
(2017) 12 J&K CK 0015
In the Jammu And Kashmir High Court
Case No : 306 of 2017

Tariq Ahmad Sheikh

APPELLANT

Vs

State of J&K & Ors.

RESPONDENT

Date of Decision : 19-12-2017

Acts Referred:

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

Citation : (2017) 12 J&K CK 0015

Hon'ble Judges : Sanjay Kumar Gupta

Bench : SINGLE BENCH

Advocate : Mir Shafqat Nazir, Asif Maqbool

Final Decision : Allowed

Judgement

1. By dint of order bearing No.92/DMS/PSA/2017 dated 31.08.2017 passed by the Respondent No.2/District Magistrate Baramulla, in exercise

of powers vested in him under Clause (a) of Section (8) of the Jammu and Kashmir Public Safety Act, 1978 (for short the Act of 1978), one

Tariq Ahmad Sheikh S/o Haji Mohammad Ramzan Sheikh R/o Edipora Bomai, District Baramulla, has been detained and lodged in Jail Kathua.

2. The detainee has challenged the said order of detention on following grounds.

a) That the detainee has been implicated in FIR No. 151/2016 of Police Station Bomai. The detainee despite being implicated in the

substantive offence was booked under the provisions of the preventive detention law by the Respondent No.2 under order dated

07.01.2017 bearing No. 210/DMB/PSA/2017. The petitioner challenged his detention vide HCP No. 23/2017 and by virtue of

order/ judgement dated 04.08.2017 this Hon'ble Court was pleased to quash the

order of detention passed against the petitioner

with the further direction to the respondents to set the detainee free. However, the detainee was shifted from the Kotabalwal Jail to

Police Station Tarzoo and kept under illegal custody till the fresh order of detention, on same grounds, was passed against the

detainee bearing No. 92/DMB/PSA/2017 dated 31.08.2017. The impugned order of detention has been passed at the behest and

instance of SSP Sopore and the subjective satisfaction has been drawn by the SSP concerned and not by the Respondent No. 2

himself. The subjective satisfaction which is sine quo non for passing of the order of detention is drawn by the SSP Sopore, which is

not permissible under law. The grounds are vague, irrelevant and nonexistent in the eyes of law.

b) That the detaining authority has not followed the constitutional and statutory procedural safeguards. The detaining authority has not

followed the procedural safeguards as provided under article 22(5) of constitution

c) That the detainee has not been furnished the grounds of detention and other connected documents which has swayed the mind of

the detaining authority. The copy of the FIR's registered against the detainee and the statements recorded under section 161 CrPC

have not been supplied to the detainee. The detainee has two fold and independent Rights viz of Right to be furnished all the

documents and subsequent right of representation against the order of the detention. Both the rights of the detainee have been

violated and there is breach of the procedural safe guards as provided under Article 22(5) of Constitution of India. The detainee has

been thus debarred from making effective and purposeful representation to the Govt. against the order of the detention. Further the

detainee has not been informed as to before whom the detainee has to file representation.

d) That the detaining authority has acted as a rubber stamp of concerned SSP and has reproduced the contents of the dossier in the

grounds of detention without applying his mind to the allegations leveled against the detainee and the necessity of passing the order of

detention. On such basis no prudent and reasonable man can make an effective

and purposeful representation against his detention.

On this count impugned order is liable to be quashed.

e) That the grounds and order of detention have been couched in hypertechnical English language. The detainee has read up to 9th

class only and the detainee as such was not in a position to understand the contents of the grounds and order of detention so as to

make an effective and purposeful representation against his detention. It was the legal duty of the detaining authority to provide to the

detainee the impugned order of detention and other connected material in the language which the detainee fully understands and make

the detainee understands the contents of the same. Thus, the detaining authority has observed the mandatory procedural requirement

in breach.

f) That the detainee has been detained on the basis of identical grounds which formed basis for passing of earlier detention order

dated 07.01.2017. The grounds of detention forming the basis for passing of impugned detention order is the ditto copy of grounds of

detention. The said grounds of detention were perused by this Hon''ble Court and were found not warranting the detention of the

detainee under preventive law, therefore the order of detention dated 07.01.2017 was quashed by this Hon''ble Court vide order

dated 04.08.2017. The detaining authority is not allowed under law to pass the fresh order of detention on the basis of same grounds

when there was no fresh material against the detainee available before the detaining authority. The order of detention is not only bad

in the eyes of law and in violation of different authoritative judicial pronouncements but also amounts to abuse of authority vested in

the detaining authority. The impugned order of detention is also contemptuous as the detaining authority has virtually tried to sit in

appeal over the judgement of this Hon''ble Court dated 04.08.2017 by passing the impugned order of detention without there being

any fresh material available against the detainee. On this ground the impugned detention order is bad in law and deserves to be

quashed.

3. State has filed counter affidavit, thereby stating that petitioner was working as

guide for militants as OGW; that on 12.12.2016, he has kept a foreign militant of Lasker -e- Toiba in his house and shifted the said militants to house of Abdul War; that militant was killed on 14.12.2016; petitioner was detained previously , but later on was released on 9.8.2017 ;that he is in touch with anti-national militants. That a dossier was prepared as normal law of land is not sufficient to deter the detinue. That all the procedural formalities have been completed.

4. I have considered the rival contentions. The record has also been produced. From the perusal of petition and documents annexed it is evident that petitioner was detained previously vide detention order no. 10/DMB/PSA/2017 dated 7.1.2017 on same facts/grounds; that order of detention was quashed by this court in HCP No. 23/2017 dated 4.8.2017 on two grounds; firstly that all documents relied while passing the detention order was not supplied (relying on *Sopia Gulam Mohd. V state of Maharashtra* air 1999 SC 3051) and secondly no compelling reasons /circumstances have been mentioned (relying on *T.P.Mohideen Koya v Government of Kerala* 2004 (8) SCC 106. V state of Maharashtra AIR 1999 SC 3051)

5. Now law is settled that person who had been once booked under preventive detention on certain grounds, and that detention comes to an end, either by revocation or by expiry of the period of detention, then if he has to be again detained under PSA , there must be fresh facts for passing a subsequent order.

6. In 1989 (2) SCC 318 in case titled *Chagan Bhagwan v. N,L Kalana* , it is held as under:-

Relevant extract What would be the legal implications and ultimate effect of quashing an order of detention by the High Court in exercise of its jurisdiction under Article 226 of the Constitution of India this Court in *Ibrahim Bachu Bafan v. State of Gujarat & Ors.*

1985

(2) SCC 24, made the following rule:

...When the High Court exercises jurisdiction under Article 226 of the Constitution it does not make an order of revocation. By

issuing a high prerogative writ like habeas corpus or certiorari it quashes the order impugned before it and by declaring the order to

be void and striking down the same it nullifies the order. The ultimate effect of cancellation of an order by revocation and quashing of

the same in exercise of the high prerogative jurisdiction vested in the High Court may be the same but the manner in which the

situation is obtained is patently different and while one process is covered by Section 11(1) of the Act, the other is not known to the

statute and is exercised by an authority beyond the purview of sub-section (1) of Section 11 of the Act. It is, therefore, our clear

opinion that in a situation where the order of detention has been quashed by the High Court, sub- section (2) of Section 11 is not

applicable and the detaining authority is not entitled to make another order under section 3 of the Act on the same grounds.

It emerges from the above authoritative judicial pronouncements that even if the order of detention comes to an end either by revocation or by

expiry of the period of detention there must be fresh facts for passing a subsequent order. A fortiori when a detention order is quashed by the

Court issuing a high prerogative writ like habeas corpus or certiorari the grounds of the said order should not be taken into consideration either as

a whole or in part even along with the fresh grounds of detention for drawing the requisite subjective satisfaction to pass a fresh order because

once the Court strikes down an earlier order by issuing rule it nullifies the entire order.

In the present case, no doubt, the order of detention contains fresh facts. In addition to that the detaining authority has referred to the earlier

detention order and the judgment of the High Court quashing it, presumably for the purpose of showing that the detenu in spite of earlier detention

order was continuing his bootlegging activities. But what the detaining authority says clearly in paragraph 9 of his affidavit in reply is that he took

into consideration the previous grounds of detention also for his conclusion that the detenu "was engaged in bootlegging activities since long". In

other words the detaining authority has taken into consideration the earlier grounds of detention which grounds had been nullified by the High Court

in Special Criminal Application No.46 of 1987 by issuing a prerogative writ of habeas corpus.

7. In view of above law the detention order No.92/DMS/PSA/2017 dated 31.08.2017 passed by the Respondent No.2/District Magistrate

Baramulla, in exercise of powers vested in him under Clause (a) of Section (8) of the Jammu and Kashmir Public Safety Act, 1978 (for short the Act of 1978), against petitioner-Tariq Ahmad Sheikh S/o Haji Mohammad Ramzan Sheikh R/o Edipora Bomai, District Baramulla, suffers from the basic inherent infirmity of law. It is quashed accordingly .There is no need to deliberate upon other grounds taken in petition. This petition is allowed.