
(2005) 12 J&K CK 0019
In the Jammu And Kashmir High Court
Case No : HCP No. 100/05

Sajad Ahmad Bhat	Vs	APPELLANT
State and Others		RESPONDENT

Date of Decision : 09-12-2005

Acts Referred:

Jammu and Kashmir Public Safety Act, 1978 — Section 10A, 8
Ranbir Penal Code, 1989 — Section 212

Citation : (2006) 2 JKJ 248

Hon'ble Judges : Hakim Imtiyaz Hussain, J

Bench : Single Bench

Advocate : G.N. Shaheen, for the Appellant; M.A. Beg, Dy. AG, for the Respondent

Final Decision : Allowed

Judgement

Hakim Imtiyaz Hussain, J.—This Habeas Corpus petition has been filed by one Gh. Nabi Bhat R/o Kathsoo Tehsil Pahalgam District

Anantnag for quashing the order of detention passed against his son Sajad Ahmad Bhat and for his release.

2. Through the medium of the present petition the petitioner seeks quashment of order No. Det/PSA/05/08 dated 4.4.2005 passed by the District

Magistrate, Anantnag under the provisions of the Jammu & Kashmir Public Safety Act, 1978 (for short the Act). The main ground raised to

challenge the order of detention is that the same has been passed without due application of mind.

3. The State has filed the reply and has also produced the record to show that the order impugned is in accordance with the provisions of the Act.

4. Heard. I have perused the record relating to the detention of the detenue. District Magistrate, Anantnag has directed the detention of Sajad

Ahmad Bhat the detenue vide order of detention No. Det/PSA/05/08 dated 4.4.20045. The order reads reads as under:

Whereas, Sr. Superintendent of Police Anantnag vide his No. Pros/Dett/05/6440-43 dated 2.4.2005 has produced material record such as

dossier and other connecting documents in respect of Sh. Sajad Ahmad Bhat S/o Gh. Nabi Bhat R/o Kathsoo Tehsil Pahalgam District Anantnag

who has been arrested in case FIR No. 56/05 u/s 212 RPC, 7/25 A. Act stands registered against the subject with Police Station Bijbehara.

Whereas I, Baseer Ahmad Khan District Magistrate Anantnag have gone through the contention of dossier produced before me carefully in

respect of the said person.

Whereas, I am satisfied that with a view to preventing of Sh. Sajad Ahmad Bhat S/o Gh. Nabi Bhat R/o Kathsoo Tehsil Pahalgam District

Anantnag from acting in any manner which, is prejudicial to the security of the State and it is necessary so to do. Now, therefore, in exercise of the

powers conferred by Section 8 Clause(a) of J&K Public Safety Act, 1978 I, Baseer Ahmad Khan District Magistrate Anantnag hereby direct that

the said Sajad Ahmad Bhat S/o Gh. Nabi Bhat R/o Kathsoo Tehsil Pahalgam District Anantnag be detained and lodged in Central Jail Kotbilwal

Jammu for a period of 24 months.

5. The detention has been ordered on the following grounds:

You Sajad Ahmad Bhat S/o Gh. Nabi Bhat R/o Kathsoo Tehsil Pahalgam District Anantnag are a permanent resident of J&K State.

Your age is about 21 years. Your educational qualification is 10+2 pass. . You have mole on left side of face as a mark of identification. You

namely Sajad Ahmad Bhat S/o Gh. Nakbi Bhat R/o Kathsoo Tehsil Pahalgam District Anantnag are an over ground worker of terrorist

organization ""Hizbul Mujahideen"" having its head quarter in Pakistan occupied Kashmir. The sole aim of this banned organization is to secede the

State of Jammu & Kashmir from the union of India by waging an armed war in Jammu & Kashmir State. To achieve this gaol the organization has

its aim/objective by killing the innocent people particularly politicians and the prominent citizen of the society on one hand so that chaos and

confusion is created in the minds of general public to jeopardize the peace and tranquillity and disturb communal harmony in the State. On the other

hands its aim is to indulge in armed attacks and ambushes on the members of security forces defending the mother land against the evil design of terrorist. The organization also indulge in Exploding improvised Explosive Devices. Lobbing of bomb to cause large scale destruction in pursuit of its civil goals.

You namely Sajad Ahmad Bhat S/o Gh. Nabi Bhat R/o Kathsoo Tehsil Pahalgam District Anantnag have been motivated by one Gulzar Ahmad

Tantray who is an active militant of Hizbul Mujahideen banned outfit to join the said organization. On his motivation you joined the said militant

outfit. You namely Sajad Ahmad Bhat S/o Gh. Nabi Bhat R/o Kathsoo Tehsil Pahalgam District Anantnag were providing food and shelter to the

militant and also carry their weapons from one place to another in order to carry antinational and subversive activities. You being an active worker

of banned outfit ""Hizbul Mujahideen"" were motivating the youths to join the said banned organization. You also provides information regarding

movement of security, Police VIP & WIP's to the militant so that they could easily be targeted by the militant. You namely Sajad Ahmad Bhat S/o

Gh. Nabi Bhat R/o Kathsoo Tehsil Pahalgam District Anantnag alongwith your associate Tariq and Manzoor Ahmad have been arrested by SOG

Anantnag at Darkhan Darigund on 29.3.2005 at recovered 02 detonators. 15 RDs of AK 47, one remote control set from your possession. In

which connection case Fir No. 56/05 u/s 212 RPC 7/25 A. Act stands registered in Police Station Bijbehara. You have been arrested in the

instant case and are on proper remand.

You namely Sajad Ahmed Bhat S/o Gh. Nabi Bhat R/o Kathsoo Tehsil Pahalgam District Anantnag are an over ground worker of Hizbul

Mujahideen banned outfit having close links with anti national elements through your aspects and motivator your activities are highly prejudicial

detrimental for maintenance of peace and security of the State otherwise for maintenance of peace and security otherwise you will be a great threat

to the security of State of J&K. It is manifest from the above facts that your activities are highly prejudicial to the security of the State. Hence you

are hereby detained under the provision of J&K Public Safety Act 1978 and you have a right of representation against the said order.

6. The detention order, reproduced above would show that the detention of the

detenue is actually based on the dossier of the Senior

Superintendent of Police Anantnag. Though the detaining authority states that the Sr. Superintendent of Police has produced other connecting

documents in respect of the detenue but no such 'other' material is on file. The detaining authority has also observed that he has gone through 'the

contention of dossier' which shows only the dossier has been produced or if any other material was sent to the detaining authority it was not

considered by him. A perusal of the grounds of detention and the dossier shows that the grounds is a verbatim copy of the dossier with minor

changes at the beginning of the sentence.

7. In *Naba Lone v. District Magistrate* 1988 SLJ 300 this Court while dealing with a case where a similar situation arose observed:

The grounds of detention supplied to the detenue is a copy of the police dossier, which was placed before the District Magistrate for his subjective

satisfaction in order to detain the detenue. This shows total non-application of mind on the part of the detaining authority. He has dittoed the Police

direction without applying his mind to the facts of the case.

8. In *Noor-ud-Din Shah v. State of J&K and Ors.* 1989 SLJ 1, this Court quashed the order of detention which was only a reproduction of the

dossier supplied to the Authority on the ground that it amounted to non-application of mind. The Court observed:

I have thoroughly by examined the dossier submitted by the Superintendent of Police, Anantnag, to District Magistrate, Anantnag as also the

grounds of detention formulated by the latter for the detention of the detenue in the present case, and I find the said grounds of detention are

nothing but the verbatim reproduction of the dossier as forwarded by the Police to the detaining authority. He has only changed the number of

paragraphs, trying in vain to give it a different shape. This is in fact a case of non-application of mind on the detaining authority. Without applying

his own mind to the facts of the case. He has acted as an agent of the police. It was his legal duty to find out if the allegations levelled by the police

against the detenue in the dossier were really going to effect the maintenance of public order, as a result of the activities, allegedly, committed by

him. He had also to find out whether such activities were going to affect the public order in future also as a result of which it was necessary to

detain the detainee, so as to prevent him from doing so. After all, the preventive detention envisaged under the Act is in fact only to prevent a

person from acting in any manner which may be prejudicial to the maintenance of public order, and not to punish him for his past penal acts. The

learned District Magistrate appears to have passed the impugned order in a routine manner being in different to the import of preventive detention

as or detained in the Act, Passing of an order without application of mind goes to the root of its validity, and in that case, the question of going into

the genuineness or otherwise of the grounds does not arise. Having found that the detaining authority has not applied his mind to the facts of the case

while passing the impugned order, it is not necessary to go to the merits of the grounds of detention, as mandated by Section 10A of the Act.

9. A similar situation arose in *Jai Singh and Others Vs. State of Jammu and Kashmir*, before the Supreme Court. The court quashed the detention

as it found that there cannot be a greater proof of non-application of mind and that the liberty of a subject being a serious matter, it is not to be

trifled with in this casual, in different and routine manner. The Court observed:

First taking up the case of *Jai Singh*, the first of the petitioners before us, a perusal of the grounds of detention shows that it is a verbatim

reproduction of the dossier submitted by the Senior Superintendent of Police, Udhampur to the District Magistrate requesting that a detention

order may kindly be issued. At the top of the dossier, the name is mentioned as *Sardar Jail Singh*, father's name is mentioned as *Sardar Ram Singh*

and the address is given as village *Bharakh*, Tehsil *Reasi*. Thereafter it is recited ""The subject is an important member of....

Thereafter follow various allegations against *Jai Singh*, paragraph by paragraph. In the grounds of detention, all that the District Magistrate has

done is to change the first three words ""the subject is"" into ""you *Jai Singh*, S/o *Ram Singh*, resident of village *Bharakh*, S/o *Ram Singh*, resident of

village *Bharakh*, Tehsil *Reasi*"". Thereafter word for word the police dossier is repeated and the word ""he"" wherever it occurs referring to *Jail Singh*

in the dossier is changed into 'you' in the grounds of detention. We are afraid it is difficult to find greater proof of non-application of mind. The

liberty of a subject is a serious matter and it is not to be trifled with in this casual, indifferent and routine manner.

10. It is well settled now that the courts while exercising powers of judicial review do not consider the challenge to an order of detention, as if on

an appeal re-appreciating the materials, yet since an order of detention involves the fundamental rights of citizen, it is open to the courts to see

whether there has been proper application of mind on the part of the detaining authority and that all the relevant and vital materials for the purpose

have been noticed, adverted to and considered. Reliance in this behalf may be placed on *Chowdarapu Raghunandan Vs. State of Tamil Nadu* and

Others, where the Apex Court held:

Though, no doubt Courts exercising powers of judicial review do not consider the challenge to an order of detention, as if on an appeal re-

appreciating the materials, yet since an order of detention in prison involves the fundamental rights of citizen, freedom of movement and pursuit of

normal life and liberty, no absolute immunity can be claimed by the respondents as to the decision arrived and it is open to the Courts to see

whether there has been due and proper application of mind and that all the relevant and vital materials for the purpose have been noticed, adverted

to and considered. So far as the facts of the present case are concerned, the plea on behalf of the petitioner is not that some one else also is

concerned with the offending act but that he has nothing to do with it and that the baggage containing the contraband really belonged to such other

person. Such plea cannot be also brushed aside in this case as one merely invented in the air but seem to have necessary basis from the fact that

baggage Ticket Nos. 0021777 and 0021771 were registered in the name of one Babu and that concedingly action and investigation in this regard

is still pending and has not concluded so far. If the baggage really belonged to another person as was stated to have been registered. It necessarily

follows that the petitioner cannot be the owner of the very same baggage. The seriously doubtful position about the elementary and basic fact

regarding the ownership of the baggage and the admitted inconclusive stage of the investigation in this regard could not legitimately help the

authorities to pass any order of detention against the petitioner on the perfunctory and inchoate materials relied upon. Apart from the absence of

any positive or concrete materials to connect the baggage in question with the petitioner, the nature of stand disclosed in the counter affidavit filed

on behalf of the 1st respondent on this aspect does not really help the authority to prove that the said material and such vitally relevant aspect was

either adverted to or really considered before passing the order of detention. Consequently, the impugned order suffers the vice of total non-

application of mind to a relevant and vital material touching question of the culpability as well as the necessity to order the detention of the

petitioner. The impugned order of detention therefore, has been rightly quashed and the writ petitioner ordered to be released from detention in

prison." It is only from the detention order and the material placed before the detaining authority that the court can come to the conclusion as to

whether there was proper application of mind in directing the detention or not. Where the detaining authority solely basis its opinion on the dossier

of the police and simply reproduces it in the grounds of detention and there is no indication either in the order of detention or the grounds of

detention that the authority himself appreciated the contentions in the dossier, gave due considerations to it and was satisfied that there were

grounds to proceed it cannot be said that there was a due application of mind on the part of the detaining authority. Mere reproduction of dossier

is not sufficient unless supported with other material to show due application of mind.

11. Applying this settled legal position to the facts of the present case I find the order impugned cannot stand as it is based on the grounds of

detention which is only a verbatim copy of the police dossier. In the facts and circumstances I find not due application of mind on the part of the

detaining authority while passing the order impugned. In view of this ground I need not to go to other grounds raised in the petition.

12. The petition is therefore, allowed. Detention order No. Det/PSA/05/08 dated 4.4.2005 impugned in the present petition is hereby quashed.

Detenue Sajad Ahmad Bhat S/o Gh. Nabi Bhat R/o Kathsoo Tehsil Pahalgam District Anantnag be released from custody in this case forthwith

provided he is not required in any other case.

13. Record produced by Ld. Dy. AG is returned to him in the open court.