Shabir Ahmad Mir Vs State Of Jammu & Kashmir & Anr

Court: Jammu & Kashmir High Court (Srinagar Bench)

Date of Decision: Nov. 5, 2019

Acts Referred: Jammu And Kashmir Public Safety. Act, 1978 â€" Section 8(a)
Unlawful Activities (Prevention) Act, 1967 â€" Section 13
Jammu And Kashmir State Ranbir Penal Code, 1989 â€" Section 120B, 148, 149, 153A, 307, 332, 336, 353
Constitution Of India, 1950 â€" Article 21, 22

Hon'ble Judges: Ali Mohammad Magrey, J

Bench: Single Bench

Advocate: Mir Shafqat Hussain, Asif Maqbool

Final Decision: Allowed

Judgement

Ali Mohammad Magrey; J

1. By dint of order bearing No.119/DMB/PSA/2018 dated 26th of December, 2018, passed by the Respondent No.2/District Magistrate Baramulla, in

exercise of powers conferred in him under Clause (a) of Section (8) of the Jammu and Kashmir Public Safety Act, 1978 (for short Ã¢â‚¬Å“The Act of

1978Ã¢â‚¬â€), one Shabir Ahmad Mir @ Saifullah S/o Mohammad Akbar Mir R/o Chinand Khushalpora, Baramulla, District Baramulla.

2. The detenue has challenged the said order of detention on varied grounds, as detailed out in the petition. It is stated that the detaining authority has

failed to apply its mind to the fact whether the preventive detention of the detenue was imperative, notwithstanding his release on bail in substantive

offences. It has also been stated that the Respondent No. 2 has passed the order of detention on the dictates of the sponsoring agency, i.e. the Officer

who has prepared the police dossier and no attempt has been made by the Respondent No.2 to scan and evaluate it before issuance of the order of

detention.

3. Counter has been filed by the Respondents, wherein it is stated that the detaining authority has complied with the requirement of Clause 5 of Article

22 read with Article 21 of the Constitution of India. The detenue has failed to avail the remedy prescribed under the Act. He has not filed the

representation against the order of detention. It has also been stated that the detenue is involved in case FIR No. 192/2016, registered at Police

Station, Baramulla, for the commission of offences punishable under Sections 13 ULA(P) Act, 153-A and 120-B of the Ranbir Penal Code (RPC);

and case FIR No. 254/2016, registered at Police Station, Baramulla, for the commission of offences punishable under Sections 13 ULA(P) Act, 307,

148, 149, 336, 353, 332, 153-A and 120-B of the Ranbir Penal Code (RPC). In the end, it has been urged that since the order of detention has been

passed on justifiable grounds, therefore, the instant Habeas Corpus petition merits dismissal, and it may, accordingly, be dismissed.

4. Heard the learned counsel for the parties, perused the record and considered the matter.

5. The main plank of the argument of the learned counsel for the petitioner is that the detenue was admitted to bail in case bearing FIR No. 192/2016

registered at Police Station, Baramulla, by order dated 3rd of December, 2018 passed by the Court of competent jurisdiction, as well as in case

bearing FIR No. 254/2016 registered at Police Station, Baramulla, by order dated 26th of December, 2018, passed by the Court of learned 1st

Additional Sessions, Baramulla. Since, the detenue was released on bail in the FIRs that formed the baseline of the order of the detention, therefore,

the question that arises for consideration is whether an order of detention could have been passed under such circumstances? The answer to this

question is an emphatic Ã¢â‚¬Å“NoÃ¢â‚¬, taking into consideration the law laid down by the Apex Court of the country in paragraph No.24 of the judgment

delivered in the case of Ã¢â‚¬Å“Sama Aruna v. State of Telangana & Anr.Ã¢â‚¬â€‹, reported in Ã¢â‚¬Å“AIR 2017 SC 2662Ã¢â‚¬â€‹, which may be noticed:

Ã¢â‚¬Å“24. There is another reason why the detention order is unjustified. It was passed when the accused was in jail in Crime No. 221 of 2016. His

custody in jail for the said offence was converted into custody under the impugned detention order. The incident involved in this offence is sometime in

the year 2002-

3. The detenue could not have been detained preventively by taking this stale incident into account, more so when he was in jail. In Ramesh Yadav v.

District Magistrate, Etah and ors, this Court observed as follows:

Ã¢â‚¬Å“6. On a reading of the grounds, particularly the paragraph which we have extracted above, it is clear that the order of detention was passed as the

detaining authority was apprehensive that in case the detenue was released on bail he would again carryon his criminal activities in the area. If the

apprehension of the detaining authority was true, the bail application had to be opposed and in case bail was granted, challenge against that order in the

higher forum had to be raised. Merely on the ground that an accused in detention as an under trial prisoner was likely to get bail an order of detention

under the National Security Act should not ordinarily be passed.Ã¢â‚¬â€‹

6. The same view has been repeated and reiterated by HonÃ¢â‚¬â„¢ble the Supreme Court in paragraph No. 13 of the judgment pronounced in the case of

Ã¢â‚¬Å“V. Shantha v. State of Telangana & othersÃ¢â‚¬â€, reported in Ã¢â‚¬Å“AIR 2017 SC 2625Ã¢â‚¬â€, that reads as under :

Ã¢â‚¬Å“13. The order of preventive detention passed against the detenue states that his illegal activities were causing danger to poor and small farmers

and their safety and financial well being. Recourse to normal legal procedure would be time consuming and would not be an effective deterrent to

prevent the detenu from indulging in further prejudicial activities in the business of spurious seeds, affecting maintenance of public order, and that there

was no other option except to invoke the provisions of the Preventive Detention Act as an extreme measure to insulate the society from his evil deeds.

The rhetorical incantation of the words Ã¢â‚¬Å“goondaÃ¢â‚¬â€ or Ã¢â‚¬Å“prejudicial to maintenance of public orderÃ¢â‚¬â€ cannot be sufficient justification to invoke the

draconian powers of preventive detention. To classify the detenue as a Ã¢â‚¬Å“goondaÃ¢â‚¬ affecting public order, because of inadequate yield from the

chilli seed sold by him and prevent him from moving for bail even is a gross abuse of the statutory power of Preventive Detention. The grounds of

detention are ex facie extraneous to the Act.Ã¢â‚¬â€

7. Testing the instant case on the touchstone of the law laid down above, the detenue could not have been detained after taking recourse to the

provisions of Ã¢â‚¬Å“The Act of 1974Ã¢â‚¬, when he was already on bail in the cases, the details whereof have been given hereinbefore. The State could

have exercised its right to knock at the doors of a higher forum and seek the reversal of the orders of bail so granted by the competent Court(s). This

single infraction knocks the bottom out of the contention raised by the State that the detenue can be detained preventatively when he was released on

bail. It cuts at the very root of the State action. The State ought to have taken recourse to the ordinary law of the land.

8. Life and liberty of the citizens of the State are of paramount importance. A duty is cast on the shoulders of the Court to enquire that the decision of

the Executive is made upon the matters laid down by the Statute and that these are relevant for arriving at such a decision. A citizen cannot be

deprived of personal liberty, guaranteed to him/her by the Constitution, except in due course of law and for the purposes sanctioned by law.

9. In the backdrop of what has been said and done above, the instant Habeas Corpus petition is allowed, as a consequence of which, the order of

detention No.119/DMB/PSA/2018 dated 26th of December, 2018, passed by the Respondent No.2/District Magistrate Baramulla, is quashed with a

further direction to the respondents to release the person of Shabir Ahmad Mir @ Saifullah S/o Mohammad Akbar Mir R/o Chinand Khushalpora,

Baramulla, forthwith from the preventive custody, of course, if not required in any other case.

10. The record, as produced by the learned Deputy Advocate General, be returned to him with utmost dispatch.