
(2017) 05 J&K CK 0005
In the Jammu And Kashmir High Court
Case No : 131 of 2016

Shakeel Ahmad Itoo

APPELLANT

Vs

State of J&K & ors.

RESPONDENT

Date of Decision : 30-05-2017

Acts Referred:

[Jammu and Kashmir Public Safety Act, 1978](#), [Section 8](#)

Citation : (2017) 05 J&K CK 0005

Hon'ble Judges : Ramalingam Sudhakar

Bench : SINGLE BENCH

Advocate : M. A. Qayoom, Mohammad Iqbal Dar

Final Decision : Allowed

Judgement

1. The writ petition is filed challenging the detention order No. 30/DMS/PSA/2016 dated 04.07.2016 passed by District Magistrate, Shopian.
2. The detenu has been detained under the Provisions of Section 8 of the Jammu and Kashmir Public Safety Act, 1978, to restrain him from indulging in activities which disturb peace and public order.
3. The grounds of detention reveal that the detenu is 45 years old graduate. During Shri Amarnath Ji land row of year 2008, the detenu alongwith other associates arranged huge public gatherings/rallies in District Shopian and staged protest demonstrations against the Government and also spread hatred and disaffection towards the State and Government of India. The detenu is also alleged to have instigated the people who resorted to violence and pelted stones upon Government establishments, disrupted vehicular traffic and erected blockades on the main roads to restrict the normal traffic movements. for which cases stands registered in the concerned

Police Stations.

4. On 28.06.2012, the detenu allegedly alongwith other miscreants provoked the people against the State Government and by provocative

speeches the sentiments of the people were raised to such an extent that the whole atmosphere became surcharged and the people resorted to

heavy anti-national and anti-State sloganeering, for which FIR No. 57/2012 was registered in Police Station, Zainapora.

5. On 31.07.2012, the detenu allegedly alongwith other miscreants / rioters staged protest demonstrations against the District Administration and

law enforcing agencies and instigated the youth for stone pelting which resulted in injuries to some police personnel and damage to Hospital

Building, for which FIR No: 251/2012 was registered in Police Station, Shopian.

6. On 18.08.2012, the detenu alongwith other associates took out a protest demonstration at Village Tulran challenging the sovereignty and

Integrity of India by delivering anti national speeches, for which FIR No: 276/2012 was registered in Police Station, Shopian.

7. On 13.09.2013, the detenu allegedly alongwith other miscreants pelted stones on the security forces and caused huge damage to the

Government buildings and vehicles of CRPF. In this connection FIR No: 139/2013 was registered in Police Station, Shopian.

8. Again on 06.11.2013, 30.05.2014, 24.07.2014 and 29.07.2014, the detenu along with his associates provoked the general public especially

the youth of Shopian against the law enforcing agencies and caused more and more disturbance and forced the shopkeepers and business units of

the District Shopian to observe shutdown which caused huge losses to the people related to business sector which in turn caused huge financial

losses to the State as well. In this connection various FIRs bearing Nos: 152/2013, 122/2014, 183/2014 and 187/2014 were registered in Police

Station, Shopian, against the detenu.

9. On 10.11.2015 the detenu alongwith his associates pasted posters in the general area of the Shopian District whereunder the people of the

area were threatened to refrain from the participation in democratic process or to face dire consequences, for which FIR No. 255/2015 was

registered in Police Station, Shopian.

10. On 07.04.2016 the detenu alongwith his associates participated on the

funeral of slain terrorist Amanullah Haq Malla and delivered hatred

speeches to the gathering and raised anti national slogans and also provoked the youth to pelt stones on security forces/Police, for which FIR No.

57/2016 was registered in Police Station, Shopian.

11. Keeping in mind the above activities which are threat to maintenance of public peace, the detaining authority was left with no option but to pass

the detention order of the detenu under the provisions of the Jammu and Kashmir Public Safety Act, 1978.

12. Challenging the said detention order, the writ petition has been filed, inter alia, on the ground that the relevant documents have not been served

on the detenu which affect the rights of the detenu to make an effective representation and a right to make a representation to the detaining

authority has not been specified.

13. In the counter filed by the respondents, the grounds of detention have been reiterated. The grounds taken in the writ petition are denied and

insofar as supply of documents is concerned, it is averred therein that the entire material was furnished to him. Perusal of the detention record

shows that except the grounds of detention nothing else was served upon the detenu.

14. With regard to the first issue, i.e., non-supply of relied upon documents, the same was considered by this Court in HCP No.522/2016 dated

28th February, 2017, wherein this Court at Paragraph No. 5 has observed as under:

5. In this case, the right of the detenue to make a meaningful representation to the competent Authority against his detention order

has been affected because from the grounds of detention it is evident that two FIRs registered against the detenue are primarily the

reasons for which the respondents have detained the detenue under the provisions of the J&K Public Safety Act, 1978, and the said

relied upon documents for detaining the detenue have not been supplied to him, therefore, this Court has no hesitation to hold that the

detention is bad on this ground alone.

15. The Hon"ble Supreme Court in case titled Thahira Haris V. Government of Karnataka, AIR 2009 SC 2184, while dealing with the aforesaid

issue held as follows:

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.

16. In view of the above, the detention order is liable to be set aside.

17. The second contention relating to denial of opportunity to make a representation to the Detaining Authority was considered in HCP No.

634/2016, in case titled Abdul Rehman Tantray vs. State of J&K". Paragraph Nos. 5 to 7 whereof are reproduced as under:

5. It is pleaded that neither the detention order nor the aforesaid intimation in terms of Section 13 of the Jammu & Kashmir Public

Safety Act, makes it clear that detainee will be entitled to make a representation to the detaining authority. Prejudice to the detainee is

pleaded stating that his right to make effective representation to the detaining authority who has issued the detention order is denied.

To buttress this argument, learned counsel for the detainee relied upon the decisions of this Court in "Bashir Ahmad Sheikh v. State of

J&K & Ors., 2011 (1) JKJ HC 82" and "Shabir Ahmad Malik v. State of J&K & Ors. 2011 (1) JKJ HC 171". Further reliance is

also placed on the decision of the Hon"ble Supreme Court in the case of "State of Maharashtra & Ors. v. Santosh Shankar Acharya,

AIR 2000 SC 2504", where provisions of Sections 3(2), 8(1) of the Maharashtra Prevention of Dangerous Activities of Slumlords,

Bootleggers, Drugs Offenders and Dangerous Persons Act, 1981, were considered in the light of the plea that the detaining authority

did not provide an opportunity to the detainee to make a representation to the Detaining Authority and therefore, it was held to be bad.

6. Considering the language used in Section 8(1) of the Maharashtra Act, the Hon"ble Supreme Court held that if the detention order

is passed by an Officer other than the State Government the right to make representation to the said detaining authority cannot be

taken away. The reliance was placed on the provisions of Section 21 of the Bombay General Clauses Act, 1904.

7. In this case also the detention order has been passed by the District Magistrate, however, right to make a representation to that

authority has not been granted, however, it is specifically mentioned that representation is to be made to the Government. Thereby

detainee has been put to great prejudice as he is unable to make a representation to the said authority.

18. In view of the aforesaid reasons, the impugned detention order is liable to be set aside. Accordingly, Habeas Corpus petition is allowed.

Detention order No: 30/DMS/PSA/2016 dated 04.07.2016 passed by the District Magistrate, Shopian, is quashed and detainee, namely, Shakeel

Ahmad Itoo S/o Late Gh. Nabi Itoo R/o Manihal Tehsil Barbugh (Imamsahib), District Shopian, be set at liberty, if not required in any other case.

19. The detention record produced by learned counsel for the respondents is handed over to him in the open Court.

20. Disposed of.