
(2010) 11 J&K CK 0004
In the Jammu And Kashmir High Court
Case No : Hcp. No. 229 of 2010

Shabir Ahmad Malik

APPELLANT

Vs

State of Jammu & Kashmir and Others

RESPONDENT

Date of Decision : 15-11-2010

Acts Referred:

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

Citation : (2011) 1 JKJ 171

Hon'ble Judges : Gh. Hasnain Massodi, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Hon'ble Mr. Justice Gh. Hasnain Massodi, Judge

1. Challenge in this petition is to order No.119/DMB/PSA/10 dated 15th July 2010, whereby District Magistrate, Baramulla - respondent No.2

herein, has ordered preventive detention of Shri Shabir Ahmad Malik son of Late Abdul Ahad Malik resident of Mulgam, Kunzar, Tehsil

Tangmarg, District Baramulla, (herein after referred to as ""detenue"") for a period of 06 months and directed his lodgment in District Jail, Kupwara.

2. I have gone through the petition. I have heard learned counsel for the petitioner as also learned Additional Advocate General, appearing for respondents.

3. The petition must succeed for the following reasons:

1. The respondent No.2 has, at the very threshold, ordered detention of detenue for a period of 06 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 detainee under preventive detention for a period of 06 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 06 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. In the instant

case, grounds of detention as well as detention order in question make mention of case - FIR No.45/2010 u/s 7/25 A. Act registered at Police

Station Kunzer and FIR No.52/2010 u/s 393 RPC, 7/27 A. Act registered at Police Station Tangmarg against the detainee. It appears that the said

case(s) have weighed with respondent No.2 at the time detention order in question was made. Copies of First Information Reports, statements

recorded u/s 161 Cr.P.C. and other material collected in connection with investigation of aforesaid case(s) has 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 cases were registered

against detainee, proceeds to opine "It is manifest from factual position as at prepares (pre-para) 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 detention

order or grounds of detention do not reveal that copies of FIRs or material collected during investigation of the aforementioned case(s) was at the

time of execution of detention warrant or immediately thereafter made available to the 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 the 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 v. 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) 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 security of the State or maintenance of the public order. Article 22(5) of the Constitution and Section 13 of the Act, thus make it obligatory

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

object is to enable detainee to convince the Detaining Authority and the 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 upper ground worker for the militants of ""HM"", having its headquarter at

PAK/POK"". The detainee is not informed with sufficient clarity the organization with which the detainee is allegedly associated. The words/

expressions like ""HM"", ""PAK/POK"", are 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 links with terrorists of ""HM militant outfit"" is rendered meaningless in view of non-description of the organization with which the detainee is

alleged to be associated. 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 activities which are detrimental to the security of the State and public order. 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 v. 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 v. State of J&K and others, 2009 (I) SLJ 2009 219.

4. The Detaining Authority - respondent No.2 did not inform the detainee that the detainee; independent of his right to file representation against his

detention to the Government, has also a right to submit a representation to the Detaining Authority till the detention was considered by the

Government and the Government accorded its approval to the detention. The respondent No.2 has thus violated Constitutional and Statutory rights

of the detainee, guaranteed under Article 22(5) of the Constitution of India and Section 13 of J&K Public Safety Act. It would be apt to make a

reference in this regard to the law laid down in State of Maharashtra and Others Vs. Santosh Shankar Acharya, .

4. Viewed thus, the petition is allowed and detention order No. 119/DMB/PSA/10 dated 15th July 2010, passed by the District Magistrate,

Baramulla - respondent No. 2, Shri Shabir Ahmad Malik son of Late Abdul Ahad Malik resident of Mulgam, Kunzar, Tehsil Tangmarg, District

Baramulla, is quashed.

5. The respondents in view of quashing of detention order are stripped of any authority to detain the detainee under order No.

119/DMB/PSA/10 dated 15th July 2010. Resultantly, the respondents are directed to release the detainee from preventive detention, ordered vide

order No. 119/DMB/PSA/10 dated 15th July 2010. Disposed of.