

Jamali Khan Vs. State and ors.

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Court : Jammu and Kashmir

Decided On : Sep-16-2008

Reported in : 2008(3)JKJ387

Judge : J.P. Singh, J.

Appellant : Jamali Khan

Respondent : State and ors.

Advocate for Pet/Ap. : Mr. Tufail

Disposition : Petition allowed

Judgement :

J.P. Singh, J.

1. Mr. Jamali Khan has filed this writ petition seeking quashing of District Magistrate Udhampur's Order No. PSA-2007/19 of 19 December, 2007 detaining him under Section 8 of the Jammu and Kashmir Public Safety Act, 1978, for a period of two years for his activities prejudicial to the security of the State,
2. Grounds of detention served on the petitioner indicate him to be a hawala courier, messenger, biker and dispatch-rider for Hurriyat Conference. He is stated to have been involved in bringing of hawala money generated through the terrorist fund abroad for keeping the pot of militancy boiling in the State.

3. It is stated in the grounds of detention that one G.M. Bhat of Hyderpora, Srinagar, residing at Delhi as well was associated with different militant organizations particularly the Tehreek-E-Hurriyat, had illegally collected huge money which was to be delivered to Syed Ali Shah Geelani, Chairman Tehreek-E-Hurriyat at Srinagar through the petitioner. A police naka had thus been laid at Jakheni when at about 17.30 hours the petitioner travelling in Tata Sumo bearing registration No. 3937/JK14 along with his wife and minor sons was intercepted. CNG Cylinder recovered from the vehicle in which petitioner had been traveling was found to contain currency notes to the tune of Rs. 46,89,500/-whereas petitioner was found to possess a cash amount of Rs. 2.50 lacs. FIR No. 252/07 was thus registered against the petitioner and others under Sections 17/18/21/24/40 of the Unlawful Activities (Prevention) Amendment Act, 2004.

4. It was during the course of the investigation of FIR No. 252/07 that District Magistrate, Udhampur issued his order of 19 December, 2007 for petitioners detention under Section 8 of the Jammu and Kashmir Public Safety Act, 1978, hereinafter to be referred as the Act, when the petitioner was in police custody in FIR No 252/07.

5. Petitioner has filed this writ petition assailing District Magistrates order of 19 December, 2007;

6. Denying the allegations appearing in the grounds of detention against the petitioner to be false, fabricated and concocted, the petitioner says that by not supplying him the material/documents on the basis whereof he had been ordered to be detained, the respondents had violated the mandatory provisions of the Public Safety Act.

7. Justifying petitioners detention under Section 8 of the Act, District Magistrate Udhampur has filed his affidavit in answer to the writ petition.

8. I have heard learned Counsel for the petitioners Mr. R.M. Tufail and learned Additional Advocate General, Mr. S.C. Gupta.

9. Mr. Tufail, learned Counsel for the petitioner, submitted that non-supply of the material/documents relied upon by the District Magistrate to the petitioner had prejudiced him in making an effective representation to the Government against his detention and in that view of the matter petitioners statutory right under Section 13 of the Public Safety Act and fundamental right under Article 22(5) of Constitution of India had been violated.

10. Learned Counsel further submitted that there was no material on records to justify petitioners detention when he was already in police custody in FIR No. 252/07.

11. Producing the detention records, Mr. Gupta has tried to justify petitioners detention on the basis of the grounds of detention. He had, however, nothing to say regarding the complaint of the petitioner that he had not been supplied the material/documents on the basis whereof the District Magistrate had proceeded to record the grounds of detention, in view of the clear factual position emerging from the records that nothing except the grounds of detention running over four pages had been supplied to the petitioner.

12. I have considered the submissions of learned Counsel for the parties and gone through the records produced by learned Additional Advocate General.

13. A short affidavit has been filed by the District Magistrate. It does not deal with the pleas which the petitioner has set up in various paragraphs of his writ petition. Paragraph No. 7 of the writ petition where the petitioner complains about the non-supply of material/documents on the basis whereof his detention had been ordered, to him, has not at all been adverted to in the affidavit.

14. Perusal of the records indicates that all that had been supplied to the petitioner was the grounds of detention running over four pages and nothing beyond that. No attempt had been made by the District Magistrate to supply the petitioner the documents which had been referred by him in the grounds of detention.

15. The material on the basis whereof the learned District Magistrate had drawn the grounds of detention and recorded his satisfaction, to detain the petitioner

under Section 8 of the Act, is neither disclosed in the order of detention nor in the grounds of detention. The police dossier on the basis whereof the grounds of detention appear to have been drawn, too were not supplied to the petitioner.

16. Non-supply of the police dossier and other material to the petitioner and non-disclosure of the nature of material in the grounds of detention, on the basis whereof the District Magistrate had proceeded to detain him under Section 8 of the Act would, in my opinion, deprive the detenu of his right to make an effective representation to the Government against his detention. This is so because effective representation to the Government against his detention cannot be contemplated unless the material on the basis whereof the grounds of detention had been drawn was supplied to the detenu because it is only after going through the material so supplied that the detenu would be able to comment on the grounds of detention and the material so supplied while making an effective and meaningful representation. Omission of the respondents to supply material to the petitioner, therefore, violates his fundamental right to make an effective representation against his detention. Petitioner's detention thus becomes unsustainable being in violation of Section 13 of the Act and Article 22(5) of the Constitution of India.

17. That apart, the satisfaction recorded by the learned District Magistrate that there is likelihood that if the petitioner was released on bail in near future, he would continue his subversive and anti-national activities, is not based on any evidence/material, barring a similar statement appearing in the police dossier. The dossier too does not indicate the basis, or the material, such as reports etc. of any agency/ies about petitioner's likelihood of indulging in subversive and anti-national activities in the event of his being released on bail in FIR 252/07.

18. Preventive detention of a person who is already in police custody is, no doubt, permissible under Section 8 of the Act yet while directing preventive detention in such cases, the detaining authority is required to spell out his satisfaction, that the detenu, if released on bail, was likely to indulge in activities prejudicial to the security of the State or maintenance of public order or the like warranting preventive detention. Such satisfaction, however, needs to be based on some material. In other words, existence of material for recording such satisfaction is the

sine-qua-non for detaining a person who is already in custody, in preventive detention.

19. The records produced by the respondents, however, do not contain any such material on the basis whereof the satisfaction recorded by the District Magistrate may be justified. Satisfaction recorded by the learned District Magistrate is, therefore, arbitrary.

20. For all what has been said above, I am of the view that the petitioners detention by District Magistrate, Udhampur under Section 8 of the Act is violative of Section 13 of the Jammu and Kashmir Public Safety Act and Articles 22(5) and 14 of Constitution of India.

21. Allowing this petition, District Magistrate Udhampurs Order No. PSA-2007/19 dated 19 December, 2007 is quashed. A direction shall accordingly issue to the respondents to release the petitioner from preventive detention forthwith, if not required in any other case.

Records to be returned to the State Counsel.

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