

Shafqat Abrar Vs Union Territory Of J&K And Others

Court: Jammu And Kashmir High Court (Srinagar Bench)

Date of Decision: Feb. 12, 2021

Acts Referred: Unlawful Activities (Prevention) Act, 1967 " Section 13, 13(2), 16, 17, 18, 18(b), 19, 20, 38, 39
Constitution Of India, 1950 " Article 22(5)

Hon'ble Judges: Rajnesh Oswal, J

Bench: Single Bench

Advocate: Asifa Padroo, Syed Ahmad Andrabi

Final Decision: Allowed

Judgement

1. Through the medium of this petition filed through his maternal uncle, the petitioner has questioned the order of detention bearing No.

59/DMK/PSA/2019 dated 20.08.2019 issued by respondent No. 2 by virtue of which the petitioner has been ordered to be detained under the J&K

Public Safety act, 1978 (for short the Act).

2. It is stated in the petition that the petitioner was arrested by the police on 27.01.2019 in view of his alleged involvement in FIR No. 7/2019 under

sections 13(2), 17, 18, 18 (b), 19, 20, 38 and 39 ULA (P) Act registered with Police Station D.H. Pora and the petitioner was enlarged on bail on

16.08.2019 by the Additional District and Session Judge (TADA, POTA), Srinagar. However, the petitioner was not released and was detained under

preventive custody in terms of order No. 59/DMK/PSA/19 (supra). The petitioner has questioned the order of detention primarily on the grounds inter

alia:

(i) that the procedural safeguards, envisaged under the Constitution of India and in terms of J&K Public Safety Act, have not been complied with by

the respondent No. 2 while passing the order of detention.

(ii) That the grounds of detention are vague, indefinite, obscure and no prudent man can make representation against such allegations.

(iii) That the grounds of detention have not been formulated by the competent authority but by the respondent No. 3 who was incompetent to do so.

(iv) That the respondent No. 2 has not furnished the relevant material relied upon by the detaining authority while passing the order of detention as

mentioned in the grounds of the detention to the petitioner, as such, the same deprived the petitioner of his right to make effective representation

against the order of detention.

(v) That the detainee was already in detention in above FIR and the detaining authority was not aware of the fact that the detainee is actually in

custody of police at the time of passing of detention order and also there is no mention of the fact that the detainee had applied for bail for his release

nor there is any satisfaction that there is likelihood of his being released on bail. There is no satisfaction by the detaining authority that there is

necessity to detain the petitioner particularly when the petitioner was already in custody.

(vi) That the grounds of detention are merely the reproduction of the contents of dossier and it shows the non-application of mind by the respondent

No. 2 while passing the order of detention.

3. The respondents have filed the counter affidavit in which they have stated that all statutory and constitutional safeguards have been complied with

by the detaining authority, indisputably keeping in mind the very object of law of preventive detention being not punitive, but only preventive. It is

further stated that grounds of detention, order of detention as well as the entire material relied upon by the detaining authority came to be furnished to

the detainee(petitioner) within the statutory period provided under section 13 of the Act. In compliance to the order of detention, the warrant was

executed by the executing officer and detainee was handed over to S. P. Central Jail Srinagar for lodgement. The contents of detention order/warrant

and the grounds of detention were read over and explained to the detainee in the language which he fully understood and in lieu thereof he signed the

execution report/order. The Advisory Board in terms of section 16 of the Act, after considering the material placed before it, held that there is

sufficient cause for detention of the petitioner in the instant case. After the opinion of the Advisory Board, the Government has confirmed the order of

detention issued against the detainee(petitioner). It is further submitted that the petitioner has studied up to 10th class and left the studies due to lack of

interest. In the meanwhile, the detainee developed close association with one over ground worker namely Afridi Bhat upon whose motivation, the

petitioner joined Hizbul Mujahidin Outfit as an active over ground worker. The detainee has been found responsible for providing shelter, food and

every logistic support to militant outfits in order to carry out unlawful activities. The detainee has been named in a case FIR No. 7/2019 under sections

13(2), 17, 18, 18 (b), 19, 20, 38 and 39 ULA (P) Act registered with Police Station D.H. Pora for hatching criminal conspiracy pertaining to the

terrorist attacks and other unlawful activities. Keeping in view the activities of the detainee prejudicial to the security, sovereignty and integrity of the

State, the respondent No. 2 has ordered his preventive detention under the Act.

4. Heard considered and produced the detention record.

5. Before appreciating the rival contentions of the parties, it would be appropriate to note that the procedural requirements are the only safeguards

available to the detainee since the Court cannot go behind the subjective satisfaction of the detaining authority. In *Abdul Latif Abdul Wahab Sheikh v.*

B. K. Jha reported in (1987) 2 SCC 22, it has been held by the Apex Court that the procedural requirements are the only safeguards available to a

detainee since the court is not expected to go behind the subjective satisfaction of the detaining authority. The procedural requirements are, therefore,

to be strictly complied with if any value is to be attached to the liberty of the subject and the constitutional rights guaranteed to him in that regard.

6. From the perusal of the execution report that forms the part of detention record, it is revealed that the detention order dated 20.08.2019 was

executed on 21.08.2019 at Central Jail, Srinagar and Mr. Nazir Ahmad, ASI executed the same. The perusal of the execution report reveals that the

contents of the detention warrant along with grounds of detention were read over and explained to him in Urdu/Kashmiri languages. Copies of

warrant, grounds of detention and dossier comprising of 8 leaves in total were handed over to the petitioner. Perusal of the grounds of detention reveal

that while preparing the grounds of detention, detaining authority i.e. respondent No. 2 has relied upon one FIR but the same has not been supplied to

the petitioner and this disabled the petitioner to make an effective representation against the order of detention to the detaining authority and also to the

Government. Thus, non furnishing of all the documents those have been relied upon by the detaining authority while issuing the detention order, to the

petitioner has resulted in denial to the petitioner of his right guaranteed under Article 22(5) of Constitution of India as well as section 13 of the Act to

make effective representation to the detaining authority and also to the Government against his preventive detention. It is only after the detainee is

supplied all the material that has been relied upon by the detaining authority, that he can make an effective representation to the Detaining Authority

and also to the Government. Failure on the part of the respondent No. 2 to supply material relied upon by him, while passing the detention order

renders it illegal. Reliance is placed upon the decision of Apex Court in *Thahira Haris v. Govt. of Karnataka*, reported in (2009) 11 SCC 438 and the

relevant para is reproduced as under:

30. 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 the right to be supplied with copies of all documents, statements and other

materials relied upon in the grounds of detention without any delay. The predominant object of communicating the grounds of detention is to enable the

detenu at the earliest opportunity to make effective and meaningful representation against his detention.

7. Besides, the detention order was passed while the petitioner was in custody in FIR mentioned above but despite this, the respondent No. 2 has

nowhere derived his satisfaction in the grounds of detention that it is necessary to detain the petitioner under the Act, particularly in view of the fact

that in the dossier it was specifically mentioned that there existed every likelihood that the petitioner may obtain bail from the court of law. It clearly

reflects the non-application of mind on the part of the respondent No. 2 while passing the order of detention against the petitioner.

8. On these grounds only, the impugned detention order is not sustainable. So there is no need to consider the other grounds of challenge.

9. In view of the above, this petition is allowed. Detention order No. 59/DMK/PSA/2019 dated 20.08.2019 is quashed. Petitioner (detenu) be set free

from the preventive custody provided he is not required in any other case.