

(2010) 12 J&K CK 0004
In the Jammu And Kashmir High Court
Case No : HCP No. 15 of 2010

Nitin Dabur

APPELLANT

Vs

State and Others

RESPONDENT

Date of Decision : 08-12-2010

Acts Referred:

Jammu and Kashmir Public Safety Act, 1978 — Section 18

Citation : (2011) 1 JKJ 263

Hon'ble Judges : Mohd. Yaqoob Mir, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Mohd. Yaqoob Mir, Judge

1. Pursuant to detention order no. 03/PSA dated 14th of May' 2010 passed by the District Magistrate, Poonch, detenue has been ordered to be

detained for a period of two years and on execution thereof, has been lodged in Central Jail, Kot Bhalwal, Jammu. Order of detention is

contended to be illegal and suffers from lack of application of mind.

2. The grounds of detention would indicate that the detenue allegedly is associated with PAK I.S.I agency, so is inculcated to indulge in disruptive

activities including arson, blasts and killing of innocent people, so is to endanger the peace and tranquility and to create sense of insecurity in the

minds of people at large. In the year 2008, detenue is shown to have been arrested along with two other persons while driving a motor cycle

bearing no. JK02F-562. Two pillion riders were arrested whereas the detenue fled away from the spot. From the possession of those pillion riders

Rs. 9500/- and Rs. 8500/- in the denomination of fake Indian currency notes of

Rs. 500/- were recovered, so a case was registered as FIR No.

179/2008. Again on 20th of November' 2009, fake Indian currency amounting to Rs. 4.35 Lacs were recovered and a case was registered as

FIR No. 64 of 2009. Finally in the grounds of detention, it concluded as under:-

Whereas, your unlawful activities clearly indicate that you are of a desperate character and your activities are dangerous for public peace,

tranquility and Society/Nation as a whole. In view of the above, it is not sufficient to deal with you under normal law of land as the indication of

your anti social activities which are highly prejudicial to the maintenance of the security in the present turmoil of the State, it is necessary to detain

you as an only alternative for preventing you from indulging in activities which are prejudicial to the security of State or the Public Orders.

Therefore, you have been ordered for detention in Kote Bhalwal Jail Jammu for a period of two years under J&K Public Safety Act, 1978.

3. The first contention of the learned counsel for the petitioner is that the order of detention suffers from lack of application of mind. The submission

so made has force to prevail for the reasons to follow.

4. According to the conclusion drawn in the grounds of detention, what is made mention of is that the activities of the detainee are dangerous for

public peace, tranquility and society/nation as a whole. Then it is recorded that it is necessary to prevent the detainee from indulging in activities

which are prejudicial to the security of the State or the Public Orders. The conclusion in the grounds of detention as referred to above, clearly

indicates that the detaining authority has not been certain as to whether activities attributable to the detainee are dangerous for public peace or

security of the State or the Public Orders. Section 18 of the J&K Public Safety Act, 1978 provides that in case of prevention vis-a-vis

maintenance of Public Order, maximum period of detention is 12 months and in case of acts prejudicial to the security of the State it is two years.

The detaining authority as per grounds of detention has not been certain whether the acts of the petitioner are prejudicial to the security of the State

or the Public Order. In the order of detention the District Magistrate, Poonch has ordered the detention of the detainee for a period of two years,

when the period of detention in terms of Section 18 of the J&K Public Safety Act, 1978 is to be fixed by the Government. Any such fixation of

detention period by the District Magistrate would amount to influencing the mind of the authorities while fixing the detention period. The non

application of mind is further forthcoming from the counter affidavit as has been filed by the District Magistrate, para V, page 3 of the counter

affidavit is relevant to be quoted. ""v. The case of the detenus was referred to the Advisory Board constituted under the provisions of J&K PSA,

1978. The Advisory Board thus approved the action of the deponent (District Magistrate Poonch) and advice the Govt, to keep the detenus in

detention accordance with the provision of Jammu and Kashmir prevention of illicit Traffic in Narcotic Drugs and Psychotropic Substances Act,

1988. The report of the Advisory Board is attached herewith and marked as Annexure -R4."" The detenie has been detained as his acts were

found to be prejudicial to thesecurity of the State. What are the acts, are that in two incidents fake currency was recovered whereas in the above

referred para of the counter affidavit, District Magistrate has stated that the Government on the advice of the Advisory Board has approved the

detention of the detenie in accordance with the provisions of the J&K prevention of illicit traffic in Narcotics and Psychotropic Substances Act,

1988. It is not termed to be lack of application of mind then what else can be termed to be so. All the aforesaid circumstances show that the

District Magistrate has not applied his mind while passing the order of detention.

5. The next contention of the learned counsel for petitioner is that the grounds of detention are simply a copy of dossier prepared by the police,

same on perusal is found to be correct. While framing the grounds of detention the detaining authority is supposed to derive subjective satisfaction

on perusal of the entire material, which may include the material forming base of the dossier prepared by the police. What the detaining authority

has done is that simply the contents of the dossier prepared by the police have been copied same has been styled as grounds of detention. Even

from the records as produced the material forming base of the dossier is not available therein. Similar position has been dealt with by this Court in a

judgment rendered in Azad Ali Khan Vs. State and Others, , wherein it has been held as under:-

7. Scrutiny of the grounds of detention and the manner in which these have been drafted by just copying the dossier of the police, demonstrates

complete non-application of mind by the District Magistrate in exercising power under Section-8 of the J&K Public Safety Act.

6. The next contention of the learned counsel for the petitioner is that the detenue has not been supplied with the documents forming base for the

order of detention, same contention is also found to be correct. From the perusal of the records it is found that the material forming base for the

grounds of detention has not been supplied to the detenue which in turn has deprived the petitioner from making an effective representation which

is a guaranteed right under Article 22(5) of the Constitution of India.

7. The order of detention on the aforesaid grounds is un-sustainable therefore, is quashed. Detenue shall be released forthwith provided he is not

required in connection with any other case.

Detention record as produced be returned to the learned counsel for respondents.

Petition, accordingly, succeeds.