
(2002) 11 J&K CK 0011
In the Jammu And Kashmir High Court
Case No : HCP No. 47 of 2002

Zameer Ahmad Sheikh

APPELLANT

Vs

State and Others

RESPONDENT

Date of Decision : 12-11-2002

Acts Referred:

Constitution of India, 1950 — Article 226
Prevention of Terrorism Act, 2002 — Section 3, 4

Citation : (2010) 4 JKJ 559

Hon'ble Judges : B.L. Bhat, J

Bench : Single Bench

Final Decision : Allowed

Judgement

B.L. Bhat, Judge

1. Deteuue Zameer Ahmad Sheikh S/o Ghulam Nabi Sheikh R/O Nowgam, Chadura, through his father Ghulam Nabi Sheikh has invoked the writ

jurisdiction of this court under Article 226 of the Constitution of India read with Section 103 of the State Constitution, wherein he has sought

indulgence of this court for quashment of the detention order No. DMS/PSA/40 dated: 04-01-2002.

2. It is inter alia maintained in the petition that the detune Zameer Ahmad Sheikh was arrested by police on 21-11-2001 and after keeping him in

unlawful detention by the respondents for a period of one month, he came to be detained under the provisions of the J&K Public Safety Act in

terms of impugned order issued by respondent No. 2; that the petitioner assails this detention order inter alia on the grounds that he is an innocent

person and has not committed any illegal or improper act, nor has ever carried out any subversive or disruptive activities in the valley of Kashmir,

which could warrant his detention under the provisions of the J&K Public Safety Act; that in terms of letter No. DMS/PSA/234-38 dated; 04-01-

2002, the detune was informed of his detention by respondent No. 2 and was also asked to make a representation to the Government, if he so

desires; that the detune accordingly submitted a representation through his father to the respondent No. 1, in which he has set up that the detune is

an innocent person and has denied the grounds of detention as groundless, and has also prayed that the detention order be revoked and he be set

at liberty; that this representation of the detune was received by respondent No. 1 on 18-02-2002, but till date it has not been considered and

disposed of; that this non-consideration of the representation of the detune vitiates the order of detention.

The petitioner has further pleaded that the detention order is also bad on the ground that same has not been handed over to the detune: that as per

the detention order, the detune was arrested on 21-11-2002 and some ammunition and arms were removed from him; that in so far as arrest of

detune on 21-11-2002 is concerned, it is admitted but it is denied that any arms and ammunition was recovered from him at the time of his arrest;

that the respondents have booked the detune under FIR No. 147/2001 registered by Police Station Shaheed Gunj, wherein he has not filed any

application for bail, consequently there was no justification for detaining him under the provision of Public Safety Act; that there were no

compelling reasons for detaining the detune under the Act when he was already in the custody of the respondents; that the grounds of detention

relied upon for detaining the detune are vague, unreal, irrelevant, untrue and baseless: that the detune has not been given the material or documents

relied upon against him for his detention.

3. On admission of the writ petition and after pulling the respondents on notice, the respondent No. 2, Abdul Humid, District Magistrate, Srinagar,

has filed his counter affidavit, wherein he has controverted all the averments made in the petition, but with respect to filing of representation by the

detune before the Government, it is stated that in para (v) of the preliminary objections that the detune did not file any representation for the

reasons best known to him. In reply to clause (b) of the writ petition, it is stated that the representation filed by the detune has been considered by

the competent authority and on having been found no merit in the said representation, same came to be disposed/rejected.

4. Heard Mr. M.A. Qayoom appearing on behalf of the petitioner and Mr. Gh. Mustafa. Government Advocate appearing on behalf of respondents.

The detention order has been assailed in the writ petition on various grounds but learned counsel appearing on behalf of the petitioner has stressed

on the ground that the representation made by the detune through his father before the Government against his detention has never /been considered.

5. It is admitted by the respondent No. 2 in his counter affidavit that the detune was arrested by SOG on 12-11-2001 and he was booked in FIR

No. 147 of 2001 of P/S Shaheed Gunj u/s 3/4 POTA. This being so, the District Magistrate. Srinagar has not disclosed the compelling reasons for

detaining the detune under the provisions of the J&K Public Safety Act when the detune had never taken any step for getting himself released on

bail in the said FIR.

6. From the perusal of the file, it reveals that the detune through his father Ghulam Nabi Sheikh had preferred a representation against the detention

order impugned before the Government through Principal Secretary to Govt. Home Department, copy whereof is on the file and it bears the

endorsement of the office of Principal Secretary to Govt. Home Department, to the effect that same has been received on 18-02-2002. However

as indicated above, the respondent No. 2 in para 4 of the preliminary objections of the counter affidavit has inter alia stated that the detune did not

file any representation for the reasons best known to him, but has further indicated in reply to clause (b) of the petition that the representation filed

by the detune has been considered by the competent authority and same having been found without any merit, was disposed/rejected. This being

so, it appears that the stand of the respondent No. 2 to the effect whether any representation was filed by the detune against his detention before

the Government or not is not contradictory only but speaks volumes about the manner in which the matters of detention of the detenue's whose

personal liberty is at stake are being dealt with by the State. Thus, this can safely be deduced that the representation so filed by the detune against

his detention order before the Government has never been considered and if considered, then in no case before the date of their filing the counter

affidavit which is dated: 03-09-2002 i.e. well after about eight months.

7. It is well settled proposition of law that once representation is filed against the detention order, same is to be disposed of by the

Government/competent authority as expeditiously as possible. The matter of delay in disposal of representation came up before the Apex Court in

a case reported as Kundanbhai Dulabni Sheikh, petitioner v. District Magistrate Ahmadabad and others. Respondents, AIR 1996 SC 2998,

wherein their lordships have held as under:-

18. Turning now to the main question relating to the early disposal of the representation, we may immediately observe that this court, in a large

number of cases, has already laid down the principle in clear and specific terms: that the representation has to be disposed of at the earliest and if

there has been any delay in the disposal of the representation, the reasons for the delay must be indicated to the Court or else the unexplained

delay or unsatisfactory explanation in the disposal of the representation would finally effect the order of detention and in that situation, continued

detention would become bad. This has been the consistent view of this Court all along from its decision in Sk. Abdul Karim and Others Vs. State

of West Bengal, . 20. In Mohinuddin alias Moin Master Vs. District Magistrate, Beed and Others, and Rama Dhondu Borade Vs. V.K. Saraf,

Commissioner of Police and Others, it was observed that inordinate and unexplained delay in (he disposal of representation would make the

continued detention of a person illegal and unconstitutional. In Devi Lal Mahto v. State of Bihar, AIR 1982 SC 1545 the continued detention was

held to have become bad on account of the indifferent attitude of the Government in not attending to the representation for about 10 days.

8. In view of this law laid down by the Hon'ble Supreme Court, it can safely be said that the detention or the detune is bad in law and is liable to be

quashed. This takes me to another ground stressed by learned counsel for the petitioner that admittedly the Detune as per memo of grounds of

detention was arrested on 21-11-2001 and the detention order impugned came to be recorded on 04-01-2002. The detention order no where

discloses the subjective satisfaction of the respondent No. 2 that there are

compelling reasons for detaining the Detune and that there is every likelihood that he may be released on bail. This non-recording of satisfaction to the aforesaid effect also makes the detention order bad in law. In

this behalf reference is made to case titled Surya Prakash Sharma v. State of U.P. (AIR 1995 SCW 1841).

9. Having regard to the above law and the facts, the detention order recorded by respondent No. 2 is bad in law and is liable to be quashed.

10. The petition is accordingly allowed and the detention order dated: 04-01-2002 passed by respondent No. 2 is hereby quashed and the detune

is directed to be set at liberty forthwith, unless required in any other case. A copy of the order be forwarded to the concerned authority.