
(2017) 05 J&K CK 0014
In the Jammu And Kashmir High Court
Case No : 425 of 2016

Waseem Ahmad Sofi

APPELLANT

Vs

State of JK & Anr.

RESPONDENT

Date of Decision : 16-05-2017

Acts Referred:

Citation : (2017) 05 J&K CK 0014

Hon'ble Judges : Ramalingam Sudhakar

Bench : SINGLE BENCH

Advocate : B.A. Tak, Irfan Andleeb

Final Decision : Allowed

Judgement

1. The instant Habeas Corpus petition has been filed challenging the order of detention bearing No.139- DMG/PSA/2016 dated 29th September, 2016, passed by District Magistrate, Ganderbal i.e. Respondent No.2.

2. In the grounds of detention, it is stated that the detainee, in this case, is 21 years old unmarried, educated upto 8th Class and is engaged as a bread-maker. It is stated that the detainee is involved in large number of cases of stone pelting after the killing of Burhan Wani and that he was regularly disturbing the public peace and tranquillity. The detainee is stated to be engaged in series of incidents of stone throwing, road blockades, damage of vehicles/including Government vehicles and public /private property. In this regard, the detaining authority, while passing the order of detention, was of the view that in order to prevent the detainee from acting in any manner prejudicial to the maintenance of public order, it was necessary to detain the detainee under the provisions of the Jammu and Kashmir Public Safety Act, 1978.

3. The detaining authority, in the grounds of detention, has referred to involvement of the detainee in various FIRs registered at Police Station

Safapora viz. FIR No.08/2013, FIR No.21/2013, FIR No.23/2013, FIR No.28/2013, FIR No.13/2016, FIR No.28/2016, FIR No.29/2016,

FIR No.31/2016, FIR No.34/2016, FIR No.35/2016, FIR No.36/2016 and FIR No.42/2016. On the basis of aforementioned incidents/FIRs, it

is stated that the detainee was involved in stone pelting incidents in the Manasbal area and was instigating youth to indulge in anti-national activities,

as such, it had become imperative to detain the detainee under the provisions of the Jammu and Kashmir Public Safety Act, 1978.

4. Mr. B.A. Tak, learned counsel for the detainee, pleads that the relied upon documents for detaining the detainee mentioned in the grounds of

detention have not been served on the detainee and, therefore, his right to make an effective representation has been affected.

5. Respondents have filed their Counter affidavit stating therein at Paragraph No.3 that the material, on the basis of which the grounds of detention

were framed, was also supplied to the detainee. However, the original record, as produced by the learned Dy.AG, does not show anywhere that

the respondents have supplied copies of all the FIRs to the detainee. In fact, from the perusal of the detention record, it is evident that whatever

material has been supplied to the detainee are six leaves including PSA warrant along with grounds of detention only. Therefore, it is evident that

the right of the detainee to make a meaningful representation has been seriously affected by non-supply of relied upon documents. This issue was

considered by this Court in HCP No.522/2016 dated 28th February, 2017, wherein this Court, at Paragraph No.5, has observed as under:

5. In this case, the right of the detainee to make a meaningful representation to the competent Authority against his detention order

has been affected because from the grounds of detention it is evident that two FIRs registered against the detainee are primarily the

reasons for which the respondents have detained the detainee under the provisions of the J&K Public Safety Act, 1978, and the said

relied upon documents for detaining the detainee have not been supplied to him, therefore, this Court has no hesitation to hold that the

detention is bad on this ground alone.

6. Further the Hon"ble Supreme Court in case titled ""Thahira Haris V. Government of Karnataka, reported in AIR 2009 SC, 2184"", held as

follows:

27. There were several grounds on which the detention of the detainee was challenged in these appeals but it is not necessary to refer

to all the grounds since on the ground of not supplying the relied upon documents, continued detention of the detainee becomes illegal

and detention order has to be quashed on that ground alone.

28. Our Constitution provides adequate safeguards under clauses (5) and (6) of Article 22 to the detainee who has been detained in

pursuance of the order made under any law providing for preventive detention. He has right to be supplied copies of all documents,

statements and other material relied upon in the grounds of detention without any delay. The predominant object of communicating

the grounds of detention is to enable the detainee at the earliest opportunity to make effective and meaningful representation against

his detention.

7. On this ground alone, the impugned order of detention is liable to be set aside. Accordingly, the instant Habeas Corpus petition is allowed,

order of detention bearing No.139- DMG/PSA/2016 dated 29th September, 2016 as extended vide Government Order No. Home/PB-

V/2937/2016 dated 30th December, 2016 is, hereby, quashed. The respondents are directed to release the detainee, namely, Waseem Ahmad

Sofi S/o Late Manzoor Ahmad Sofi R/o Kondbal Manasbal Safapora, Tehsil Lar, District Ganderbal, from preventive custody forthwith, if not

required in any other case.

8. Detention record is returned to learned Dy. AG in the open Court.