
(2017) 05 J&K CK 0004
In the Jammu And Kashmir High Court
Case No : 44 of 2017

Shahid Ahmad Dar	Vs	APPELLANT
State of JK & Ors.		RESPONDENT

Date of Decision : 24-05-2017

Acts Referred:

Citation : (2017) 05 J&K CK 0004

Hon'ble Judges : Ramalingam Sudhakar

Bench : SINGLE BENCH

Advocate : M.Y. Lone, M.A. Beigh

Final Decision : Allowed

Judgement

1. The instant Habeas Corpus petition has been filed challenging the order of detention bearing No. DMB/PSA/06 of 2017 dated 1st February, 2017, passed by District Magistrate, Budgam i.e. Respondent No.2.

2. In the grounds of detention, it is stated that the detainee, 22 years old, is a dreaded stone pelter causing serious law and order problems for the Law Enforcement Agencies and is also involved in pelting stones upon the devotees at Ziyarat Shareef, Makhama, who were carrying out a procession on some holy occasion . It is alleged that the detainee is motivating youth of the area to raise anti-national slogans and damage public as well as private properties. Four cases have been registered against the detainee at Police Station, Magam bearing FIR Nos. 128/2016, 130/2016, 150/2016 and 193/2016. The detaining authority was of the view that in order to stop the detainee from indulging in activities which are prejudicial and detrimental to the maintenance of public order, the detainee has been detained under the provisions of the Jammu and Kashmir Public Safety

Act, 1978.

3. One of the ground taken in the Habeas Corpus petition is that the relied upon documents for detaining the detainee have not been supplied to the

detainee in its entirety, as such, his right to make an effective representation has been curtailed.

4. Mr. Beigh, learned AAG, states that counter has been filed by them, but the same has wrongly been put in HCP No.21/2017, wherein detention

order has already expired, however, the said counter is relevant to the present detention order. On perusal of the aforesaid counter affidavit, it is

evident that, in fact, the same is directed against the present detention order bearing No. DMB/PSA/06 of 2017 dated 1st February, 2017. In that

counter affidavit, there is a vague reference of supply of relied upon documents in the form of grounds of detention. The original detention record

was produced by learned AAG which reveals that the relied upon documents were handed over to the jail authorities for serving the same on the

detainee, but the details whereof are absent. In view of vagueness of the counter affidavit, it is clear that all relied upon documents have not been

served on the detainee, vitiating the detention order.

5. Reliance has been placed on the decision of the Hon'ble Supreme Court in case titled ""Thahira Haris V. Government of Karnataka, reported in

AIR 2009 SC, 2184"", in which the Hon'ble Supreme Court, at Paragraph Nos. 27 and 28, held as under:

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

to all the grounds since on the ground of not supplying the relied upon documents, continued detention of the detainee becomes 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 detainee 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 detainee at the earliest opportunity to make effective and meaningful representation against his

detention.

6. Since the detention order, in this case, suffers from serious errors as pointed out above, same is liable to be set aside. Accordingly, the instant

Habeas Corpus petition is allowed and order of detention bearing No. DMB/PSA/06 of 2017 dated 1st February, 2017 is hereby quashed. The

respondents are directed to release the detinue, namely, Shahid Ahmad Dar S/o Abdul Majeed Dar R/o Sozeath, Narbal, Budgam, from

preventive custody forthwith, if not required in any other case.