

(2011) 09 J&K CK 0037
In the Jammu And Kashmir High Court
Case No : HCP No. 216 of 2011

Suhail Ahmad Dar

APPELLANT

Vs

State of Jammu & Kashmir and others

RESPONDENT

Date of Decision : 29-09-2011

Acts Referred:

Ranbir Penal Code, 1989 — Section 121, 121A, 124A, 307

Citation : (2011) 09 J&K CK 0037

Hon'ble Judges : Hasnain Massodi, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Honble Mr. Justice Hasnain Massodi, Judge

1. Challenge to order No.05/DMK/PSA/11 dated 28.04.2011, of District Magistrate, Kulgam ' respondent No.2 herein, whereby one Shri Suhail

Ahmad Dar son of Bashir Ahmad Dar resident of Redwani Bala Tehsil and District Kulgam (herein after referred to as 'detenue') has been placed

under preventive detention must succeed for the following reasons:

2. The Detaining Authority at the threshold intriguingly has referred to the 'grounds of detention' to have been prepared by Superintendent of

Police, Kulgam, and placed before Detaining Authority. The Detaining Authority may get inputs from different agencies, including Senior

Superintendent of Police of the concerned District. Responsibility to formulate grounds of detention, however, rests with the Detaining Authority. It

is Detaining Authority, who has to go through the reports and other inputs received by him from concerned police and other agencies and on such

perusal arrive at a subjective satisfaction that the subject is to be placed under

preventive detention. It is thus for the Detaining Authority to formulate grounds of detention and satisfy itself that grounds of detention so formulated warrant passing of preventive detention. The detention order, for the said reasons, exhibits total non-application of mind by the Detaining Authority. The detention order is liable to be quashed on this ground alone.

3. The Constitutional and Statutory safeguards, guaranteed to a person detained under preventive detention law, are meaningless unless and until the detenu is made aware of and furnished all the material that weighed with the Detaining Authority while making detention order. The detention record reveals that none of the documents referred to in the detention order was ever supplied to the detenu. The endorsement on the reverse of the detention order made by the Executing Officer ' ASI Mohd Anwar No.39/AWT of P/S Kulgam, 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 detenu at the time of execution of detention order or immediately thereafter. The grounds of detention make reference to case ' FIR No.163/2010 u/s 307, 121, 121-A, 124A, 188, 147, 148, 149, 336, 427, 332 RPC; and FIR No.239/2010 u/s 307 RPC, 7/25 A. Act at Police Station Kulgam, to have been registered against the detenu. It appears that the said cases have weighed with Detaining Authority at the time detention order in question was made. Copies of First Information Reports, statements recorded u/s 161 Cr.P.C. and other material collected in connection with investigation of aforesaid cases has not been furnished to detenu. The material, mentioned above, thus assumes significance in the facts and circumstances of the case. The counter affidavit as also detention record do not reveal that copies of FIRs or material collected during investigation of the aforementioned cases was at the time of execution of detention warrant or immediately thereafter made available to the detenu 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 the detenu. It is only after the detenu has all said material available that

the detainee can make an effort to convince the Detaining Authority and thereafter the Government that their apprehensions as regards activities of the detainee are baseless and misplaced. If the detainee is not supplied

the material on which the detention order is based, the detainee 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. While holding so, I draw support from *Dhananjay 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*, .

4. Article 22(5) of Constitution 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 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), Constitution of India 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 the 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 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 have been arranging shelter and food for militants and gathering information about movement of security

forces to facilitate militants. The grounds of detention as also detention record do

not reveal that the identification of militants, to whom the information regarding movement of security forces was being allegedly provided/ transmitted by the detainee, has been disclosed to detainee. The detainee is also alleged to have been carrying/transporting illegal arms of militants from one place to another place. The detainee is not furnished the details regarding the place/places, from which he helped to carry/ transport arms of militants or destination of alleged consignments or to whom such help was extended by the detainee. The detainee along with his associate is also alleged to be responsible for stone pelting and injuring police and CRPF personnel. The detainee has also not been furnished the details of police and CRPF personnel, who are alleged to have been injured by the detainee and his associates by pelting stone on them. The detainee, in absence of such details, could not be expected to have been in a position to give his side of story and persuade the Detaining Authority and other respondents that the allegations against detainee were bereft of any basis.

To sum up, the grounds of detention that constitute basis for the 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 detaining authority and prompted detaining authority 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.

5. The Detaining Authority ' respondent No.2 did not inform the detainee that the

detenue, independent of his right to file representation against his detention to the Government, has also a right to submit a representation to the Detaining Authority till the detention was considered by the Government and the Government accorded its approval to the detention. The respondent No.2 has thus violated Constitutional and Statutory rights of the detenue, guaranteed under Article 22(5), Constitution of India and Section 13 of J&K Public Safety Act. The right to make a representation necessarily implies that the detenue must be informed of his right to make a representation to the authority that has made the order of detention at the time when the detenue is served with the grounds of detention so as to enable him to make such a representation and the failure to do so results in denial of the right of the person detained to make a representation. It would be apt to make a reference in this regard to the law laid down in State of Maharashtra and Others Vs. Santosh Shankar Acharya, ; Mrs.Nutan J. Patel Vs. S.V. Prasad and another, SC 1995 (4) Crimes 767; and Kamleshkumar Ishwardas Patel Vs. Union of India (UOI) and Others, .

Viewed thus, the petition is allowed and detention order No.05/ DMK/PSA/11 dated 28.04.2011, passed by the District Magistrate, Kulgam ' respondent No. 2, directing detention of Shri Suhail Ahmad Dar son of Bashir Ahmad Dar resident of Redwani Bala Tehsil and District Kulgam, quashed.

The respondents, in view of quashment of detention order, are stripped of any authority to detain the detenue under order No.05/ DMK/PSA/11 dated 28.04.2011. Resultantly, the respondents are directed to release the detenue from preventive detention, ordered vide order No. 05/DMK/PSA/11 dated 28.04.2011.

Detention record be returned to the counsel for Respondents Disposed of.