

HIGH COURT OF JAMMU AND KASHMIR AT JAMMU

Case: H.C.(W) No. 27/2008

Date: 05.03.2009

Altaf Hussain

Vs.

State and others

Coram:

Hon'ble Mr. Justice Virender Singh, Judge.

Appearing counsel:

For petitioner(s) : Mr. H. A. Siddiqui, Advocate.

For respondent(s) : Mr. P. C. Sharma, Addl. Advocate General.

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| i) | Whether approved for reporting
in Press/Journal/Media | Yes/No |
| ii) | Whether to be reported in
Digest/Journal | Yes/No |

Through the instant petition, Altaf Hussain S/o Mohd. Din R/o Raj Nagar, Budhal, (for short to be referred to as the alleged 'detenue') seeks quashment of the detention order dated 17.05.2008 passed by District Magistrate, Rajouri (respondent No.2) under Section 8 of the J&K Public Safety Act, 1978 (for short to be referred to as 'the Act') primarily on the ground that it totally lacks application of mind by the detaining authority and has been passed just in a mechanical manner inasmuch as that in the grounds of detention supplied to him (detenue), he was shown to have been taken into custody in case F.I.R. No. 45/2005 and thereafter in case F.I.R. No.46/2005 registered at Police Station Budhal and had secured bail in both the aforesaid two cases, whereas it is factually incorrect as he remained in custody upto 02.04.2008 when he ultimately earned acquittal in case F.I.R. No.46/2005 as is clear from the copy of the judgment (Annexure-A) passed by Principal Sessions Judge, Rajouri. It is after his release from the jail in

aforesaid case (F.I.R. No. 46/2005), he was again arrested in case F.I.R. No. 1/2007 registered at Police Station Joint Interrogation Centre (JIC) Jammu and remained in the Police Station for sometime and then sent to Police Station Budhal where he was served with the impugned order dated 17.05.2008.

Mr. Siddiqui, learned counsel for the detainee, while developing his case vigorously on the aforesaid facts, submits that this lacks of awareness by the detaining authority and that the detainee could not be detained on the ground for which criminal investigation was carried out and even challan was produced before the competent Court. This material flaw alone is enough to set aside the impugned order of detention.

Mr. Siddiqui points out certain other flaws also submitting that the detainee was not aware as to for how much period he had to remain in detention as it is not made clear anywhere. Besides this, he was also not supplied with the relevant material relied upon in the grounds, in absence whereof, he could not make an effective representation. But primarily Mr. Siddiqui is striking his view point home on non-application of mind by the detaining authority. He, not only prays for quashment of the impugned order, but asks for compensation also.

Mr. P. C. Sharma, while refuting the arguments of Mr. Siddiqui, submits that may be in the grounds of detention, it is not reflected in so many words that the detainee was in custody in one of the cases bearing F.I.R.No. 46/2005 and it is said that he had secured bail in both the cases bearing F.I.R. Nos. 45/2005 & 46/2005, but the true factual position was subsequently indicated by the District Magistrate in his affidavit dated 26.11.2008 which

was submitted by him pursuant to the direction of this Court dated 21.10.2008. It is made clear by him that the detenue was discharged in both the cases on 02.04.2008. According to Mr. Sharma, non-mentioning of word 'discharge' specifically in the grounds of detention and instead mentioning of released on bail in both the cases would not make much difference as before the detenue was arrested in F.I.R. No. 01/2007 registered at Police Station JIC Jammu, he was not required in the aforesaid two F.I.Rs. viz., 45/2005 & 46/2005. The main ground for detaining him is that he had again started indulging in subversive activities, and therefore, it called for passing the order of detention dated 17.05.2008.

Mr. Sharma then submits that affidavit dated 26.11.2008, according to the then State Counsel (Sh. V. K. Chopra), was not complete and he made a prayer for placing on record a better affidavit on behalf of District Magistrate, Rajouri, which request was acceded to by this Court on 19.12.2008, pursuant to which, another affidavit was submitted by the District Magistrate Rajouri dated 31.12.2008 depicting the entire flashback of the detenue and also making his position clear with regard to the ambiguity crept in the first reply filed by him taking the stand that the detention order is processed at different levels through the investigating/ security/ intelligence agencies and in view of the highly sensitive nature of assignment attached to the post of District Magistrate, where he is invariably under pressure or work, inadvertently certain facts were left by him in the grounds of detention.

Justifying the act of District Magistrate, Mr. Sharma submits that the detenue, in fact, was facing trial for the substantive offences

in many cases and ultimately when he was discharged on 02.04.2008, the respondents watched his activities and found them to be subversive in nature, resultantly detained him vide order impugned herein. This was the subjective satisfaction of the detaining authority, which normally does not call for interference by this Court. Therefore, the detenue has no case for the relief sought herein.

Admitted position before me is that on the file, there are three affidavits of District Magistrate viz., one dated 29.09.2008, the second dated 26.11.2008 which was tendered by him pursuant to the direction of this Court dated 21.10.2008 and the third dated 31.12.2008 by way of a better affidavit. One fact, which is consistent in all these affidavits is that the detenue was in custody upto 02.04.2008, which fact was not made clear initially by the District Magistrate in the grounds of detention in which it was simply said that after securing bail in F.I.R. Nos. 45/2005 & 46/2005 the detenue had again started indulging in subversive activities inasmuch as he used to provide food, shelter and safe hideouts to the terrorists of an outfit (HM outfit). Even if we give some margin to the District Magistrate for not properly examining the dossier of the detenue and passed the order simply on the basis of whatever was stated before him by SSP concerned or as a matter of fact any other agency and, therefore, inadvertently some contradiction appeared in the grounds of detention as stated by him in his detailed affidavit dated 31.12.2008 filed in the shape of better affidavit, still one glaring fact, which cannot be just ignored by this Court is that the detenue was again arrested on 03.04.2008 in case F.I.R. No. 01/2007 registered with the Police Station JIC Jammu

and released from the Police Station on 13.05.2008 as is categorically stated by the District Magistrate in his affidavit dated 26.11.2008. Therefore, it is not believable at all and would also not appeal to judicial conscious which is an embodiment of reasoning that within three days' time, after his release from the police, he would again indulge in nefarious activities prejudicial to the security of the State. The specific stand taken by the detainee is that he was with JIC Jammu and with Police Station Budhal upto 17.05.2008 when the detention order was passed, which fact, no doubt, has been refuted by the District Magistrate, Rajouri, in his first affidavit dated 29.09.2008 stating that the detainee was taken into custody on 23.05.2008 and lodged him in District Jail Rajouri. But the decision taken in haste creates a lot of doubt in the mind of the Court to hold that either the District Magistrate was not made aware of the entire facts or he did not take pains to apply his mind while passing the order of detention. It appears that it is passed just in a mechanical manner dittoing whatever was stated before him. In short, he just performed his part of job like a rubber stamp. This is not expected of a District Magistrate, who has to deal with sensitive cases of this type.

I have perused the detention record (dossier of the detainee) furnished by Mr. Sharma and retained by me. It does not improve the case of the respondents in any better way so as to defend the detention order as there is no supporting material available on record.

It is well settled that in a case of preventive detention the grounds of detention must be clear and definite to enable the detainee to make an effective representation to the Government so

that he can establish his innocence, if possible. If one of the grounds in the order is non-existent or irrelevant, the entire detention order can fall. In my considered view, the aforesaid main flaw in the detention order is staring at it and reflects total non-application of mind right from the very beginning.

No doubt, while exercising power of judicial review, this Court should not ordinarily sit in appeal over the detention order so as to re-appreciate the material, which was the basis of subjective satisfaction of the detaining authority, but at the same time if non-existent or irrelevant facts are taken into account by the detaining authority, it is open to the Court to re-assess the case to see as to whether there is proper application of mind on the part of the detaining authority or not. After all detention order involves the fundamental right of the citizen and this right not to be infringed in a casual manner. Subjective satisfaction of the detaining authority does not mean that he should not apply his mind and believe the dossier prepared by the police and produced before him as gospel truth. If, on the face of it, the detention order speaks volumes of non-application of mind, it has to be disturbed by bringing it within the scope of judicial review. So is the factual position in the case on hand.

I do not feel the necessity of detaining myself any further by entering into detailed discussion with regard to other flaws as pointed out by Mr. Siddiqui, as in my considered view, the aforesaid one significant flaw is sufficient to quash the impugned order.

As a sequel to what is stated hereinabove, the net result is that the instant petition is allowed and the order dated 17.05.2008 impugned herein is quashed. The respondents are directed to

release the person of Altaf Hussain S/o Mohd. Din R/o Raj Nagar, Budhal, forthwith, if not required in any other case.

Although the petitioner has also prayed for compensation, yet keeping in view the totality of facts and circumstances of the present case and the bona fides projected by the District Magistrate in his affidavit dated 31.12.2008, I do not intend to pass any order in favour of the alleged detainee in this regard.

Registry is directed to send copy of the order to all concerned for its compliance without any delay.

The detention record is handed over to Mr. P. C. Sharma, learned Addl. Advocate General, today in the Court itself.

Disposed of.

(Virender Singh)
Judge

Jammu
05.03.2009
'Narinder'