

RESPONDENT

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**Date of Decision :** 16-05-2017

**Acts Referred:**

[Jammu and Kashmir Public Safety Act, 1978](#), [Section 8](#)

**Citation :** (2017) 05 J&K CK 0024

**Hon'ble Judges :** Ramalingam Sudhakar

**Bench :** SINGLE BENCH

**Advocate :** Gulzar Ahmad Bhat, Asif Maqbool

**Final Decision :** Allowed

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## Judgement

1. The instant Habeas Corpus petition has been filed challenging the order of detention bearing No. DMB/ARA/PSA/137 dated 23rd September,

2016, passed by District Magistrate, Baramulla i.e. Respondent No.2.

2. In the grounds of detention, it is stated that the detainee, in this case, is 23 years old unmarried labourer and educated upto 12th standard. It is

stated that the detainee is a chronic stone pelter and is involved in pelting stones on Police/Security forces, causing damage to Government/Private

buildings and vehicles. The detainee is stated to be involved in attacking police/CRPF personnel thereby causing grave law and order problems for

the Law Enforcement Agencies, therefore, in order to prevent the detainee in indulging in activities prejudicial to the maintenance of public order,

the provisions of Jammu and Kashmir Public Safety Act, 1798, were invoked to detain the detainee.

3. Reference in the grounds of detention has been made to incident dated 24th

July, 2017, for which FIR No.267/2016 stands registered at Police

Station Sopore. Another incident of 26th August, 2016, is referred to stating that an unruly/violent mob armed with lathies and stones indulged in

heavy stone pelting on the Police/CRPF personnel for which case FIR No.349/2016 stands registered in Police Station, Sopore. Another incident

referred to is of 1st September, 2016, where it is alleged that the detainee led an unruly/violent mob, armed with lathies and stones near Bada

Bazar, Sopore and resorted to heavy stone pelting on the Police/CRPF personnel for which FIR No.239/2016 stands registered at Police Station,

Sopore. Again on 9th September, 2016, it is stated that the detainee being part of unruly mob armed with lathies and stones coming out of different

streets resorted to heavy stone pelting on the law enforcement personnel due to which some police personnel got seriously injured. In this regard,

FIR No.386/2016 stands registered in Police Station, Sopore.

4. According to the detaining authority, the detainee instigated/motivated stone pelters and that his anti-national activities caused serious damage to

the maintenance of public order. It is stated that action taken under normal law did not prove sufficient to deter the detainee from indulging in

antinational activities, as such, the detainee was detained under the provisions of Section 8 of the Jammu and Kashmir Public Safety Act, 1978.

5. Challenging the said detention order, instant Habeas Corpus petition has been filed contending therein, inter alia, that the relied upon documents

for detaining the detainee have not been served on the detainee in the manner known to law and, therefore, prejudice is caused to the detainee and

his right to make a representation has been deprived.

6. Respondents have filed their Counter affidavit stating therein at Paragraph No.4 that whatever material was required to be furnished to the

detainee, stands furnished to him in the form of grounds of detention.

7. A perusal of the Counter affidavit reveals that no details of the documents relied upon for detaining the detainee have been given. Moreover, the

detention record, as produced by the learned Government Advocate, shows that only detention warrant and the grounds of detention have been

supplied to the detainee and that no other document relied upon in the grounds of detention has been served on the detainee thereby affecting the

right of the detainee to make an effective representation against his detention.

This issue was considered by this Court in HCP No.522/2016 dated 28th February, 2017, wherein this Court, at Paragraph No.5, has observed as under:

5. In this case, the right of the detainee to make a meaningful representation to the competent Authority against his detention order has been

affected because from the grounds of detention it is evident that two FIRs registered against the detainee are primarily the reasons for which the

respondents have detained the detainee under the provisions of the J&K Public Safety Act, 1978, and the said relied upon documents for detaining

the detainee have not been supplied to him, therefore, this Court has no hesitation to hold that the detention is bad on this ground alone.

8. Further, the Hon"ble Supreme Court in case titled ""Thahira Haris V. Government of Karnataka, reported in AIR 2009 SC, 2184"", held as

follows:

27. There were several grounds on which the detention of the detainee was challenged in these appeals but it is not necessary to refer to all the

grounds since on the ground of not supplying the relied upon documents, continued detention of the detainee becomes illegal and detention order

has to be quashed on that ground alone. 28. Our Constitution provides adequate safeguards under clauses (5) and (6) of Article 22 to the detainee

who has been detained in pursuance of the order made under any law providing for preventive detention. He has right to be supplied copies of all

documents, statements and other material relied upon in the grounds of detention without any delay. The predominant object of communicating the

grounds of detention is to enable the detainee at the earliest opportunity to make effective and meaningful representation against his detention.

9. For the aforementioned reasons, the impugned order of detention is liable to be set aside. Accordingly, the instant Habeas Corpus petition is

allowed, order of detention bearing No. DMB/ARA/PSA/137 dated 23rd September, 2016 as extended vide Government Order bearing No.

Home/PBV/ 2822 of 2016 dated 23rd December, 2016 is, hereby, quashed. The respondents are directed to release the detainee, namely, Nasir

Ahmad Mir S/o Ghulam Nabi Mir R/o Model Town-B Sopore, Tehsil Sopore, District Baramulla, from preventive custody forthwith, if not

required in any other case.