
(2010) 03 J&K CK 0036
In the Jammu And Kashmir High Court
Case No : HCP No. 223 of 2009

Shabir Ahmad Zargar

APPELLANT

Vs

State and Others

RESPONDENT

Date of Decision : 25-03-2010

Acts Referred:

Constitution of India, 1950 — Article 22

Citation : (2010) 2 JKJ 110

Hon'ble Judges : Gh. Hasnain Massodi, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Gh. Hasnain Massodi, J.—Preventive detention is a serious invasion of personal liberty and such meagre safeguards as the constitution has

provided against the improper exercise of the power must be jealously watched and forced by the Court", the Supreme Court observed in Dr.

Ram Krishan Bhardwaj Vs. The State of Delhi and Others, . The principle of law has been reiterated thereafter in a number of authoritative judicial

pronouncement by Supreme Court and the High Courts. The Supreme Court in Dhananjay Das Vs. District Magistrate, Darrang and Another, has

spelt out the safeguards provided under the constitution in case of preventive detention, in following words;

The law is by now well settled that the detenue has two rights under Article 22(5) of the constitution: (1) to be informed, as soon as maybe of the

grounds on which the order of detention is made, that is, the grounds which led to the subjective satisfaction of the detaining authority, and (2) to

be afforded the earliest opportunity to making representation against the order of detention, that is to be furnished with sufficient particulars to

enable him to make representation which on being considered may obtain relief to him....

2. The Petitioners grievance is that the Respondent No. 2 while ordering preventive detention of Sh. Shabir Ahmad Zargar Son of Ghulam Rasool

Zargar Resident of New Colony Soura Srinagar, (hereinafter referred to as detenu) vide order No. DMS/PSA/48/2009 dated 20th October

2009 has not followed and adhered to the procedural safeguards mandated by the Constitution and Jammu and Kashmir Public Safety Act 1978,

(herein after referred to as Act).

3. I have gone through the Habeas Corpus petition, the Counter Affidavit filed by the Respondent No. 2 as also detention record submitted by

Learned Additional Advocate General.

4. The petition is destined to succeed on the following grounds:

(I) The grounds of detention are vague, depriving the detenu of the right to make an effective representation against his detention- a right

guaranteed under Article 22(5) of the Constitution of India and Section 13 (1) of the Act. The grounds of detention (Annexure P-I) after detailing

the alleged secessionist activities of the detenu since his childhood, that prompted the District Magistrate Srinagar to issue successive detention

orders the last of which was revoked, details immediate ground for slapping preventive detention on the detenu vide order impugned in the

petition as under;-

Report received from reliable sources indicate that you are preparing ground for launching a fresh phase of strikes and in this connection you have

been found motivating the released militants and other cadres of different secessionist and terrorist outfits for organizing the illegal strikes as and

when the final decision regarding the same is taken. You hail from Soura and wield a considerable clout in secessionist/terrorist circles in

downtown city, where you are presently concentrating mobilize your contacts for carrying out the secessionist agenda which is aimed at achieving

the session of the State of Jammu and Kashmir from Union of India. You have put your cadres in a state of readiness for launching the agitation to

disturb the public order and create hurdles for the administrative machinery. A particular faction of Hurriyat Conference has already hinted at

launching the agitation in near future and you have been assigned a very

important role in the scheme of things chalked out by the said secessionist group". The ground extracted above that voices the apprehension that the detainee was "preparing ground for launching a fresh phase of strikes and that the detainee to accomplish the suspected designs was "motivating the released militants and other cadres of different secessionist and terrorist outfits". The ground of detention does not give particulars of "released militants" and "other cadres" who have been approached by the detainee. The detainee is said to have put his "cadres" in a state readiness. The "cadres" are not identified in the grounds of detention nor is it stated with sufficient clarity as to who has "hinted at launching the agitation" or who has assigned "very important role" to the detainee or what role has been assigned to the detainee. In absence of all these details the detainee can not be said to have been in a position to make an effective and meaningful representation, envisioned under the Constitution of India and the Act. The Respondents in effect have violated detainee's constitutional and statutory rights. It needs no emphasis that even if one amongst various grounds relied upon by the detaining authority to arrive at subjective satisfaction that the detainee is required to be placed under preventive detention to prevent the detainee from acting in any manner prejudicial to the security of the State or the maintenance of public order, is vague the right of the detainee to make representation against his detention is violated.

Reference in this regard may be made to law laid down in Dr. Ram Krishan Bhardwaj Vs. The State of Delhi and Others, and the latest judgment of this Court reported in Syed Aasiya Indrabi v. State of J&K and Ors. (1) SLJ 219. It is pertinent to point out that as per the grounds of detention (Annexure P-I) placed on the file, the detainee was previously put under preventive detention vide order No. DMS/PSA/96 dated 31.1.2003. The detention order was quashed by this Court, the detainee was thereafter again detained under the Act, vide No: DMS/PSA/02 dated 17.5.2005. The aforesaid detention order was revoked by the Government vide order No. Home/PSA/2094/05 dated 2nd August 2005. The detainee was thereafter arrested in connection with case FIR 155/1990 of Police Station Soura and lodged in Central Jail Srinagar as under-trial. The detainee was bailed out on 15.11.2006 but immediately re-arrested on 16.11.2006 in case FIIR 123 of 1990 Police Station M.R. Gunj.

(II) That though the Respondent No. 2-detaining authority in the impugned detention order made mention of ""material record"" and ""other

connecting documents"" that according to Respondent No. 2 was gone through and relied upon to record satisfaction that the detainee was required

to be put under preventive detention, so as to prevent the detainee from acting in any manner prejudicial to the maintenance of the security of the

State, the ""material record"" and other ""connecting documents"" that find mention in the detention order were not supplied to the detainee. A

reference in the detention order is made to FIR 45, but the detention record does not reveal that copies of aforesaid FIR's 45/90 u/s 302 P/S

Nowhatta have been furnished to the detainee.

It is constitutional obligation of the detaining authority to provide the material that was considered by it to arrive at a conclusion that preventive

detention of the detainee was warranted u/s 8 of the Act, to the detainee so that detainee is in a position to exercise his right of making a

representation against the detention order. The detaining authority having failed to provide the aforesaid material to the detainee, the detainee's right

of making representation against his preventive detention guaranteed under Article 22 of the constitution of India and Jammu and Kashmir Public

Safety Act, 1978 is violated. A reference in this regard may be made to Dhananjay Das Vs. District Magistrate, Darrang and Another, , Sophia

Gulam Mohd. Bham Vs. State of Maharashtra and Others, and Union of India (UOI) Vs. Ranu Bhandari, .

(III) The Respondent No. 2 did not inform the detainee that the detainee may file a representation before the Respondent No. 2 during the period

of 12 days the detention order was to stay in force independent of his right to file a representation to the Government guaranteed under Article 22

(5) and Section 13 (1) of the Act. It is well settled law that the detaining authority is required to inform the detainee of his right to submit a

representation even to the detaining authority. Reference in this regard may be made to State of Maharashtra and Others Vs. Santosh Shankar

Acharya, .

5. The petition is accordingly allowed, and the detention order for the reason discussed, is quashed. Resultantly the detainee namely Shabir Ahmad

Zargar Son of Ghulam Rasool Zargar Resident of New Colony Soura Srinagar, is

directed to be released forthwith, unless the detainee is involved in any other case justifying his custody/detention.