

(2000) 06 J&K CK 0002
In the Jammu And Kashmir High Court
Case No : H.C. Petition No. 260 of 1999

Shakeel Ahmad Mir

APPELLANT

Vs

State of J. and K. and Others

RESPONDENT

Date of Decision : 02-06-2000

Acts Referred:

Jammu and Kashmir Public Safety Act, 1978 — Section 3

Citation : (2000) CriLJ 4108 : (2001) 1 RCR(Criminal) 199

Hon'ble Judges : Syed Bashir-Ud-Din, J

Bench : Single Bench

Advocate : M.S. Hussain, for the Appellant; M. Amin, Govt. Pleader, for the Respondent

Final Decision : Allowed

Judgement

Syed Bashir-Ud-Din, J.—District Magistrate, Srinagar, respondent No. 2, passed detention order DMS/PSA/127, dated 30-11-1999

(Annexure-P3) u/s 3 of Jammu and Kashmir Public Safety Act, 1978, whereunder one Shakeel Ahmad Mir on whose behalf this H.C. petition,

writ petition has been filed, is detained with a view to prevent him from acting in any manner prejudicial to the maintenance of the security of the

State. This order is challenged in this petition on number of grounds.

2. Counter-affidavit has been filed on behalf of respondents by District Magistrate, Srinagar, respondent No. 2.

3. The counsel for petitioner submits that challenge to the impugned detention order is confined only to two grounds. First, the order is vitiated for

non-application of mind and has been passed in a mechanical fashion. The Detaining Authority has not been made aware of the fact that the detenu

who had been taken in custody on 20-7-1999 in connection with FIR 167/99

Under Sections 7/25, I.A. Act by Police Station M.R. Gunj, Srinagar was released and admitted to bail on 2-8-1999, by the competent Court and while out on bail and enjoying his freedom he was taken in preventive custody on 8-12-1999. Despite being out on bail for over four months, the Detaining Authority has in the grounds as also in the reply mentioned that the petitioner was in police custody when he was taken in preventive custody and ' handedover to jail authority at Udhampur for confining him under the detention order. Next, counsel further submits that the detenu is an illiterate person who cannot understand English language. The grounds of detention were supplied to him in English not understood by and intelligible to him. No transcript copy in Urdu or Kashmiri accompanied the grounds. The detenu has been adversely affected and prejudiced to make a representation.

4. Government Advocate, Mr. M. Amin, submits, that the Detaining Authority has applied mind and drawn subjective satisfaction while passing the detention order, taut is candid enough to admit that the specific allegation of the petitioner having been on bail as referred in paras 4, 8 and 9 of the petition is not specifically refuted in counter. However, he has produced detention record and concedes that the record does not even prima facie displace the above petition allegation of detenu having been bailed out and while out on bail was taken in custody and yet in the detention order it is shown that on the date of detention he was in punitive custody. The counsel further submits that the grounds of detention were served on the detenu who was explained and translated the same. A receipt was obtained from him while being handedover to jail authorities at Udhampur for being kept in preventive custody there. The counsel concedes that no translation or transcription in Urdu or Kashmiri accompanied the grounds and order when same was served on the detenu.

5. Perusal of record reveals that the detenu was taken in custody in FIR 167/99, Under Sections 7/25, I.A. Act Registered at P/S Maharaj Gunj on 20-7-1999, when some arms and ammunition is shown to have been recovered from his possession. He was granted bail on 2-8-1999 (Annexure P1). The detenu was released on bail from Judicial custody as under trial, while on bail the detenu was again arrested on 7-12-1999 and next day taken to Udhampur where he was handedover to Superintendent of

Udhampur Jail for lodgment as detenu under the impugned detention order of November 30, 1999 (Annexure P3).

6. A combined reading of paras 4, 8 and 9, shows that uncontroverted allegation of the factum of detenu being on bail during a period of over four months and while on bail he was not reportedly involved in any subversive activity is sustainable. These facts and circumstances were not brought to the notice of the Detaining Authority as is manifest from the silence maintained by the respondent No. 2 in counter and as also because of the last para of the grounds reproduced below, which run counter to what is stated heretofore. This relevant extract reads thus :--

...Your activities are highly prejudicial to the maintenance of security of the State and although you are at present in police custody there is every apprehension of your being bailed out and join militant activities again which possess a great threat to the security of the State. Hence your detention under J. & K. PSA has become imperative for which order under the J. & K. Public Safety Act has been issued.

7. It would be seen that the Detaining Authority was fed with information/report that the petitioner was in police custody when the order of detention was passed on 30-11-1999 and that his being out on bail posted potential threat to the security of the State the facts which run counter to ground reality of petitioner being on bail at the relevant time. No facts and circumstances are brought to the notice of Detaining Authority of petitioner having indulged in any activity threatening the security of the State. In like circumstances in Anant Sakharam Raut Vs. State of Maharashtra and Another, it is pointed out:--

...There is absolutely no mention in order about the fact that: the petitioner was an under trial prisoner, that he was arrested in connection with the three cases that, applications for bail were pending and that, he was released on three successive days in the three cases. This indicates a total absence of application of mind on the part of Detaining Authority while passing the order of detention....We hold that there was clear non-application of mind on the part of the Detaining Authority about the fact that the petitioner was granted bail when the order of detention was passed. In the result we set aside the judgment of the Bombay High Court under appeal, quash the order of detention and direct that the petitioner

be released forthwith....

8. Clearly a ease of non-implication of mind on the part of the Detaining Authority while passing the detention order is writ. large on record. The

order cannot be said to have been passed after deriving subjective satisfaction from relevant material/documents as required under law. The

detention is vitiated on this ground.

9. The contention that the detenu is an illiterate and was not supplied translation in Urdu or Kashmiri languages (which he understood) of grounds

served in English on him and thereby sustaining the charge of failing to understand its contents so as to adversely affect his real chances of making

an effective and meaningful representation, is based on record.

10. Record shows that the grounds of detention and order of detention were served on the detenu by Divisional Officer of Police Division Urdu

Bazar, Srinagar who took detenu in custody on 7-12-1999. Though it speaks of that the contents of the warrant were read over and explained to

the detenu, but it ho where shows that the grounds were also read over and explained to detenu either in Urdu or Kashmiri language which

languages detenu is stated to be under- standing. The whole record speaks of execution of detention order and its being ex-plained in language

intelligible to the detenu. >> In fact, from record, it is seen that the receipt on record is only of transfer of detenu to the Udhampur Jail and

confinement of his corpus in the Udhampur Jail for which receipt is given. It only speaks of handing over and taking over of the person of detenu

inter se Police Division Urdu Bazar, Srinagar and the Assistant Superintendent, District Jail Udhampur. There is no proof whatsoever on record to

show that the grounds were served on detenu much less served in language understood by him and accompanied by a translation in the language

which the detenu understood. It is also seen from record that the service of grounds on detenu claimed to be through SSP, Srinagar/SHO Police

Station, Mahragunj and Divisional Officer, Police Station, Urdu Bazar, is not supported by any material or documents on record. None of these

officials or even for that matter any! other officer from Police or jail authorities at Udhampur has filed an affidavit or placed on record anything

regarding service of the grounds as above. In such circumstances, it hardly suffices to say in counter before Court that the grounds were served on

detenu in the language which he understood.

11. In Smt. Raziya Umar Bakshi Vs. Union of India and Others, it has been held :-

...Where the detaining authority is satisfied that the grounds are couched in a language which is not known to the detenu it must see to it that the

grounds are explained to the detenu, a translated script is given to him and the grounds bear some sort of a certificate to show that the grounds

have been explained to the detenu in the language which he understands. A bare denial at the stage when Habeas Corpus petition is filed in the

Court by the detaining authority that these formalities were observed would be of no consequence particularly when it is not supported by any

document by any affidavit of the person who had done the job of explaining or translation.

12. In Hadibandhu Das Vs. District Magistrate and Another, , it has been observed that mere oral explanation of an order without supplying him a

translation in a script or language which the detenu understood amounts to denial of right of being communicated the grounds.

13. In Hadibandhu Das Vs. District Magistrate and Another, , it has been held :-

...The grounds in support of the order served on the appellant ran into fourteen typed pages and referred to his activities over a period of thirteen

years, besides referring to a large number of Court proceedings concerning him and other persons who were alleged to be his associates. Mere

oral explanation of a complicated order of the nature made against the appellant without supplying him the translation in script and language which

he understood would in our judgment, amount to denial of the right of being communicated the grounds and of being afforded the opportunity of

making a representation against the order

14. In result, for aforesaid reasons the detention order is held legally bad and, therefore, quashed. Respondents competent authority having

physical custody of the corpus of the detenu Shakeel Ahmad Mir s/o Abdul Salam Mir R/o Woosi Sahib Aalikadal, Srinagar shall set him at liberty

and release him forthwith from preventive detention, provided detenu is not required in any substantive offence or case. Communicate the order to

concerned and supply copy to detenu free of cost. The detention record has been handedover to Mr. M. Amin, G.A in open Court.