

HIGH COURT OF JAMMU AND KASHMIR
AT JAMMU.

HC(W) No. 4/2008

Date of Decision: 20.11.2008

Koushal Kumar Sharma VS. State & Ors.

Coram:

MR. JUSTICE J.P.SINGH, JUDGE.

APPEARING COUNSEL:

For Petitioner : Mr. M.A.Goni, Sr.Advocate with
 Mr. Ajay Singh Kotwal, Advocate.

For Respondents : Mr. S.C.Gupta, AAG.

i)	Whether to be reported in Press/Journal/Media	:	Yes
ii)	Whether to be reported in Digest/Journal	:	Yes

Koushal Kumar Sharma alias Kashu has filed this petition through Sardari Lal, his uncle, seeking quashing of order No. 02/PSA of 2008 of 09.01.2008 passed by District Magistrate, Jammu whereby the petitioner has been ordered to be detained under Section 8 of the Jammu and Kashmir Public Safety Act, 1978, hereinafter referred to as the ~~Act~~ **Act**

Referring to the pleas set up in the petition, Mr. M.A.Goni, learned Senior Counsel, submitted that the respondents had disabled the petitioner to make representation to the Government against his detention, in that, the Police Dossier on the basis whereof the District Magistrate had

directed detention, were not supplied to the petitioner and the copies of the FIRs which had been supplied to him were all in Urdu language which he would not understand, as a result whereof, he was deprived of his constitutional right to make effective representation against his detention. He further submitted that the respondents had fabricated false FIRs against the petitioner in which he stood released on bail by competent Court of jurisdiction but the District Magistrate had not been apprised about all these bail orders by the police agency which, for undisclosed reasons, was bent upon curtailing petitioner's fundamental right to Life and Liberty. Petitioner, according to the learned counsel, had been subjected to inhuman treatment at the hands of the police agencies and his detention was liable to be quashed because the detention order besides being violative of Article 22 (5) of the Constitution of India and Section 13 of the Jammu and Kashmir Public Safety Act was even otherwise unsustainable as the satisfaction recorded by the District Magistrate was not supported by any material on records, which reflected complete non-application of mind.

Respondents had been called upon through learned Advocate General to file Counter Affidavit to the petition and produce the detention records. They have, however, opted not to rebut the pleas set up in the petition and have tried to justify petitioner's detention only on the basis of the records which the

learned State Counsel Mr. S.C.Gupta had produced at the time of consideration of the petition.

I have considered the submissions made at the Bar in the light of the detention records which the learned State Counsel had produced for the perusal of the Court.

Perusal of the detention records reveals that the District Magistrate had recorded his satisfaction on the basis of the Dossier which had been sent to him by Senior Superintendent of Police, Jammu.

The Police Dossier, as the records indicate, was not part of the material that had been supplied to the detainee. Neither the detention order nor the grounds of detention formulated by the District Magistrate indicate that these had been drawn by the District Magistrate on the basis of the Dossier of Senior Superintendent of Police, Jammu.

Omission of the District Magistrate to indicate either in the detention order or in the grounds in support thereof, the material on the basis whereof he had drawn the grounds of detention and contemplated petitioner's detention under Section 8 of the Act would, in my opinion, deprive the detainee of his right to make an effective representation to the Government against his detention, in that, effective representation may not be contemplated unless the detainee would know about the material which had entered the detaining authority's mind at the

time of its contemplating issuance or otherwise of a detention order in terms of Section 8 of the Act.

As the respondents have opted not to rebut the case set up by the petitioner that he did not know Urdu language and was thus disabled to know as to what was contained in the copies of the FIRs mentioned in the grounds of detention which had been supplied to him, the necessary irresistible conclusion would thus be, that the detainee had not known the contents of the FIRs and was thus deprived of his right to comment on the FIRs while making his representation to the Government in exercise of the right guaranteed to him in this behalf under Article 22 (5) of the Constitution of India and Section 13 of the Act.

Having been deprived of his right to know about the material which had entered the mind of the detaining authority in contemplating his detention, and his right to make effective representation against his detention, the petitioner's detention under Section 8 of the Act cannot be justified.

That apart, the grounds of detention indicate that the detainee is stated to have chosen criminal activities as his profession and had formed a gang of like minded criminals who would always remain armed with deadly weapons and strike at will at innocent persons/peace loving citizens either for extortion or for creating a fear psychosis in the minds of general public; but this prelude in the grounds of detention does not indicate the material on the basis whereof it had been drawn by

the District Magistrate. Records indicate that this introduction in the grounds of detention is the same with which the Senior Superintendent of Police, Jammu & Kashmir Police had been prefaced. The Police Dossier too is silent about the material on the basis whereof this introductory statement had been made by Senior Superintendent of Police.

There is nothing in the detention records to indicate the material on the basis whereof it may be said that the petitioner had chosen criminal activities as his profession and had formed a gang of likeminded criminals who, armed with deadly weapons would strike at will at innocent persons/peace loving citizens for extortion or for creating fear psychosis.

Such being the case, the District Magistrate does not appear to have applied his mind while contemplating petitioner's detention and had mechanically reproduced the Police Dossier in the grounds of detention to justify petitioner's detention without looking for the material which would satisfy him that when released on bail the detenue was likely to revive his criminal activities which would pose threat to the maintenance of public order.

Law is settled that while passing an order for preventive detention of a person who is already in custody, the detaining authority is required to record his satisfaction that the person in custody, when released on bail or otherwise, was likely to indulge in such activities which may be prejudicial to the

maintenance of public order or security of the State and as such his preventive detention was warranted. Equally well settled is the principle of law that such a satisfaction is required to be recorded on the basis of some or the other material available to the detaining authority. Sans such material, the detaining authority may be disabled to direct the preventive detention of a person who is already in custody.

As there is no material on records on the basis whereof such a satisfaction could be contemplated as has been recorded by the District Magistrate in the present case so the petitioner's detention cannot be justified on this ground as well.

For all what has been said above, petitioner's detention becomes unsustainable, in that, respondents' omission to supply him the material which had been relied upon by the detaining authority while contemplating his detention under Section 8 of the Act, has deprived him of his fundamental right under Article 22 (5) of the Constitution of India and the statutory right available to him in this behalf under Section 13 of the Act to make effective representation against his detention to the Government. The detention order, even otherwise, suffers from non-application of mind and is liable to be quashed to restore petitioner's right to liberty.

Accordingly, allowing this petition, District Magistrate Jammu's Order No. 02/PSA of 2008 of 09.01.2008 is quashed. A direction shall therefore issue to the respondents to set the



petitioner-detenu to liberty forthwith, if not required in any other case.

Detention records be returned to the State Counsel.

(J. P. Singh)
Judge

Jammu.
20.11.2008
Pawan Chopra