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Abdul Rashid, Vs. State and ors.

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Court : Jammu and Kashmir

Decided On : Mar-25-2010

Judge : J.P. Singh, J.

Appellant : Abdul Rashid, ;noor DIn and Hadayatullah

Respondent : State and ors.

Judgement :

J.P. Singh, J.

1. M/S Abdul Rashid, Noor Din & Hadayatullah have been detained in preventive custody by District Magistrate, Ramban in exercise of powers under Section 8 of the Jammu and Kashmir Public Safety Act, 1978, hereinafter to be referred as the 'Act', vide Order Nos. DMR/PSA of 2009/18, DMR/PSA of 2009/19 & DMR/PSA of 2009/20 dated 17.03.2009 respectively.

2. The grounds of Detention in case of the detenues being similar, grounds of one of the detenues' is reproduced, hereunder for reference, to deal with the submissions raised at the Bar for and against the detention. The grounds read thus:

Name : Ab. Rashid

Parentage : Atta Mohd.

R/O : Kadara Wagan.

Tehsil : Banihal.

District : Ramban.

Education : Nil

Age : 32 years.

Occupation : Laborer

Nationality : Indian.

Recovery:

01-LPG Gas Cylinder = 01 No.

02-LPG gas stove = 01 No.

03-Vessels = 03 Nos.

04 plates = 03 Nos.

05 Presser Cooker = 02 Nos.

06 Empty Ghee Tins = 03 Nos.

07 Karchi = 02 Nos.

08 Glass = 01 No.

09 Wire = 08 Mtrs.

10 Binocular = 01 No.

11 Diary = 01 No.

12 Holy Book = 07 Nos.

13 Blankets = 01 No.

14 Rice = 05 Nos.

15 Dal Mix = 250 Gms.

16 Dal channa = 01 Kgs.

17 Tea = 259 Gms

18 Haldi Powder = 500 Gms

19 Chilly Powder = 500 Gms.

20 Salt = 01 Kg.

21 Milk Powder = 02 pkts.

22 Sugar = 02 kgs.

(The recovery was made out from hideout)

I have gone through the dossier submitted by the Sr. Superintendent of Police Ramban, where under he has recommended your detention under the prevention of J&K; Public Safety Act, 1978. In respect of his dossier he has submitted a detailed report of your antinational activities in which you have indulged in.

You are a hardcore active O.G.W militant of banned draded HM outfit. This outfit, in league with the other members of the various dreaded terrorist organizations have unleashed reign of terror and fear psychosis not only in the State of J&K; but also in various part of country. The militant organizations (Umbrella militant Organization) have created terror and fear psychosis in the society by way of killing innocent citizen of India and in the State. You are active and hard core OGW of HM. You being OGW of HM with the support of Noor Din and Hadayatullah have constructed a hideout for terrorist about 40 to 50 yards away from the residential house. You have constructed this hideout in your land for HM terrorist namely (1) Abdul Rashid code Khari Zaber S/O Akhter Naik R/o Lablotha, (Commander HM) (2) Nazir Ahmed S/o Mohd. Ramzan R/o Saran Khari and (3)

Ayaz Ahmed @ Mossa S/O Abdul Rehman R/o Shagan Banihal. All the above mentioned terrorist are wanted in case (1) FIR No. 64/08 Under Section 302/RPC 7/25/27A Act (2) FIR No. 146/08 Under Section 302/120-B/121-A/122 RPC 7/25/27A Act (3) 178/08/Under Section 302/120-B/121-A/122 RPC 7/25/27 Act (4) 04/09 Under Section 307/120-B/121-A/122 RPC 7/25/27A Act of P/s Banihal.

You are actively taking part in anti-national and terrorist activities. You are also trained in handling Arms and ammunitions. Brief resume of your involvement and activities are summarized as under:

You were born in village Kadara Wagan Tehsil Banihal. The militancy in this area started in 1990 and large number of youth joined militancy and started attack on security forces and civilians. These militants of various organization were/are used to visit and stay in your house for food, shelter and information regarding security forces. These militants were/are planning to target the security forces in your house.

You along with Noor Din S/o Habibullah and Hadayatullah S/O Noor Din, R/O Kadara wagan Banihal, joined HM outfit (banned) and provided every type of information regarding security forces and their movements. You are also working for militants and boosting moral of civilians regarding Jehad against Indian govt. and security forces. You have intentionally constructed a hideout for terrorist in your land, 40/50 yards away from the residential house for terrorist especially for HM militants namely Abdul Rashid Code Kari Zaber S/O Akhter Naik R/O Lablotha.(Commander HM) (2) Nazir Ahmed S/O Mohd Ramzan R/O Saran Khari and (3) Ayaz Ahmed @ Mossa S/O Abdul Rehman R/O Shagan Banihal. You kept a heap of dry grass on the hideout with the intention to cheat the security forces. You intentionally alongwith Noor Din and Hadayatullah provided land to terrorists for their shelter with intention to increase militant activities. You alongwith Noor Din and Hadayatullah have joined the HM organization, and from this Hideout. You, Noor Mohd. and Hadayatullah alongwith these above mentioned militants were planning to plant IED on National Highway.

The Security forces including Police Station, Banihal Police party and 23 RR, during search operation came to know that you, Noor Din and Hadayatullah have

constructed a hideout for above said terrorist. On this information the security forces cordoned the area as there was apprehension that militants may be hiding themselves inside the hideout. The hideout was busted out and the items as mentioned above, have been recovered from the hideout which was provided by you and your associates. On this a case FIR No. 17/09 U/S 10/18/19/20/21 unlawful activities (prevention amended act) was registered at P/S banihal. During the course of investigation 03 persons namely (1) Noor Din (2) Hadayatullah and (3) (you) were questioned and your active involvement was established. From Noor Din and Hadayatullah two Mobiles were recovered. From these mobiles details, it is clear that you and your associates have been keeping close/active contacts with above mentioned HM militants.

Arest:- On 25/01/2009 You alongwith Noor Din and Hadayatullah were arrested by Police party of Police Station Banihal. You are presently bailed out by the Hon'ble Court there is apprehension that you will again involve yourself in militant activities.

You are active OGW militants of dreaded banned outfit of HM and other militant organizations, besides this you are also informer of militant organizations. You can handle every weapons and ammunitions. You not intentionally supported militants but also constructed hideout for them. You had kept this house and hideout for militants to use for stay, shelter and food. You alongwith your associates provided all kinds of realistic and logistic support to militants for increasing militants networks.

You, therefore, remained active OGW member of HM outfit in the ongoing armed struggle against the union of India by way of terrorizing society and public in large. You alongwith your associates and member/militants of HM want to throw the established Govt. of J&K; by way of terror and disruptive act. The main agenda of HM is to make J&K; as a part of Pakistan by way of terrorist activities and disintegrate India by cession.

Your active involvement in militancy and your link with commanders of militant organizations are detrimental to the security of State. In the light of you highly antinational, Objectionable, Prejudicial and subversive activities, you remained at

large is a great risk to the security of the country and total security of the State in the back-drop of the aforesaid subversive and prejudicial activities. In the light of above grounds which are based on the dossier submitted by the Sr. Superintendent of Police Ramban and in view of the prevailing situation in District Ramban and also your persistent lot of supporting/working to the cause of militants, you have been considered as a potential threat to the security of the State. As such, I have arrived at the conclusion that your detention under the provisions of J&K; Public Safety Act, 1978 is absolutely necessary. You are therefore, detained under the provisions of section 8 of the J&K; Public Safety Act, 1978.

2. Before their detention in preventive custody, the detenues were in police custody in FIR No. 17/2009 registered at Police Station Banihal under Sections 10, 18, 19, 20 & 21 of the Unlawful Activities (Prevention) Act, 1967.

3. They were, however, released on bail in the aforementioned FIR by Judicial Magistrate, Ist Class, Banihal vide his Order of February 20, 2009, which too needs to be noticed. It reads as follows:

In the Court of JMIC, Banihal.

Noor Din and Ors. v. State

Bail Application

ORDER

20.02.09

Counsel for applicants Sh. K.S.Bali & Sh. Khalid Nizam Adv. Present.

P.O for the State present.

Through this application applicants have prayed for their release on bail. Police report called it has been reported by the police that the accused/applicants have been arrested on 30.01.2009 & have been remanded to J/C in case of FIR No. 17/2009 P/S Banihal, offences u/s 10,18,19,20,21 ULFA Act, applicants have also

been sent to J/C for interrogation. Investigation is going on. P.O has objected to bail application and has stated in his objections that the accused are assisting the terrorist & in case bail is granted to them security forces would not be able to stop the terrorist activities.

Perusal of C.D file revealed that there is evidence of only police officer that too only to the extent that a hide out has been busted from the land of the accused & some domestic items have been recovered from these facts at the most it can be inferred that the accused have knowledge that the terrorists are hiding there & mere knowledge cannot bring home the offences under Section 10, 18, 19, 20, 21 ULFA Act.

The association of accused with terrorists conspiracy or harbouring has not been prima facie made out at this stage. Therefore, keeping in view the role of accused proved till date of their involvement in above offences. I am of the opinion that accused cannot be kept behind the bars for further period. Even the alleged offences are not punishable with death or alternative imprisonment for life, therefore, jurisdiction of the court is not barred.

Accordingly, I allow the application and accused are ordered to be released from J/C subject to furnishing of personal and surety bonds in the amount of Rs. 10,000/- each, applicants are directed that they shall not jump over bail bonds & remain present before I/O whenever required. This application is, accordingly, disposed of.

Announced: 20.02.09.

Sd/-

JMIC, Banihal

4. The Detention records produced by the learned State Counsel reveal receipt of Senior Superintendent of Police, Ramban's Dossiers dated 24.02.2009 along with records running over nine leaves by the learned District Magistrate on the same day. These records, however, do not contain any material, like information, report(s) or the like, on the basis whereof it may be said that after their release

from police custody pursuant to the orders of the learned Judicial Magistrate, the detenues were likely to indulge in any activity prejudicial to the security of the State.

5. The records are further silent about the activities of the detenues from the date of their release on bail until issuance of the Detention order on 17.03.2009.

6. The inaction of the District Magistrate on the Senior Superintendent's recommendations, for this intervening period, is not explained. Omission of the learned District Magistrate to act promptly on the Senior Superintendent's recommendations and his omission to know about the activities of the detenues from the time of their release on bail until the issuance of the Detention orders indicates mechanical exercise of power under Section 8 of the Act which is additionally demonstrated by his verbatim reproduction of the Police Dossier into the grounds of Detention except for substitution of the expression 'the subject' in the Police Dossier by the expression 'YOU' in the grounds of detention and introducing following two paragraphs in every Detention order:

I have gone through the Dossier submitted by the Senior Superintendent of Police, Ramban, where under he has recommended your Detention under the provisions of Jammu and Kashmir Public Safety Act, 1978. In respect of this Dossier, he has submitted a detailed report of your anti-national activities in which you have indulged in.

In the light of above grounds which are based on the Dossier submitted by the Senior Superintendent of Police Ramban and in view of the prevailing situation in District Ramban and your persistent lot of supporting/working to the cause of militants, you have been considered a potential threat to the security of the State. As such, I have arrived at the conclusion that your Detention under the provisions of Jammu and Kashmir Public Safety Act, 1978 is absolutely necessary. You are, therefore, detained under the provisions of Section 8 of the Jammu and Kashmir Public Safety Act, 1978.

7. Resort to the provisions of the Act to curtail one's Fundamental Right to Life and Personal Liberty may be justified only if the exercise of power was actuated in

public or State interest. Prompt action by the detaining Authorities in this respect on request of the law enforcing agencies, goes a long way in demonstrating bonafide exercise of power in public and State interest. Unexplained inaction by the detaining Authority, in this respect, for weeks together puts a question mark on the exercise of such power.

8. Barring the incident and arrest of the detenues on January 25, 2009, leading to the registration of FIR No. 17/2009, rest of the resume in the grounds of Detention about the detenues is just a vague narration, general in character, without specifying the date(s), month(s) or year of the activities of the detenues. There is no material either on records except the Senior Superintendent of Police's Dossier and that too without specific details of the activities of one or the other detenues.

9. The release of the detenues on bail, as the order of the learned Judicial Magistrate so indicates had been opposed by the State on the ground that if released on bail, the Security Forces would not be able to stop the terrorist activities. The learned Magistrate, however, after going through the Case Diaries, did not find any prima facie case to have been made out by the Police against the detenues indicating their association with or any conspiracy to harbour terrorists, And accordingly finding no role of the detenues in the commission of offences for which they had been detained, directed their release on bail.

10. Rather than questioning the bail order in the Superior Courts to project their view point, the State functionaries appear to have resorted to the exercise of power under Section 8 of the Act on the ground that there was apprehension that the detenues would again involve themselves in militant activities. The additional ground projected by the respondents to seek the preventive Detention of those who were released on bail, without there being any instance of any activity of one or the other detenues hinting at their likelihood of indulging in militant activities, cannot be justified, for to detain a person released on bail by a competent Court of jurisdiction, in preventive Detention, on allegations similar to those on which their Detention in police custody was found unjustified, mere ipsi dixit of the detaining Authority to justify the Detention order, would not be a substitute for some or the other material necessarily needed for recording satisfaction that there was

likelihood of the detenues indulging in activities warranting curtailment of their Fundamental Right to Life and Liberty under Article 21 of the Constitution of India for his detention in preventive custody.

11. The specific case set up by the detenues in paragraph No. 4 (B) of their Petition that there was no material on records indicating their likelihood of indulging in militant activities after their release on bail, has remained uncontroverted, in that, neither the District Magistrate nor the Superintendent of Police, Ramban have responded to the petitioners' specific plea referred to hereinabove, in their Affidavits filed in response to the Petitions.

12. Another specific plea of the detenues raised in their Petition that the material relied upon by the detaining Authority including FIR No. 17/2009 was not supplied to them, remains uncontroverted.

13. The Detention records reveal supplying of Police Dossier and the grounds of Detention running over three leaves only to the detenues. Rest of the material which the learned District Magistrate is stated to have considered while contemplating the detentions, has not been supplied to the detenues. Delivery of only the Police Dossier and the grounds of Detention minus rest of the material relied upon by the detaining Authority in passing the Detention orders, in my opinion, deprive the detenues of their right to make effective Representation against the Detention to the Government, in that, effective Representation by the detenues may not be contemplated unless they were informed of the grounds of Detention and the material on the basis whereof those had been drawn, for the detenues' right to project their view point against the grounds of Detention may not be conceived unless they had an occasion to go through the material on which the grounds of Detention were based.

14. No case having been set up by the respondents that the disclosure of the material relied upon by the District Magistrate, to the detenues may not be in public interest, the omission to supply whole of the material relied upon by the detaining Authority to the detenues deprives them of their right to make effective Representation against their Detention violating Article 22(5) of the Constitution of India and Section 13 of the Act.

15. In view of the above discussion, it appears that the Detention orders have been passed without any material on records supporting the respondents' apprehension that the detenues would again involve themselves in militant activities, to justify the detenues' detention which the learned Judicial Magistrate, on the similar facts had not found warranted under law.

16. For all what has been said above, the orders passed by District Magistrate, Ramban, for preventive Detention of Abdul Rashid, Noor Din & Hadayatullah, are found to have been passed without application of mind and in violation of the provisions of Article 22 (5) of the Constitution of India and Section 13 of the Jammu and Kashmir Public Safety Act, 1978. All these Petitions, therefore, succeeds and are, accordingly, allowed, quashing District Magistrate, Ramban's Order Nos. DMR/PSA of 2009/18, DMR/PSA of 2009/19 & DMR/PSA of 2009/20 dated 17.03.2009.

17. The respondents are, accordingly, directed to set Abdul Rashid, Noor Din & Hadayatullah to liberty forthwith, unless required in any other case. Detention records be returned to the State Counsel.

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