
(2018) 08 J&K CK 0004

jammu & kashmir high court

Case No: Habeas Corpus Petition No94 Of 201

Mohammad Lateef Dar
@APPELLANT@Hash
State And Ors

APPELLANT

Vs

RESPONDENT

Date of Decision: Aug. 1, 2018

Acts Referred:

Jammu and Kashmir Public Safety Act, 1978 " Section 8, 8(1)#Constitution of India, 1950 " Article 21, 22(3)(b)

Citation: (2018) 08 J&K CK 0004

Hon'ble Judges: M. K. Hanjura, J

Bench: Single Bench

Final Decision: Disposed Off

Judgement

This case has a chequered history. The detainee Mohammad Lateef Dar, was earlier, detained by the respondent No.2, in exercise of powers

vested in him under clause (a) of section (8) of the Jammu & Kashmir Public Safety Act, 1978 (for short Act of 1978), vide, detention order

bearing No. 67/DMS/PSA/16 dated 29-09-2016. The said order was challenged by the detainee before this Court in HC(P) 596/2016, and after

allowing the writ petition on 02-03-2017, the order of detention was quashed, by this Court and the respondents were directed, to release the

person of the detainee forthwith. However, instead of releasing the detainee, he was again detained by the respondent No.2 in terms of, detention

order bearing No. 95/DMS/PSA/2017 dated 31-03-2017. The said order was also assailed by the detainee by the medium of HC(P) No. 113/2017 and

the Court, while allowing the petition on 23-01-2018, ordered for the release of the detainee. It is further stated, that yet another order of

detention, bearing No.119/DMS/PSA/2018, dated 08-03-2018, impugned herein, has been slapped on the detainee on the same set of grounds

and on the basis of same F.I.Rs as were incorporated in the earlier orders of detention. The detainee was ordered to be lodged in District Jail,

Kotebhalwal, Jammu, and he continues to be there at the moment. The grounds of detention, along with the allied documents, are said to have

been served on the detainee and the contents whereof, as contended, are stated to have been read over and explained to him in the language which

he understood fully well.

02/ The order of detention has been challenged on the grounds, inter alia, that the detainee has been deprived of the right to file an effective

representation before the Detaining Authority, i.e. the District Magistrate, Shopian, against the order of detention as the copy of dossier, the

copies of the F.I.Rs and other connected documents have not been furnished to him. It is also argued that the detainee could not have been detained

under the provisions of PSA when he was already booked in substantive offences under various F.I.Rs and was in the custody of the respondents

since the year 2016. The petition, on this ground alone, deserves to be allowed and, as a consequence thereof, the order of detention is liable

to be quashed.

03/ In the counter affidavit, the respondents have pleaded that the order of detention has been passed after taking into consideration the relevant

provisions of J & K Public Safety Act. 1978 (JKPSA). The grounds of detention have been conveyed to the detainee, in the language with which

he is conversant and these have been read over and explained to him. Therefore, the order of detention does not suffer from any vice. It has been

passed with due diligence and it will sustain, in the eyes of the law. The arguments of the learned counsel for the respondents are in tune and in

line with the pleadings of the respondents.

04/Ã, Heard and considered. The detention record has also been perused.

05/Ã, As already stated, theÃ, impugned order of detentionÃ, has been challenged chiefly, on the ground that the detainee could not have beenÃ,

detained under the provisions of PSA when he wasÃ, alreadyÃ, bookedÃ, in substantive offences in casesÃ, bearing F.I.R No. 234/2016 u/s 147,

148, 149, 188, 336, 427 RPC, 3 PPP D Act, F.I.R No. 251/2016 u/s 147, 148, 149, 336, 353, 332, 307 RPC, 3 PPP D Act, 13 ULA Act,Ã, F.I.R No.

270/2016, u/s 147, 148, 149, 336, 353 RPC, 3 (1) PPP D Act, 13 ULA Act, F.I.R No. 278/2016 u/s 147, 148, 149, 336, 353, 307 RPC, 13 ULA Act,

F.I.R No. 287/2016 u/s 147, 148, 149, 336, 353, 332, 307 RPC, 13 ULA Act & F.I.R No. 301/2016 u/s 147, 148, 149, 336, 353, 332, 307, 427 RPC, 13

ULA Act, registered at Police Station Shopian. The detaineeÃ, wasÃ, already in the custodyÃ, of the respondents at the time of passing of the

impugned order of detention.

06/ Preventivedetention, as has beenÃ, held in the cases ofÃ, A.K.Gopalan v.Ã, State of Madras (1950) SCR 88 and Rekha vs. State of Tamil Nadu

(AIR 2011 SCW 2262), is, by nature, repugnant to democratic ideas and an anathema to the rule of law. The Supreme Court in RekhaÃ¢â€s case

(supra) emphasized that article 22 (3) (b) of the ConstitutionÃ, of India is to be readÃ, as an exception to article 21 of the Constitution of India and

not allowed to nullify the right to personal liberty guaranteed under article 21. The Supreme Court furtherÃ, observed thatÃ, since article 22(3)(b) of

the Constitution of India permits preventive detention,Ã, we cannot hold it illegal but we must confine the power of preventive detention within very

narrow limits, otherwise we will be taking away the great right to liberty guaranteed by Article 21 of the Constitution of India which was won after

long, arduous, historic struggles. It has, therefore, to be understood that if the ordinary law of the land (India Penal Code and other penal statutes) can

deal with a situation, recourse to a preventive detention law will be illegal. The Supreme Court addedÃ, that it must be remembered that if, in the case

of preventive detention, no offence is proved, and there is no conviction, which can only be sanctioned by legal evidence, preventive detention is

often described as “jurisdiction of suspicion.” To prevent misuse of this potentially dangerous power the law of preventive detention has to be

strictly construed and meticulous compliance with the procedural safeguards, however, technical, is, in our opinion, mandatory and vital. The Supreme

Court, after putting reliance on the law laid down in *Kamleshwar Ishwar Prasad Patel vs. Union of India and others* (1995) 2 SCC 51 (para

49) observed, that the history of liberty is the history of procedural safeguards. These procedural safeguards are required to be zealously watched,

and enforced by the Court and their rigor cannot be allowed to be diluted on the basis of the nature of alleged activities of the detainee. The Supreme

Court quoted with approval the observation made in *Ratan Singh Vs. State of Punjab and others* 1981 (4) SCC, emphasizing the need to ensure,

that the constitutional and statutory safeguards available to a detainee, are followed in letter and spirit. It observed, but the laws of preventive

detention afford only a modicum of safeguards to persons detained under them, and if freedom and liberty are to have any meaning in our democratic

set up, it is essential, that at least those safeguards are not denied to the detainees.

07/ The procedural requirements are the only safeguards available to a detainee since the Court is, not expected, to go behind the subjective

satisfaction of Detaining Authority. As laid down by the Apex Court in the case of *Abdul Latif, Abdul Wahab Sheikh, v. B.K. Jha*, and anr.

(1987) 2 SCC 22, 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.

08/ Looking at the instant case from the above perspective, the aforementioned F.I.Rs were registered, against the detainee at Police Station,

Shopian, and as already stated, he was in the custody of the respondents at the time of the passing of the impugned order, of detention. These

F.I.Rs form the baseline of the order of the detention, of the detainee. The relevant extract of the grounds of the detention, which is necessary, to

the decision of this petition, needs consideration and same is reproduced, as under :

“From the above, it is clear that you are deeply involved in anti national/anti social activities, which are prejudicial to the maintenance of the public order. As the normal law is not sufficient to deter and prevent you from such activities, as such it has become imperative to re-detain you

under the provisions of the Public Safety Act, 1978, as compelling case has emerged against you. Thus in order to curb your activities, your re-

detention under the preventive law has become imperative and it is prudent and, legally desirable, to re-detain you under clause (a)(i), sub section

(1) of section 8 of J&K Public Safety Act, 1978 so that you are restrained from further indulging in anti national/anti social activities.”

09/ The question for consideration, is, can an order of detention be passed on the face of, what has been detailed above. The answer to this

question can be a big “No” taking into consideration the law laid down by the Apex Court of the Country in para 24 sub para (6), of the

judgment delivered in the case of Sama Aruna Vs. State of Telangana and another, reported in AIR 2017 SC 2662, which reads as under:-

“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 detainee was released on bail he would again carry on 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.”

10/ The same view has been repeated and, reiterated by the Honble Supreme Court in, paragraph 13 of the judgment delivered in the case

of V.Shanta Vs. State of Telangana and others, reported in AIR 2017 SC 2625, that reads as follows:

“13. The order of preventive detention passed against the detainee 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 detainee 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 “goonda” or “prejudicial to maintenance of public order” cannot be sufficient justification

to invoke the draconian powers of preventive detention. To classify the detainee as a “goonda” 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.”

11/ Testing the case on hand on the touchstone of the law laid down above, the detainee could not have been detained after taking recourse to the

provision of PSA, when he, was involved in various F.I.Rs for the commission of substantive offences, in which he was arrested and, had, not

been enlarged on bail in many of these F.I.Rs. The proper course, would have been to challenge the order of bail, if, granted to him. He could

not have been detained preventatively, particularly, when he was already in the custody of the respondents. This single infraction, renders the order

of detention liable to be set aside. Besides, the order of detention appears to have been passed on surmises, conjectures and repetition of the

earlier grounds, questioned in the earlier writ petitions, which is bad in law.

12/ Viewed in the context of all that has been said and done above, the petition is allowed, as a consequence of which, the, order of detention

bearing No. 119/DMS/PSA/2018, dated 08-03-2018 passed by the respondent No.2
District Magistrate, Shopian, is quashed with a further

direction to the respondents to release the person of, Mohammad Lateef Dar, S/O late
Abdul Gani Dar, R/O, Zawoora, Dar Mohalla, Tehsil

& District Shopian, Kashmir, forthwith from the preventive custody, unless required in any
other case.

13/ The petition is, accordingly, disposed of along with connected IAs. The record
shall be returned to the learned counsel for the respondents.