

(2011) 08 J&K CK 0032
In the Jammu And Kashmir High Court
Case No : HCP No. 82 of 2011

Sajad Bhat Bhat

APPELLANT

Vs

State of Jammu & Kashmir and others

RESPONDENT

Date of Decision : 02-08-2011

Acts Referred:

Arms Act, 1959 — Section 25, 7
Criminal Procedure Code, 1973 (CrPC) — Section 161

Citation : (2011) 08 J&K CK 0032

Hon'ble Judges : Hasnain Massodi, J

Bench : Single Bench

Judgement

Hasnain Massodi, Judge

1. Challenge to order No. 163/DMB/PSA/10 dated 20.12.2010, of District Magistrate, Baramulla respondent No. 2 herein, whereby one Shri

Sajad Ahmad Bhat son of Bashir Ahmad Bhat resident of Botingoo Tehsil Sopore District Baramulla (herein after referred to as 'detenue') has

been placed under preventive detention, must succeed for following reasons:

1. The respondent No. 2 has intriguingly mentioned that ""on the basis of grounds of detention placed before me (him)"" , the detenue is placed under

preventive detention from acting in any manner prejudicial to the security of the State. The Detaining Authority may get inputs from different

agencies including Superintendent of Police of the concerned District. Responsibility to formulate grounds of detention, however, rests with the

Detaining Authority. It is Detaining Authority, who has to go through the reports and other inputs received by him from concerned police and other

agencies and on such perusal arrive at a subjective satisfaction that the subject is to be placed under preventive detention. It is thus for the

Detaining Authority to formulate grounds of detention and satisfy itself that grounds of detention so formulated warrant passing of preventive

detention. The detention order, for the said reasons, exhibits total non-application of mind by the detaining authority. The detention order is liable

to be quashed on this ground alone.

2. The grounds of detention make reference to case - FIR No. 559/2010 u/s 7/25 A. Act, to have been registered against detainee. The

involvement of detainee in the aforementioned case appears to have heavily weighed with detaining authority while making detention order. The

detention record as also counter affidavit do not indicate that copies of aforementioned First Information Reports, statements recorded u/s 161

Cr.P.C. and other material collected in connection with investigation of aforesaid cases, were ever supplied to detainee. It is pertinent to point out

that the detaining authority in grounds of detention, after detailing background, in which aforesaid case was registered against detainee, proceeds to

opine ""It is manifest from factual position as at prepares (pre paras) that your activities are highly prejudicial to the maintenance of public order""..

The material, mentioned above, thus assumes significance in the facts and circumstances of the case. The respondents, in their counter affidavit,

have not controverted the plea that the said material was not furnished to detainee. The detention record as also counter affidavit reveal that none of

the documents referred to in the detention order was supplied to the detainee. It needs no emphasis that the detainee cannot be expected to make a

meaningful exercise of his Constitutional and Statutory rights guaranteed under Article 22(5) of the Constitution of India and Section 13 of Jammu

and Kashmir Public Safety Act, 1978, unless and until the material on which the detention order is based, is supplied to the detainee. It is only after

the detainee has all said material available, that the detainee can make an effort to convince Detaining Authority and thereafter Government, that

their apprehension as regards activities of the detainee are baseless and misplaced. If the detainee is not supplied material, on which detention order

is based, the detainee cannot be in a position to make an effective representation against his detention order. The failure on the part of Detaining

Authority to supply material relied at the time of making detention order to detainee, renders detention order illegal and unsustainable. While holding

so, I draw support from *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 provides a precious and valuable right to a person detained under preventive detention law - J&K Public Safety

Act 1978, 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 maintenance of public order. Article 22(5), Constitution of India and Section 13 of the Act, thus make it obligatory for Detaining

Authority to provide detainee an earliest opportunity of making an effective and meaningful representation against his detention. The object is to

enable detainee to convince Detaining Authority and Government, as the case may be, that all 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

detainee be informed with all possible clarity what is/are apprehended activity/ies that persuaded 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 be associated with 'HM' outfit. The word/expression like 'HM', is too vague to make the detainee

aware of the exact accusation leveled against him. The detaining authority has not to work on assumptions and presumptions that whatever

acronyms it is aware of must be necessarily known to the detainee. The reference to the activities of "'HM outfit'" is rendered meaningless in view of

non-description of organization with which the detainee is alleged to be associated. It is also alleged that some arms/ammunition were recovered

from the detainee. There is nothing on record to suggest that the seizure memo, vide which the alleged recoveries were made, were ever supplied to

the detainee. The counter affidavit as also detention record do not reveal that the detainee is furnished the necessary details of occurrences/events

attributed to him. The detainee, in absence of such details, could not be expected to have been in a position to give his side of story and persuade

the respondent No. 2 and other respondents that the allegations against the detainee were bereft of any basis. To sum up, the grounds of detention

that constitute basis for the detention order in question are ambiguous, vague, uncertain and hazy. A person of ordinary prudence would not be in a

position to explain his stand in reply to the grounds of detention detailed by the respondent No. 2. The detainee has been kept guessing about the

facts and events that weighed with the respondent No. 2 and prompted the respondent No. 2 to record subjective satisfaction regarding sufficiency

of the material to warrant preventive detention of the detainee. 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 219.

4. 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. 163/DMB/PSA/10 dated 20.12.2010, passed by the District Magistrate,

Baramulla respondent No. 2, directing detention of Shri Sajad Ahmad Bhat son of Bashir Ahmad Bhat resident of Botingoo 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.

163/DMB/PSA/10 dated 20.12.2010. Resultantly, the respondents are directed to release the detainee from preventive detention, ordered vide

order No. 163/DMB/PSA/10 dated 20.12.2010.

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

5. Disposed of.