
(2011) 04 J&K CK 0008
In the Jammu And Kashmir High Court
Case No : HCP No. 457 of 2010

Shabir Ahmad Wani

APPELLANT

Vs

State of Jammu & Kashmir and others

RESPONDENT

Date of Decision : 22-04-2011

Acts Referred:

Ranbir Penal Code, 1989 — Section 150A, 153A, 440

Citation : (2011) 04 J&K CK 0008

Hon'ble Judges : Hasnain Massodi, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Hasnain Massodi, Judge

1. Challenge to order No. DMB/PSA/209/2010 dated 1st November 2010, of District Magistrate, Budgam respondent No. 2 herein, whereby

one Shri Shabir Ahmad Wani son of Abdul Aziz Wani resident of Narbal Tehsil Beerwah District Budgam (herein after referred to as 'detenue')

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

25. The detention order as also grounds of detention make mention of ""dossier and other connecting documents"" received from Superintendent of

Police Budgam vide No. Legal/Dos/09/2630-3 dated 30.09.2010, relied upon by Detaining Authority while making the detention order. The

detention record reveals that none of the documents referred to in the detention order was ever supplied to the detenue. The endorsement on the

reverse of detention order made by Executing Officer "" ASI Ab Aziz NGO No. 171/Bud of P/S Magam, 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. 68/2010 u/s 150-A, 153-A, 440 RPC, 13 ULA Act, 66 IT Act P/S Magam, to have been registered against detainee. It appears that the 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 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 becomes, therefore, necessary to detain you under PSA with a view to preventing you from perpetuating your agenda inimical to peace and 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 does not reveal that the copies of FIR or material collected during investigation of aforementioned case 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 detainee. It is only after the detainee has all said material available that he can make an effort to convince the Detaining Authority and thereafter the Government that their apprehensions as regards activities of detainee are baseless and misplaced. If the detainee is not supplied the material on which the detention order is based, he 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 Dhananjoy 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, .

26. Article 22(5) Constitution of India 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 or security of the State. Article 22(5) of the Constitution 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 the 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 his 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 'OGW' of Hurriyat-G Group. The word/expression like 'OGW', is too vague to make the detainee

aware of 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 detainee. The detainee is not informed with sufficient clarity the exact allegations leveled and furnished the

particulars thereof. The grounds of detention that constitute basis for 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 detaining authority. The

detainee has been kept guessing about the facts and events that weighed with

respondent No. 3 and prompted respondent No. 3 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.

27. 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 right to submit a representation to the Detaining Authority till the detention was considered by the

Government and approved. The respondent No. 2 has in effect violated Constitutional and Statutory rights of detainee, guaranteed under Article

22(5), Constitution of India and Section 13, 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. DMB/PSA/209/2010 dated 1st November 2010, passed by the District

Magistrate, Budgam respondent No. 2, directing detention of Shri Shabir Ahmad Wani son of Abdul Aziz Wani resident of Narbal Tehsil Beerwah

District Budgam, quashed.

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

209/2010 dated 1st November 2010. Resultantly, the respondents are directed to release the detainee from preventive detention, ordered under

order No. DMB/PSA/209/2010 dated 1st November 2010.

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

5. Disposed of.