

(2013) 08 J&K CK 0004
In the Jammu And Kashmir High Court
Case No : HCP No. 52 of 2013

Ubaid Tariq Antoo

APPELLANT

Vs

State of J. and K. and Others

RESPONDENT

Date of Decision : 22-08-2013

Acts Referred:

Citation : (2013) CriLJ 4725

Hon'ble Judges : Tashi Rabstan, J

Bench : Single Bench

Advocate : Tufail and M.A. Qayoom, for the Appellant; T.A. Lone, Deputy Advt. General, for the Respondent

Final Decision : Allowed

Judgement

Tashi Rabstan, J.—One Shri Ubaid Tariq Antoo alias Biila alias Faris son of Tariq Ahmad Antoo alias Mitha resident of Kraltang Sopore

District Baramula (hereinafter referred to as ""detenue"") has approached this Court seeking quashment of Order No. 01/DMB/PSA/2013 dated

2nd May 2013, passed by District Magistrate, Baramulla (for short ""detaining authority"") whereby detenue was ordered to be detained u/s 8 of

Jammu and Kashmir Public Safety Act, 1978, on various grounds. The Detaining Authority and the State Government were allowed several

opportunities to respond to the motion. They have, however, opted not to file any response to the petition.

2. Detention record, however, has been made available by learned Deputy Advocate General.

3. Heard learned counsel for the parties at length and considered their submissions and have gone through the record.

4. Preventive detention as held in A.K. Gopalan Vs. The State of Madras, and reiterated in Rekha Vs. State of T. Nadu tr. Sec. to Govt. and

Another, is by its very nature repugnant to democratic ideals and an anathema to the rule of law. The Supreme Court in Rekha's case (supra),

while emphasising that Article 22(3)(b), Constitution of India, is to be read as an exception to Article 21, Constitution of India and not allowed to

nullify the right to personal liberty guaranteed under the later, observed:

Since however, Article 22(3)(b) of the Constitution of India permits preventive detention, we cannot hold it illegal, but we must confine the power

of preventive detention to very narrow limits, otherwise we will be taking away the great right to liberty guaranteed by Article 21 of Constitution of

India, which was won after long arduous, historic struggle. It follows therefore that if law of land (Indian Penal Code and other penal statutes) can

deal with the situation, recourse to the preventive detention law will be illegal.

5. The Court further observed:

It must be remembered that in case of preventive detention no offence is provided and the justification of such detention case is suspicion or

reasonable probability, and there is no conviction which can only be warranted by legal evidence. Preventive detention is often described as

jurisdiction of suspicion. The Detaining Authority passes the order of detention on subjective satisfaction. Since Clause (3) of Article 22 specifically

excludes the applicability of clauses (1) and (2), the detenu is not entitled to a lawyer or the right to be produced before a Magistrate within 24

hours of arrest. To prevent misuse of this potentially dangerous power the law of preventive detention has to be strictly construed and meticulous

compliance with the procedural safeguards, however, technical, is, in our opinion, mandatory and vital.

6. In Kamleshkumar Ishwardas Patel Vs. Union of India (UOI) and Others, the Supreme Court observed:

The history of liberty is the history of procedural safeguards. These procedural safeguards are required to be zealously watched and enforced by

the Court and their rigour cannot be allowed to be diluted on the basis of the nature of alleged activities of the detenu.

7. Law on the subject was succinctly laid down by the Apex Court in Abdul Latif Abdul Wahab Sheikh Vs. B.K. Jha and another, in following

words:

The procedural requirements are the only safeguards available to a detainee since the Court is not expected to go behind the subjective satisfaction

of the Detaining Authority. The procedural requirements are, therefore to be strictly complied with if any value is to be attached to the liberty of the

subject and the Constitutional rights guaranteed to him in that regard.

8. The baseline, that emerges from the above over view of case law on the subject of preventive detention is that whenever preventive detention is

called in question in a Court of law, the first and foremost task before the Court is to see whether the procedural safeguards, guaranteed under

Article 22(5) Constitution of India and Preventive Detention Law pressed into service to slap the detention, are adhered to.

9. The Constitutional and Statutory safeguards granted to a person detained under preventive detention law are meaningless unless and until the

detainee is made aware of and furnished all the material that weighed with the detaining authority while making detention order. In the present case

the Detention order makes mention of the material record such as dossier and other connecting documents relied upon by the Detaining Authority

while making detention order. The detention order makes mention of a communication No. PROSS/PSA/2013/5362 dated 1-4-2013, received

from Superintendent of Police, Sopore. The detention record, made available by learned Deputy Advocate General, reveals that none of the

documents referred to in the detention order was ever supplied to the detainee. The grounds of detention make reference to case FIR No.

315/2010 under Sections 147, 427, RPC P/S Sopore; FIR No. 470/2010 under Sections 307, 148, 336, 427, RPC P/S Sopore; FIR No.

75/2011 u/s 307, RPC, 7/27 I.A. Act P/S Sopore; FIR No. 78/2011 u/s 307, RPC 7/27 Arms Act P/S Sopore; FIR No. 250/2012 u/s 7/25

Arms Act P/S Sopore, claimed to have been registered against the detainee. The involvement of detainee in the said cases appears to have weighed

with Detaining Authority while making detention order. The detention record does not indicate that copies of above First Information Reports,

statements recorded u/s 161, Cr.P.C. and other material collected in connection with investigation of aforesaid cases, were ever supplied to

detainee. The material, mentioned above thus assumes significance in the facts

and circumstances of the case. It needs no emphasis, that the detinue cannot be expected to make a meaningful exercise of his Constitutional and Statutory rights guaranteed under Article 22(5), Constitution

of India and Section 13, J & K Public Safety Act, 1978, unless and until the material on which the detention order is based, is supplied to detinue.

It is only after the detinue has all said material available that he can make an effort to convince the Detaining Authority and thereafter Government

that their apprehension concerning activities of detinue are baseless and misplaced. If the detinue is not supplied material, on which the detention

order is based, he cannot be in a position to make an effective representation against his detention order. The failure on the part of the Detaining

Authority to supply the material relied at the time of making detention order to the detinue, renders detention order illegal and unsustainable. While

holding so, reference may be made to law laid down in Thahira Haris etc. Vs. Government of Karnataka and Others, ; Union of India (UOI) Vs.

Ranu Bhandari, ; Dhananjay Das Vs. District Magistrate, Darrang and Another, , Sophia Gulam Mohd. Bham Vs. State of Maharashtra and

Others, ; and Syed Aasiya Indrabi v. State of J & K (2009 (1) SLJ 219).

10. Article 22(5), 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 detinue, on whom preventive detention order is slapped, is

held in custody without a formal charge and trial. The detinue is held in custody on a mere suspicion that his apprehended activities may be

prejudicial to the security of the State or maintenance of public order. Article 22(5) of the Constitution and Section 13 of the Act, this make it

obligatory for Detaining Authority to provide detinue earliest opportunity of making an effective and meaningful representation against his

detention. The object is to enable the detinue to convince the Detaining Authority and the 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 detinue

meaningful, it is necessary that detinue be informed with all possible clarity what is/are apprehended activities 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. The grounds of detention reveal that the detainee is alleged to have been providing logistic support to active militants operating and also providing them regular information regarding movement of police and security forces. The detainee has not been given particulars of militants to whom the detainee is alleged to have been providing logistic support and regular information as regards movement of police and security forces. It was incumbent upon the detaining authority to give adequate information regarding identity of militants, with whom the detainee was alleged to have associated to indulge in subversive activities. The detainee only after getting the said information would have been in a position to explain his stand and make an effort to convince the competent authority that his preventive detention was unwarranted. 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 State of Maharashtra and Others Vs. Santosh Shankar Acharya, ; Chaju Ram Vs. The State of Jammu and Kashmir, ; Dr. Ram Krishan Bhardwaj Vs. The State of Delhi and Others, ; Mohd. Yousuf Rather Vs. State of Jammu and Kashmir and Others, ; and Ghulam Nabi Shah Vs. State of Jammu & Kashmir and Others,

11. For the afore-stated facts, reasons and the law, the petition is allowed and detention order No. 01/DMB/PSA/2013 dated 2nd May 2013, passed by the District Magistrate, Baramulla respondent No. 2, directing detention of Shri Ubaid Tariq Antto alias Billa alias Faris son of Tariq Ahmad Antoo alias Mitha resident of Kraltang Sopore District Baramula, quashed. The respondents, in view of quashment of detention order, are stripped of any authority to detain the detainee under order No. 1/DMB/PSA/2013 dated 2nd May 2013. Resultantly, the respondents are directed to release the detainee from preventive detention, order vide order No. 01/DMB/PSA/2013 dated 2nd May, 2013.

12. Disposed of. Detention record by returned to the counsel for respondents.