
(2010) 04 J&K CK 0047
In the Jammu And Kashmir High Court

Nazir Ahmad

APPELLANT

Vs

State and Others

RESPONDENT

Date of Decision : 30-04-2010

Acts Referred:

Constitution of India, 1950 — Article 22
Criminal Procedure Code, 1973 (CrPC) — Section 161

Citation : (2010) 2 JKJ 660

Hon'ble Judges : Hasnain Massodi, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Hasnain Massodi, J.—The Constitution of India - Article 22(5) guarantees following two important rights to a person detained under a

Preventive Detention Law:

To be informed, as soon as may be of the grounds on which the order of detention is made, i.e. the grounds which led to the subjective satisfaction

of the Detaining Authority; that preventive detention was required to be slapped on the detainee To be afforded the earliest opportunity of making a

representation against the order of detention, that is to be furnished with sufficient particulars to enable him to make a presentation which on being

considered may obtain relief to him.

2. Both the rights guaranteed under the Constitution, according to the petitioner have been violated in case of Nazir Ahmad Son of Sh. Ali

Mohammad Resident of Bathoi Tehsil Mahore, District Reasi (herein after referred to as ""detenue""), placed under preventive detention by District

Magistrate -- respondent No. 2 herein vide Order No. DM/Index/312 dated 14.05.2009. The petitioner - father of the detenue, it need no

emphasis, is interested in his life and liberty. The grounds urged in the petition are controverted by the respondents in their reply affidavit.

3. I have gone through the petition, counter affidavit filed by the respondent No. 2, as also detention record made available by Counsel for the respondents. I have heard Counsel for the parties.

4. Challenge to the detention order must succeed on the following grounds:

1. The grounds of detention make mention of case FIR No. 18/2009 under 11/13/17/21, 40-(1)B of Unlawful activities Prevention Act, and

registered against the detainee. But either copy of the FIR mentioned nor the material collected during the investigation by the Investigating Officer

has been made available to the detainee. The endorsement record by the Executing Officer ASI Sh. Shafqat No. 7102/NGO Police Station

Thanamandi on the reverse of detention order does not any were indicate that the aforesaid material was furnished to the detainee at the time of

execution of the detention warrant or immediately thereafter. It appears, that the, involvement of the detainee in case FIR 18/2009 weighed

primarily with the Detaining Authority at the time the detention order was slapped on the detainee. The Detaining Authority was to furnish the copy

of FIR, statements of witnesses recorded by the Investigating Officer u/s 161 Cr.P.C. and copies of seizure memo if any to the detainee so as to

enable the detainee to make clear his stand and convince the Detaining Authority and thereafter the Government that the detention order was

unwarranted and the apprehensions voiced in the detention order and echoed in the grounds of detention were misplaced. The Detaining Authority

by with- holding the aforesaid material on which admittedly reliance was placed while passing the detention order has violated the Constitutional

and statutory safeguards guaranteed to the detainee under Article 22(5) of the Constitution of India and u/s 13 of Jammu and Kashmir Public

Safety Act, 1978. The detention order in question is bound to be quashed on this ground alone. While holding so, I draw support from law laid

down in 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 v. State of Jammu and Kashmir and Ors. 2009 (I) S.L.J 219; and Thahira Haris

etc. Vs. Government of Karnataka and Others, .

2. The grounds of detention, so as to enable the detainee to make an effective representation against his detention, must be clear, specific and

unambiguous, In case the grounds of detention suffer from ambiguity or are vague and sketch, the detainee is left guessing about the exact grounds

that were considered by the Detaining Authority to arrive at a subjective satisfaction that apprehended activities of the detainee were likely to

prejudice the security of the state or public order and that to prevent the detainee from indulging its activities it was necessary to place the detainee

under preventive detention. In the present case a closer look at the grounds of detention leads to the conclusion that the grounds of detention in the

present case are too general, vague and violate the Constitutional and statutory rights of the detainee to make an effective and meaningful

representation against the detention. The detainee is alleged to have been working ""as a guide, harbourer and courier of hawala money of LET

outfit and ""found involved and abetting the terrorism by raising funds for the terrorists of LET outfit"". The detainee is not informed for whom and

when he acted as guide, harbourer or a Curier and how he was involved in adding and abetting terrorism or from whom he raised funds or what

was meant by the alphabets LET. The detainee without being told the person(s) with whom he had associated or whom he had guided or

harboured or for whom he acted as a courier can not expected to explain his stand and convince the Detaining Authority and thereafter the

Government the he had no acquaintance with such person(s) or no chance to meet such person(s). Again the detainee is informed that he was

motivated by one Mohammad Rafiq Alias Noman and code Abdul Rehman, the identity of Mohammad Rafiq alias Noman and Anr. person Alias

Noman, their parentage or place of residence is not disclosed to the detainee. How can detainee make a representation and persuade the Detaining

Authority and the Government thereafter to believe that code Noman and code Abdul Rehman were not known to him or that the detainee had

nothing to do with such persons unless and until all particulars regarding said persons are made available to the detainee. The detainee is alleged to

have handed over Rs. 50,000/- to code Noman after collecting such amount from person code Rizwan, The ground again is vague and unspecific.

These are some of the instances illustrative of the grounds of detention being vague and ambiguous. The respondents thus while formulating the

grounds of detention, have violated the precious right of the detainee to make representation against his detention. It needs no emphasis that a

detention order can not stand the legal scrutiny even where one amongst several grounds of detention is vague and sketchy.

3. The Detaining Authority - respondent No. 2 otherwise did not inform the detainee that the detainee independent of his right to file representation

against his detention to the Government, has also right to submit a representation to the Detaining Authority till the detention was considered by the

Government and accorded approved. The respondent No. 2 has in effect 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. Reference in this regard may be made to the law laid

down in State of Maharashtra and Others Vs. Santosh Shankar Acharya, .

5. In the circumstances the petition is allowed and the detention order No.DM/index/312 Dated 14.5.2009 passed by the respondents directing

preventive detention of Nazir Ahmad Son of Sh. Ali Mohammad Resident of Bathoi Tehsil Mahore, district Reasi is quashed. Resultantly, the

detainee is directed to be let off, unless of course the detainee is required in any other case(s), justifying his continued custody/detention.