

(2000) 10 J&K CK 0001
In the Jammu And Kashmir High Court
Case No : Habeas Corpus Petition No. 259/99

Waqar Ahmad Mir

APPELLANT

Vs

State of J&K and Others

RESPONDENT

Date of Decision : 31-10-2000

Acts Referred:

Public Safety Act, 1978 — Section 11

Citation : (2001) KashLJ 367

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

Bench : Single Bench

Advocate : M.S.Hussain, G.Mustaffa, Advocates appearing for the Parties

Judgement

1. This Habeas Corpus petition is directed against the order of detention DMS/PSA/99112 dated 29111999 of District Magistrate Srinagar

whereunder Waqar Ahmad Mir is detained under preventive custody under Section 8 of the Jammu and Kashmir Public Safety Act.

2. Counter has been filed by the detaining authority, respondent no.2 (District Magistrate, Srinagar) on his and on behalf of State of Jammu and

Kashmir. Rejoinder to the counter affidavit of Respondent no. 2 has been filed and is on record.

3. Petitioner's counsel canvases that on 9111999 when the detention order was passed, detainee Waqar Ahmad Mir was already in custody in FIR

No. 186/99 under Section 7/25 I.A. Act registered at Police Station Soura Srinagar. The detainee was taken in preventive custody on 9111999

about two months after his punitive detention. The grounds of detention are vague, indefinite and run in omnibus terms. It suffers from

nonapplication of mind and the detaining authority has failed to demonstrate the assumption of subjective satisfaction while dealing with this

detention case. The detainee being illiterate and not able to understand the English language, he ought to have been supplied translation/transcription

either in Urdu or in Kashmiri languages which he understood. Detainee has not been supplied the materials and documents referred in the grounds.

All this has prejudiced the petitioner's right to make representation to the government against the order of detention.

4. The counsel for respondents submits that said Waqar Ahmad Mir was detained under the provisions of Jammu and Kashmir Public Safety in

terms of the order of detention passed by the detaining authority respondent no.

2. The detention order was executed on 13/11/1999, when the

custody of detainee was transferred into preventive custody. The contents of order of detention were read over and explained to the petitioner

(detainee) in Urdu/ Kashmiri language. He fully understood the contents thereto. The grounds of detention were also supplied and read over to the

detainee. The detention order has been supplied to detainee within the prescribed time frame. The detainee was also informed of his right to make

representation. The provisions of Public Safety Act were followed and the petitioner's case was also placed before the Advisory Board under the

Jammu and Kashmir Public Safety Act. The Board opined and recommended that there are sufficient grounds for continued detention. The order

of District Magistrate was confirmed by Home Department on 24/12/2000 placing petitioner under preventive detention for 24 months. Detainee is

not an illiterate person as he could execute the receipt by putting his signature in English thereto.

5. Petitioner has filed rejoinder, wherein it is stated that petitioner is illiterate and further reiterated that he was neither supplied order of detention

nor he was given the grounds, the basis of the detention.

6. From perusal of file, it is revealed that the grounds of detention with order of detention are in English. It is not known whether the order as also

the grounds were understood by the detainee. The grounds inter alia refer to FIR 186/ 99, registered at Police Station Soura and the recovery of

Arms and Ammunition through copies thereof have not been supplied to the petitioner. The detention record made available by Mr. G. Mustaffa,

Govt. Advocate shows that period of detention is executed to two years by the Government and the action of District Magistrate in ordering the

preventive detention of said Waqar Ahmad Mir stands confirmed by the Government. The grounds of detention with order of detention have been delivered to petitioner as is evident from the receipts executed by the detenu thereto. So the plea/ argument that the detenu was not supplied the copy and the grounds does not hold good, though record does not show that the grounds of detention with material/documents referred therein were completely supplied to the detenu. The detention order is based on grounds referred in the order of detention. Yet the grounds disclose that the same is based on the material supplied to the District Magistrate Srinagar, which inter alia included some police report, reference to FIR, recovery of ammunition and predetention activities of petitioner. Same have not been supplied to detenu. The detenu cannot be said to have been given complete set of communicable grounds. There is basis to hold that petitioner in absence of communication of grounds and material has been prejudiced to make representation against impugned order.

7. It is further seen that though the petitioner (detenu) is stated to have been arrested on 28/09/1999 in FIR 186/99 and at the time the order of detention was passed he continued in punitive detention. Yet the warrant has been executed only on November 13, 1999. The delay in execution of warrant has not been explained.

8. In *Sophia Gulam Mohd. Bham vs. State of Maharashtra and Others*. (AIR 1999 SC : 3051), a detention case dealt with under contravention of Foreign Exchange and prevention of Smuggling Activities Act (52 of 1974), the learned Judge observed :

The right to be communicated the grounds of detention flows from Article 22(5) while the right to be supplied all the material on which the grounds are based flows from the right given to the detenu to make a representation can be made and the order of detention can be assailed only when all the grounds on which the order is based are communicated to the detenu and the material on which those grounds are based are also disclosed and copies thereof are supplied to the person detained in his own language....".

9. Then again in *Naseer Ahmed Sheikh vs. Additional Chief Secretary Home and Another* (SLJ 1999 J and K 241) a Division bench to which I was a party, observed :

The grounds of detention give out that the alleged prejudicial activities came to be attributed on the basis of the reports made available to the detaining authority by the concerned SSP. Nowhere is it pleaded, muchless shown, that the copy/ copies of these reports of the police on which the detaining authority based its satisfaction to pass the detention order were supplied/ provided to the detainee so as to enable him to make an effective representation against the order".

10. The imputation of vagueness of allegations and nonapplication of mind on the part of detaining authority is not born out by the record. The detaining authority seems alive to these aspects of the case. In his counter affidavit the detaining authority has unequivocally stated that he applied his mind and was satisfied that the detention of the detainee was necessary to prevent him from indulging in activities prejudicial to the security of the State.

11. In result on aforesaid consideration as detaining authority/ government has failed to supply all the material/ documents referred in the grounds of detention, the detainee has been disabled to make any meaningful representation against his detention to the Government petitioner could not have made effective representation so long, the material referred in grounds was not communicated in full to the detainee. Obviously, come to the above conclusion, the detention order is to be held invalid. Accordingly the impugned detention order is legally bad and quashed. Respondents / comment authority or officer having custody of corpus of detainee shall set him at liberty and release him forthwith provided the detainee Waqar Ahmad Mir

S/o Ghulam Nabi R/o Hawal Srinagar is not required in any other substantive offence or case including FIR 186/99 registered at Police Station

Soura.

12. Communicate the order to concerned and supply copy free of cost to the petitioner. Detention record be returned to Sh. Gh. Mustaffa.GA.