

HIGH COURT OF JAMMU AND KASHMIR
AT JAMMU

LPAHC no.1/2008
CMP no.1/2009

Date of order: 27.2.2009

Ravinder Kumar Jain.

v.

State of J&K & ors.

Coram:

Hon'ble Mr. Justice Barin Ghosh, Chief Justice

Hon'ble Mr. Justice J. P. Singh, Judge

Appearing counsel:

For Appellant(s) : Mr. M. K. Bhardwaj, Sr. Advocate.
Mr. Sachin Sharma, Advocate.

For respondent(s) : Mr. P. C. Sharma, AAG.

In course of investigation into the offences alleged to have been committed, as reported in FIR no. 252/2007, under Sections 17/18/21/24/40 of the Unlawful Activities (Prevention) Amendment Act, 2004, the appellant was arrested. While the appellant remained under arrest, by an order dated 19th December, 2007, issued under Public Safety Act, 1978, the appellant was detained in terms of the provisions of the said Act. The grounds of detention as served upon the appellant along with the detention order held out that in course of investigation into the offences alleged to have been

committed, as reported in the aforementioned FIR, arrests, searches and seizures had been made which revealed that an arrested person from whose custody a huge sum of money was recovered, said to have confessed involvement of the appellant in Hawala transaction, in which the arrested person was involved, for the purpose of financing militants and that a visiting card of the appellant was seized in course of search and seizure at the premise of the arrested person situate at Delhi, and that suggests connection of the appellant with Hawala transactions for financing militants in the Valley. Neither a copy of the First Information Report nor a copy of the deposition or statement of the person arrested and, at the same time, no copy of the seizure memo/list, showing the seizure of the visiting card of the appellant at the place, mentioned in the grounds for detention, had been furnished to the appellant at the time of service of the grounds of detention or at any subsequent point of time. What was, therefore, served, was the views expressed on the basis of some documents by the detaining authority and not the grounds . The service of grounds of detention being *sin-qua-non* for upholding the detention and that being absent in the instant case, the appellant's detention cannot be held to be sustainable in law.

While considering the writ petition filed by the appellant, challenging the order of detention, the learned Single Judge, who dealt with the same,

did not consider what prejudice the appellant suffered for non-furnishing of the grounds in support of the detention of the appellant, and thereby how his rights guaranteed by Articles 21 and 22 of the Constitution of India have been infringed.

It is now well settled that merely on the basis of ones perception, detention cannot be upheld. The detention can only be upheld provided the detaining authority has discharged its basic legal obligations by making the detenu know why he has been detained, and that can only be made known by supplying him the grounds upon which the detention has been made and not on the basis of perception of a person upon considering such grounds but without supplying the same and thereby preventing the detenu from making a appropriate representation, which in law, he is entitled to for revoking the detention.

In the circumstances, the appeal is allowed. Judgment under appeal is set aside and, at the same time, the writ petition is allowed by quashing the detention order. Let the appellant be released in the event he is not undergoing imprisonment or held under custody in connection with any other matter.

It is made clear that this order only quashes the detention order made under Section 8 of the J&K Public Safety Act and does not bring to an end custody of the appellant upon his being arrested in connection with FIR mentioned above.

(J. P. Singh)
Judge

(Barin Ghosh)
Chief Justice

Jammu,
27.02.2009
Tilak, Secy.