
(2011) 08 J&K CK 0033
In the Jammu And Kashmir High Court
Case No : HCP No. 154 of 2011

Nayeem Ahmad Wani

APPELLANT

Vs

State of Jammu & Kashmir and others

RESPONDENT

Date of Decision : 11-08-2011

Acts Referred:

Ranbir Penal Code, 1989 — Section 364, 392

Citation : (2011) 08 J&K CK 0033

Hon'ble Judges : Hasnain Massodi, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Hasnain Massodi, Judge

1. Challenge to order No. 51-DMK/PSA of 2010 dated 31.03.2011, of District Magistrate, Kupwara respondent No. 2 herein, whereby one

Shri Nayeem Ahmad Wani son of Gh. Mohi-u-din Wani resident of Kulangam Tehsil Handwara District Kupwara (herein after referred to as

'detenue') has been placed under preventive detention, must succeed for following reasons:

The detention order makes mention of material record such as dossier and other connecting documents relied upon by the detaining authority while

making the detention order. The detention order also makes reference to a communication received from Superintendent of Police, Handwara. The

detention record reveals that none of the documents referred to in the detention order was ever supplied to the detenue. The endorsement on the

reverse of the detention order made by the Executing Officer ASI Ali Mohd No. 149/S of P/S Handwara P/P Chowgal, 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. 336/2005 u/s 364, 347

RPC; FIR No. 17/2006 u/s 392 RPC; FIR No. 48/2006 u/s 392 RPC; FIR No. 128/2007 u/s 223, 224, 512 RPC, Police Station Handwara, to

have been registered against the detainee. The involvement of detainee in aforementioned cases appears to have heavily weighed with detaining

authority while making detention order. The record does not indicate that copies of aforementioned First Information Reports, statements recorded

u/s 161 Cr.P.C. and other material collected in connection with investigation of aforesaid case(s), were ever supplied to detainee. It is pertinent to

point out that the detaining authority, in grounds of detention after detailing background in which aforesaid cases were registered against detainee,

proceeds to opine 'In view of the above facts, it is evident that your activities are detrimental to the security of the State'. The material, mentioned

above, thus assumes significance in the facts and circumstances of the case. It needs no emphasis, that the detainee cannot be expected to make a

meaningful exercise of his Constitutional and Statutory rights guaranteed under Article 22(5) , Constitution of India and Section 13, J&K Public

Safety Act, 1978, unless and until the material on which the detention order is based, is supplied to the detainee. It is only after the detainee has all

said material available, that the detainee can make an effort to convince detaining authority and thereafter Government, that their apprehension as

regards activities of the detainee are baseless and misplaced. If the detainee is not supplied material, on which detention order is based, the detainee

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 detainee, 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 (S.L.J. 2009 (I) 219); and Thahira

Haris etc. Vs. Government of Karnataka and Others, .

2. Article 22(5) of 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 detainee, on whom preventive detention order is slapped, is

held in custody without a formal charge and a trial. The detainee is held in custody on a mere suspicion that his apprehended activities may be

prejudicial to the maintenance of public order or security of the State. Article 22(5), Constitution of India and Section 13 of the Act, thus make it

obligatory for Detaining Authority to provide detainee an earliest opportunity of making an effective and meaningful representation against his

detention. The object is to enable detainee 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.

3. In the instant case the detainee is alleged to be 'OGW' of Hizbul Mujahidin militant outfit, whose headquarter is at 'POK'. The words/

expressions like 'OGW' and 'POK' are too vague to make the detainee aware of the exact accusation levelled 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 detainee is

alleged to have acted as a courier for terrorists and provided them information about the security movements, logistics including food and utensils.

The terrorists, who are alleged to have been given food and utensils as also information about the security movements, are not identified nor their

identity disclosed. The detainee is also alleged to have been motivated by one 'Azger' District Commander to work as their OGW of Hizbul

Mujahidin outfit. The detainee was not provided the particulars of 'Azger' and the detainee thus has been prevented from explaining that the detainee

had nothing to do with 'Azger'. It was incumbent upon the detaining authority to give adequate information regarding identity of militants, with

whom the detainee was alleged to have associated to indulge in subversive activities. The detainee, in absence of such details, could not be expected to have been in a position to give his side of story and persuade respondent No. 2 and other respondents that the allegations against 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 respondent No. 2. The detainee has been kept guessing about the facts and events that weighed with respondent No. 2 and prompted respondent No. 2 to record subjective satisfaction regarding sufficiency of the material to warrant preventive detention of the detainee. These are only few instances to illustrate that the grounds of detention are vague and ambiguous and bound to keep the detainee 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 detainee 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 2009 219.

4. The Detaining Authority respondent No. 2 did not inform the detainee that the detainee, independent of his right to file representation against his detention to the Government, has also a right to submit a representation to the Detaining Authority till the detention was considered by the Government and the Government accorded its approval to the detention. The respondent No. 2 has thus violated Constitutional and Statutory rights of the detainee, guaranteed under Article 22(5) of the Constitution of India and Section 13 of J&K Public Safety Act. It would be apt to make a reference in this regard to the law laid down in State of Maharashtra and Others Vs. Santosh Shankar Acharya, .

5. Viewed thus, the petition is allowed and detention order No. 51-DMK/PSA of 2010 dated 31.03.2011, passed by the District Magistrate,

Kupwara respondent No. 2, directing detention of Shri Nayeem Ahmad Wani son of Gh. Mohi-u-din Wani resident of Kulangam Tehsil

Handwara District Kupwara, quashed.

6. The respondents, in view of quashment of detention order, are stripped of any authority to detain the detainee under order No. 51-DMK/ PSA

of 2010 dated 31.03.2011. Resultantly, the respondents are directed to release the detainee from preventive detention, ordered vide order No.

51-DMK/PSA of 2010 dated 31.03.2011.

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

8. Disposed of.