
(2013) 04 J&K CK 0005
In the Jammu And Kashmir High Court
Case No : HC (W) No. 33 of 2012

Zahid Latief

APPELLANT

Vs

State and Others

RESPONDENT

Date of Decision : 04-04-2013

Acts Referred:

Citation : (2013) CriLJ 4668

Hon'ble Judges : Tashi Rabstan, J

Bench : Single Bench

Advocate : Piyush Gupta, for the Appellant; Z.S. Wattali, Dy. A.G, for the Respondent

Final Decision : Allowed

Judgement

Tashi Rabstan, J.—This petition has been filed by the detenu Zahid Latief through his wife seeking quashment of Order No. DMJ/PSA/157-

61 of 2012 dated 16-11-2012 on various grounds as projected in the petition. It is contended that on 19-5-2012, husband of the petitioner

(detenu) was arrested by respondent No. 5 in FIR No. 128 of 2012 under Ss. 17, 21 Unlawful Activities (P) Act, and under Ss. 121, 122, 123,

RPC and 7/25 Arms Act and he continued to remain in Jail with effect from 19-5-2012 to 15-11-2012.

2. The star ground projected by the learned counsel for the petitioner to question the validity of detention order is non-supply of the grounds of

detention and other material to the husband of the petitioner by the detaining authority, thus, deprived the detenu of his constitutional right of

making an effective representation to the Government against his detention and, thus, detention of husband of the petitioner is illegal being violative

of the provisions of Art. 22(5) of the Constitution of India and S. 13 of the Jammu and Kashmir Public Safety Act, 1978.

3. The respondents have filed detailed reply wherein they have denied the contents made in the petition. It is contended that on the basis of a

reliable information received by the police it was revealed that detenu entered into a conspiracy with one of his close relatives Gulam Ahmed Mir

alias Jia Mir resident of Thanamandi Rajouri, an over ground worker, to support various terrorist activities at the behest of ISI. It is further

contended that detenu started indulging in acquisition, possession carriage and circulation of hawala money funded by ISI into the State to fund the

terrorist outfits, thus, threatened the security of the State. On 19-5-2012, detenu along with two unknown suspects received hawala money from a

courier in Srinagar, who were travelling in a vehicle bearing registration No. 5483-JK091N from Srinagar to Jammu. It is further contended that

SOG team headed by Dy. S.P. stopped the said vehicle at Achhar Kund bridge at Jammu-Srinagar National Highway. While searching the

vehicle, the detenu started running away but was overpowered with the help of other members of the team detenu disclosed his identity as Zahid

Latief Wani son of Abdul Latief Wani resident of Thanamandi, Rajouri at present H.No. 112, Upper Gujjar Nagar, Jammu and his companions

were also apprehended who too disclosed their identity. It is also contended that during search, an amount of Rs. 5.00 lac of Indian currency was

recovered from the possession of the detenu which were kept in white coloured bag. On asking, detenu and his companions, they could not given

an explanation for possession of such a huge amount, therefore, case under FIR No. 128 of 2012 under Ss. 17, 21 Unlawful Activities (P) Act

and under Ss. 121, 122, 123, RPC and 7/25, Arms Act was registered in Police Station, Nagrota.

4. During investigation subsequent to the arrest, personal search of the detenu and his accomplices was conducted and from the possession of

detenu in addition to mobile phones, identity cards, ATM cards, some documents containing details of huge cash transactions were also seized.

5. It is admitted that challan could not be produced by the police within stipulated period, thus, learned Chief Judicial Magistrate, Jammu vide

order dated 15-11-2012 granted bail to the detenu on account of default by the police in completion of investigation within the prescribed period.

Copy of order passed by the learned CJM, Jammu is on record.

6. On asking, learned counsel for the respondents produced the record, a perusal whereof reveals that on 21-11-2012, detenu was supplied

documents consisting of warrants of detention, grounds of detention, dossier and other relevant record passed by District Magistrate, Jammu

against proper receipt, thus, contention of learned counsel for the petitioner that grounds of detention and other relevant documents have not been

supplied is unfounded.

7. Now question remains for consideration is: whether record relied upon by the detaining authority to record satisfaction that the activities of the

detenu were prejudicial and detrimental to the maintenance of public order and, whether detaining authority has applied its application of mind

while issuing order of detention.

8. All that appeared from the records is that the detenu is stated to have been supplied with the detention order as also the grounds of detention

and other relevant documents. The endorsement made on the reverse of detention order indicates that while executing detention order, grounds of

detention were read over and explained to the detenu in his own language, i.e., Dogri, Hindi/Urdu which he understood fully.

9. Although, the endorsement on the reverse of the detention order reveals that the grounds of detention were served upon the detenu but there

does not appear any truth therein, in that, the endorsement on the first page of the detention order issued by the District Magistrate, Jammu does

not indicate that the grounds of detention too were issued along with detention order for service upon the detenu.

10. The order of detention has been passed on imaginary grounds and in colourable exercise of its power, because order of detention does not

disclose application of mind by the detaining authority while passing the same on the material on which it is based. Even there is nothing on record

to show that detenu is said to have been produced before the State Advisory Board under the Jammu and Kashmir Public Safety Act.

11. The grounds of detention also do not indicate any such activity of the detenu which may fall within the definition of "Public Order" as explained

in S. 8(2)(b) of the Jammu and Kashmir Public Safety Act, 1978. Although, the State Advisory Board constituted under S. 14 of the Jammu and

Kashmir Public Safety Act, 1978 had indicated in its report to the Government that the activities of the detenu were prejudicial to the security of

the State, therefore, order issued by the District Magistrate, Jammu is perfectly valid, yet the opinion of the Board does not appear to have been

considered by the State Government, which committed the same mistake while confirming the detention order, that the District Magistrate had

done in issuing the detention under the provisions of the Jammu and Kashmir Public Safety Act, which was not attracted in the case, on the basis

whereof order was issued. In grounds of detention, the detaining authority has stated that the detenu is in custody in the aforesaid FIR. Though, he

was granted bail by the learned CJM, Jammu vide order dated 15-11-2012 on account of not producing challan before the competent Court of

law within the prescribed period, but the detaining authority has not whispered about the same in the detention order. This circumstance decisively

shows that the detention order is vitiated, for non-application of mind.

12. Be that as it may, even otherwise, the omission of the detaining authority for not properly applying the application of mind in the grounds of

detention and not properly supplying copy of detention order, deprived the detenu of his right of making an effective representation against the

detention order.

13. My view is fortified by the judgments passed by this Court in Altaf Hussain Mir Vs. State of Jammu & Kashmir and Others, and Ranjit Singh

v. State and others reported in 2012 (III) SLJ 877 (HC).

14. In view of above, the detention order issued by the District Magistrate, Jammu is, therefore, found violative of the provisions of Article 22(5)

of the Constitution of India and Section 13 of the Jammu and Kashmir Public Safety Act, 1978, therefore, cannot sustain, for, the order is found to

have been issued without application of mind.

15. In the given circumstances, this petition is, allowed. Order of detention No. 07/PSA of 2012 dated 16-11-2012 issued by District Magistrate,

Jammu is quashed. The respondents are directed to set the detenu free, unless otherwise required in any other case. Detention records be returned

to the State counsel.