

(2018) 08 J&K CK 0049

In the Jammu And Kashmir High Court

Case No : Habeas Corpus Petition No.47 Of 2018

Zafar Ul Islam Shah @APPELLANT@Hash State Of Jammu & Kashmir And Others

Date of Decision : 20-08-2018

Acts Referred:

Jammu and Kashmir Public Safety Act, 1978 — Section 8(a)

Citation : (2018) 08 J&K CK 0049

Hon'ble Judges : Dhiraj Singh Thakur, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

1. In this Habeas Corpus petition, the petitioner challenges the order of detention dated 27.01.2018, whereby the District Magistrate, Baramulla in

exercise of the powers vested in him under Section 8(a) of Jammu and Kashmir Public Safety Act, 1978 has ordered the detention of the petitioner,

with a view to prevent him from indulging in activities, which are prejudicial to the maintenance of peace and public order.Â Â

2. The grounds on which the order of detention has been challenged are :-

a) that the order of detention and connected documents were not supplied to the petitioner.Â

b) that the order of detention suffers from non-application of mind, because the detaining authority was not aware as to whether the petitioner had

filed any bail application and whether the bail application filed in FIR No. 277/2016 u/s 147, 148, 149, 152, 336, 332, 307 RPC, registered in Police

Station Sopore, had been allowed or rejected.Â Â Â

3. In reply affidavit filed by the State, a stand is taken that the petitioner has passed his 12th class examination from Govt. Higher Secondary School,

Sopore and is affiliated with subversive elements and creates law and order problems by provoking youth to protest and pelt stones, thereby disturbing peace and tranquility in the Sopore area. The petitioner also stated to have been booked in FIR Nos. 277/2016, 169/2017 & 08/2018 for various offences including 336/307 etc.Â

4. Heard learned counsel for the parties.Â

5. Records have been produced, on a perusal whereof it appears that the detaining authority was aware of the fact that the petitioner was involved in various offences, for which FIR Nos. 277/2016, 169/2017 & 08/2018 registered in Police Station, Sopore. The detaining authority also appears to have been aware of the fact that the petitioner stood released. The detaining authority also had informed the petitioner of his right to make a representation to the Home Department of the detaining authority, if the petitioner so desired.Â

6. The allegations that the detaining authority was unaware of the fact that the petitioner had moved a bail application, in which he stood released and that the order impugned did not reflect that the same was within the knowledge of the detaining authority does not matter much in the instant case, inasmuch as, admittedly on the date when the order was passed, the petitioner was not under arrest, therefore, that argument would not help the petitioner in the instant case, in any manner, whatsoever.Â

7. On a perusal of the execution report, which is on record, it becomes clear that the petitioner was served with the order of detention as also the grounds of detention and other documents containing seven leaves through the Executing Officer. Not only this, the documents were read-over and explained in English language as also in the Kashmiri language, which was fully understood by the petitioner andÂ the signatures of the petitioner were also obtained. The safeguards as envisaged under the Act, therefore, fully stood complied with.Â

8. Having considered the matter in its entirety, I am of the opinion that the petition lacks merit and is, accordingly, dismissed.

9. The detention record be returned to the learned counsel for the respondents against proper receipt.