
(2011) 08 J&K CK 0037
In the Jammu And Kashmir High Court
Case No : HCP No. 28 of 2011

Reyaz Ahmad Trumkroo

APPELLANT

Vs

State of Jammu & Kashmir and others

RESPONDENT

Date of Decision : 24-08-2011

Acts Referred:

Jammu and Kashmir Public Safety Act, 1978 — Section 8(1), 8(4)

Citation : (2011) 08 J&K CK 0037

Hon'ble Judges : Hasnain Massodi, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Hasnain Massodi, Judge

1. Challenge to order No. 127/DMB/PSA/10 dated 12.08.2010, whereby District Magistrate, Baramulla respondent No. 2 herein, has ordered

preventive detention of Shri Reyaz Ahmad Trumkroo son of Mohd Shaban resident of Khushal Matoo Tehsil Sopore District Baramulla

(hereinafter referred to as 'detenue'), is to succeed for the following reasons:

1. The respondent No. 2 has, at the very threshold, ordered detention of detenue for a period of 12 months. The respondent No. 2 a senior officer

in the State Administration, is expected to be aware that the detention order made u/s 8(1) of J&K Public Safety Act read with Sub Section (1) is

to survive in terms of Section 8 (4) of J&K Public Safety Act, 1978, for a period of 12 days, unless within said period detention order finds

approval of the Government. The respondent No. 2 by placing the detenue under preventive detention for a period of 12 months in one go has not

only overstepped his authority and trespassed over the powers of Government

but closed all doors for detainee to make a representation against preventive detention. It needs no emphasis that a detainee, under Article 22(5) Constitution of India and Section 13 of the J&K Public Safety Act, has a valuable right to make a representation against his detention to the Detaining Authority, immediately after the detention is made and thereafter to the Government. The detainee has a right to convince the Detaining Authority that the activities attributed to him and apprehended by the Authority are devoid of any substance; that the detainee is a peace loving citizen and there is no reason to suspect that his acts of omission and commission in any manner are prejudicial and detrimental to the security of the State. Once the Detaining Authority orders detention for 12 months, the detainee would be right in nursing an apprehension that the whole matter has been prejudged and there is no use in making a representation against his preventive detention. The illegality committed is bound to dissuade the detainee from making use of an important Constitutional and Statutory right. The Detaining Authority by deciding on the period of detention at the initial stage, has violated Constitutional and Statutory rights of the detainee guaranteed under Article 22, Constitution of India and Section 13, J&K Public Safety Act.

2. The Constitutional and Statutory safeguards, guaranteed to a person detained under preventive detention law, are meaningless unless and until the detainee is made aware of and furnished all the material that weighed with the Detaining Authority while making detention order. The detention record reveals that none of the documents referred to in the detention order was ever supplied to the detainee. The endorsement on the reverse of the detention order made by the Executing Officer Sh. Bashir Ahmad ASI No. 19/ PL of P/S Sopore, 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. 244/2010 u/s 307/IPC, 7/27 I.A. Act, P/S Sopore, to have been registered against detainee. It appears that the involvement of detainee in said case has weighed with respondent No. 2 at the time detention order in question was made. Copies of First Information Report, statements recorded u/s 161 Cr.P.C. and

other material collected in connection with investigation of aforesaid case have not been furnished to detainee. It is pertinent to point out that the

respondent No. 2, in grounds of detention after detailing the background in which aforesaid case was registered against detainee, proceeds to

opine. 'It is manifest from factual position at pre-pares (pre-paras) that your activities are highly pre-judicial to the maintenance of public order'.

The material, mentioned above, thus assumes significance in the facts and circumstances of the case. The detention record does not reveal that

copies of FIR or material collected during investigation of the aforementioned case was at the time of execution of detention warrant or

immediately thereafter made available to detainee to enable him to exercise his Constitutional and Statutory rights guaranteed under Article 22(5),

Constitution of India and Section 13, J&K Public Safety Act, 1978. The Constitutional and Statutory Safeguards are meaningless unless and until

the material on which the detention order is based is supplied to detainee. It is only after the detainee has all said material available that the detainee

can make an effort to convince the Detaining Authority and thereafter the Government that their apprehensions as regards activities of the detainee

are baseless and misplaced. If the detainee is not supplied the material on which the detention order is based, the detainee would not be in a

position to make an effective representation against his detention. The failure on the part of Detaining Authority to supply the material relied at the

time of making detention order, renders detention illegal and unsustainable. It is not necessary to burden this judgment with the detailed reference

to the case law on the subject. A reference to the reported cases, mentioned hereinafter, would suffice. The principle of law, finds expression 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 versus State of Jammu and Kashmir and Others 2009 (I) S.L.J 219; and Thahira Haris etc.

Vs. Government of Karnataka and Others, .

3. Article 22(5) of Constitution of India guarantees a precious and valuable right to a person detained under preventive detention law J&K Public

Safety Act 1978 in the present case, 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 security of the State or to maintenance of the public. Article 22(5) of the Constitution and Section

13 of the Act, make it obligatory for the Detaining Authority to provide the detainee an earliest opportunity of making representation against his

detention. The object is to enable the detainee to convince the Detaining Authority and the Government, as the case may be, that all the

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 the detainee be informed with all possible clarity what is/are apprehended activity/ies that

persuade the 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.

In the instant case the detainee is alleged to have provided every input to the militants with regard to the movement of security forces. The militants,

to whom the information was being allegedly transmitted by the detainee, are not identified nor their identity disclosed. The detainee is also alleged

to have managed food, shelter and other logistic support to the militants in carrying out the subversive activities. 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 only after getting the said information would have been in a position to explain his stand and make an effort to

convince the competent authority that his preventive detention was unwarranted. 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 respondent No. 2 in the concluding para of the grounds of detention claims to be satisfied that the activities of the detainee are 'prejudicial to

the maintenance of public order'. However, the respondent No. 2 in detention order has averred that the detainee was placed under preventive

detention as in the opinion of respondent No. 2, the activities of detainee were 'highly prejudicial to the security of State'. There is thus conflict

between the detention order, impugned in the petition, and grounds of detention as also the counter affidavit sworn by the detaining authority. The

conflict is indicative of non-application of mind by detaining authority. The detaining authority appears to be not sure about the exact ground that

persuaded it to make the detention order. It is pertinent to point out that the detaining authority can slap prevention detention if the activities of a

person proposed to be detained under the Act are prejudicial to the security of the State or public order. Once the detaining authority has not been

able to spell out the exact ground in the detention order that led to detention of detainee, non-application on the part of detaining authority is writ

large on the detention order. The detention order merits to be quashed on this ground alone.

5. The detaining authority 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 his detention was considered by the government and approved.

The detaining authority, 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 Jammu and Kashmir 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, .

2. Viewed thus, the petition is allowed and detention order No. 127/ DMB/PSA/10 dated 12.08.2010, passed by the District Magistrate,

Baramulla respondent No. 2, directing detention of Shri Reyaz Ahmad Trumkroo son of Mohd Shaban resident of Khushal Matoo Tehsil Sopore

District Baramulla, quashed.

3. The respondents, in view of quashment of detention order, are stripped of any authority to detain the detainee under order No. 127/

DMB/PSA/10 dated 12.08.2010. Resultantly, the respondents are directed to release the detainee from preventive detention, ordered vide order

No. 127/DMB/PSA/10 dated 12.08.2010.

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

5. Disposed of.