

(2017) 05 J&K CK 0009
In the Jammu And Kashmir High Court
Case No : 559 of 2016

Sajad Ahmad Shiekh

APPELLANT

Vs

State of J&K & Ors.

RESPONDENT

Date of Decision : 06-05-2017

Acts Referred:

Citation : (2017) 05 J&K CK 0009

Hon'ble Judges : Ramalingam Sudhakar

Bench : SINGLE BENCH

Advocate : Nasir Qadri, Q. R. Shamas

Final Decision : Allowed

Judgement

1. The instant Habeas Corpus petition has been filed, challenging the Detention order No. 17/DMB/PSA/2016 dated 23.08.2016. It is stated in

the detention order that in order to prevent the detainee to act in any manner prejudicial to the public order and therefore, it has become necessary

to detain him under the provisions of Jammu and Kashmir Public Safety Act, 1978.

2. In the grounds of detention, it is stated that the detainee is 20 year old and hails from Manzmohalla S. K. Bala Hajin, Bandipora. He is stated to

be studied up to 8th class and that he was involved in activities of unlawful procession, mobilizing the youth, provoking and instigating them against

the Government, thereby indulging in activities, highly prejudicial to the peace, tranquillity and public order. In relation to various unlawful activities

like stone pelting, FIR No. 48/2016, 52/2016, 54/2016 was registered before the Police Station Hajin. In all these three incidents, it is stated that

the detainee was part of a big mob who were pelting stones on the police and

security forces, stating that the activities of the detainee are prejudicial to the peace and public order and that the normal course of action or ordinary law would have not effect on him, therefore, the detention has been slabbed on him.

3. Counter stands filed by the respondents.

4. One of the grounds in the Habeas Corpus petition is that the detention order is bad as the detainee has not been supplied the relied upon

documents and his right to make an effective representation has been curtailed. In the reply filed by the respondents, it is stated that at the time of

execution or warrant contents of detention order were explained to the detainee and the detention material relied upon were served to the detainee

through Superintendent Coat Bulwal Jail, Jammu. It is also stated that along with detention warrant, copies of FIRs were supplied to the detainee to

make a representation.

5. Ongoing through the original record file and execution warrant, it says that relevant documents, i.e., detention warrant and grounds of detention

had been handed over to Court Bulwal Jail, Jammu but there is no reference to the documents and the grounds of detention.

6. It is therefore, clear that all the documents which form part of detention order have not been served to the detainee so as to enable him to make

an effective representation. This issue of non-supply of relied upon documents was considered in HCP No.522/2016 dated 28th February 2017,

wherein this Court has observed,

that the right of the detainee to make a meaningful representation to the competent Authority against his detention order has been

affected because from the grounds of detention it is evident that FIR registered against the detainee are primarily the reason for which

the respondents have detained the detainee under the provisions of the J&K Public Safety Act, 1978, and the said relied upon

documents for detaining the detainee have not been supplied to him, therefore, this Court has no hesitation to hold that the detention is

bad on this ground alone".

7. Further reliance has been placed on Paragraph Nos. 27 & 28 of the decision of the Hon''ble Supreme Court in case Titled "" Thahira Haris V.

Government of Karnataka, reported in AIR 2009 SC, 2184, which are reproduced as under:-

27. There were several grounds on which the detention of the detenu was challenged in these appeals but it is not necessary to refer

to all the grounds since on the ground of not supply the relied upon documents, continue detention of the detenu become illegal and

detention order has to be quashed on that ground alone.

28. Our Constitution provides adequate safeguards under clauses (5) and (6) of Article 22 to the detenu who has been detained in

pursuance of the order made under any law providing for preventive detention. He has right to be supplied copies of all documents,

statements and other material relied upon in the grounds of detention without any delay. The predominant object of communicating

the grounds of detention is to enable the detenu at the earliest opportunity to make effective and meaningful representation against his

detention.

8. The 2nd issued , i.e., denial of representation to the Detaining Authority merits consideration in light of the decision of this Court rendered in

HCP No. 634/2016. Paragraph Nos. 5 to 7 whereof are reproduced as under:-

5. It is pleaded that neither the detention order nor the aforesaid intimation in terms of Section 13 of the Jammu and Kashmir Public

Safety Act, makes it clear that detenu will be entitled to make a representation to the Detaining Authority. Prejudice to the detenu is

pleaded stating that this right to make effective representation to the Detaining Authority who has issued the detention order is denied.

To buttress this argument, learned counsel for the petitioner relied upon the decisions of this Court in "" Bashir Ahmad Sheikh v. State

of J&K & Ors, 2011 (1) JKJ HC 82 and Shabir Ahmad Malik V. State of J&K & Ors. 2011 (1) JKJ HC 171"". Further reliance is

also placed on the decision of this Hon"ble Supreme Court in the case of "" State of Maharashtra & Ors. v. Santosh Shankar

Acharya, AIR 2000 SC 2504"", where provisions of Sections 3(2), 8(1) of the Maharashtra Prevention of Dangerous Activities of

Slumlords, Bootleggers, Drugs offenders and Dangerous Persons Act, 1981, was considered in the light of the plea that the Detaining

Authority did not provide an opportunity to the detainee to make a representation to the Detaining Authority and there, it was held to be bad.

6. Considering the language used in Section 8(1) of the Maharashtra Act, the Hon"ble Supreme Court held that if the detention order

is passed by an officer other than the State Government the right to make representation to the said detaining authority cannot be

taken away. The reliance was placed on the provisions of Section 21 of the Bombay General Clauses Act, 1904.

7. In this case also the detention order has been passed by the District Magistrate, however, right to make a representation to that

authority has not been granted, however, it is specifically mentioned that representation is to be made to the Government. Thereby

detainee has been put to great prejudice as he is unable to make a representation to the said authority.

9. On both the aforesaid grounds, the impugned detention order is liable to be set aside. Accordingly, the Habeas Corpus petition is allowed,

detention order bearing No. 17/DMB/PSA of 2016 dated 23.08.2016, is hereby quashed and the respondents are directed to release the

detainee, namely, Sajad Ahmad Shiekh S/O Abdul Jabbar Sheikh R/O Manzmohalla, S. K. Bala, Hajin, Bandipora from preventive custody

forthwith, if not required in any other case.

10. Record is returned to learned GA in the open Court.