

(2006) 12 J&K CK 0008
In the Jammu And Kashmir High Court

Noor Mohammad	Vs	APPELLANT
State of Jammu & Kashmir and Others		RESPONDENT

Date of Decision : 22-12-2006

Acts Referred:

Arms Act, 1959 — Section 25, 26, 27, 7
Constitution of India, 1950 — Article 22
Wireless Telegraphy Act, 1933 — Section 3, 6

Citation : (2007) 2 JKJ 505

Hon'ble Judges : Jai Pal Singh, J

Bench : Single Bench

Final Decision : Allowed

Judgement

J.P. Singh, J.—Noor Mohd., petitioner has filed this Habeas Corpus Petition to seek quashing of detention order No. PSA-2006/6 dated

14-09-06 of District Magistrate, Udhampur saying that there was no material with the District Magistrate on the basis whereof, the petitioner could

be validly detained u/s 8 of J&K Public Safety Act, 1978. Omission of the District Magistrate to reflect the material on the basis whereof he had

recorded his satisfaction to exercise power u/s 8 of J&K Public Safety Act too has been urged as a ground by the petitioner to say that this

omission had deprived him of his constitutional right to make an effective representation against his detention.

2. Respondents though afforded opportunity to file their reply to this petition, have opted not to file any counter affidavit. They have, however,

produced the detention records through Sh. B.S. Salathia Additional Advocate General, their counsel.

3. I have considered the submissions of learned Counsel for the parties and

perused the detention records.

4. Petitioner's detention has been ordered by the District Magistrate, Udhampur on grounds which read thus:

Grounds of detention in respect of Sh. Noor Mohd. @ Noora S/o Umar Din Sheikh Gaste Muslim R/o Village Kadwa. Basantgarh Tehsil

Ramnagar District Udhampur.

Whereas, you being a hardcore and dangerous activist of HM terrorist outfit and are deeply involved in the terrorist activities and support the

terror campaign of HM terrorist outfit in Ramnagar and Basantgarh areas of District Udhampur;

Whereas, you apart from being an active upper ground activist of terrorist outfit acts as a courier and are deeply involved in providing food and

shelter to the militants and act as a guide and informed regarding movement/ presence of security forces. You also act as a guide to the armed

militants who infiltrate from across the border to this side and extend all required help to them for accomplishment of their terrorist acts. Your

activities are highly pre-judicial to the security of the State;

Whereas, during the year, 1996, militant namely Gul Mohd (Brother-in-law of Noor Mohd @ Noora) alongwith Ab. Qayoom, Mushtaq and other

militants of HM outfit visited your house and you provided meals and shelter to them.

Whereas, in the month of August, 2004, militants of HM outfits namely Gul Mohd., Nadeem and Razak visited his house and Gul Mohd. Handed

over a plastic container containing one wireless set and one grenade to him for keeping it in safe custody and he kept the items in his custody.

Whereas, in the month of November, 2004, militant of HM outfit namely Gul Mohd and Nadeem Hussain handed over AK-47 Rifle alongwith

loaded magazine to him for keeping it in safe custody at the same place where already ammunition was hidden and he kept all the items including

the AK-47 Rifle in his safe custody illegally.

Whereas, in the month of February, 2005, Noor Mohd @ Noora was arrested by the police and on his instance, one wireless set and one hand

grenade was recovered from a pit which he had dug near his house. On this case FIR No: 3/2005 u/s 120B/121/122/124A RPC 7/25/26/27

Arms Act stands registered in Police Station Basantgarh.

Whereas, in view of the above, I am satisfied that your activities are anti-national, subversive and prejudicial to the security of the state. Therefore, you are detained in the Kot Balwal Jail, Jammu for a period of two years under the provisions of Public Safety Act, 1978.

5. Neither the detention order nor the grounds of detention, indicate the material or source on the basis whereof, Learned District Magistrate had proceeded to draw the grounds of detention. The records which have been made available by learned state counsel too do not indicate the existence of any material on the basis whereof these grounds could be drawn by the Learned District Magistrate. It cannot thus be comprehended as to on what material Learned District Magistrate had drawn the grounds of detention. Such being the case, a person of ordinary prudence, may not be able to make an effective representation against the action of the District Magistrate unless the source of information and material relied upon by the detaining authority in drawing the grounds of detention had been disclosed.

6. I, therefore, find force in the submission of Mr. Hafiz-Ul-Rehman when he says that the omission of Learned District Magistrate in not reflecting the source or material in the grounds of detention had deprived the petitioner of his right to make an effective representation against his detention.

Respondents having failed to produce any material on records to justify the grounds of detention, leave this Court with no other option except to conclude that the order impugned in the petition is the result of complete non-application of mind by the District Magistrate. The order impugned thus, violates Section 8 and 13 of the J&K Public Safety Act, 1978. It offends the mandate of Article .22(5) of Constitution of India too.

7. That apart, the petitioner, as it so appears from the grounds of detention the detinue is stated by District Magistrate, Udhampur to be in custody in FIR No. 3/05 u/s 120B/121/122/124A RPC and 7/25/26/27 Arms Act registered at Police Station Basantgarh. What were those circumstances, which impelled the District Magistrate to pass a detention order in respect of a person who was already in custody, is not forthcoming from the grounds of detention. True it is, that a detention order may be implanted by a detaining authority even in case of a person who was in custody, but in those cases, some reasons/grounds are required to be spelled out to indicate as to why a person though in custody had

been ordered to be detained in preventive custody. Absence of such reasons, in the case of a person who was already in custody, exhibits

complete non-application of mind by the detaining authority in exercising power u/s 8 of J&K Public Safety Act, 1978. Petitioner has placed a

copy of judgment delivered by Learned Sessions Judge, Udhampur acquitting him in offences u/s 122 RPC 7/25 Arms Act and 3/6 Indian

Wireless Telegraphy Act, 1933 on records. Learned District Magistrate, Udhampur has not reflected in his grounds of detention the effect of

acquittal of the petitioner. He has only referred to the FIR which had later culminated in the police challan. All these facts, support the plea of the

petitioner that the District Magistrate, Udhampur had issued the detention order, in a mechanical manner.

8. For all what has been said above, I find the detention of the petitioner to be illegal and unconstitutional being in violation of Section 8 & 13 of

J&K Public Safety Act and Article 22(5) of Constitution of India.

9. Allowing this petition, Order No. PSA-2006/6 dated 14-09-06 of District Magistrate, Udhampur is, accordingly, quashed. Petitioner is ordered

to be set to liberty forthwith, if not required in any other case for infraction of penal laws in force in the State.

10. Detention records shall be returned to the State counsel.