

HIGH COURT OF JAMMU AND KASHMIR AT
JAMMU

HC(W) No. 10/2011

Date of Decision: 31.05.2011

Farid Ahmed Naik	VS.	State & anr.
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Coram:

MR. JUSTICE J.P.SINGH.

APPEARING COUNSEL:

For Petitioner : Mr. O.P.Thakur, Advocate.

For Respondents : Mr. B.R.Chandan, Dy.A.G.

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| i) | Whether to be reported
in Press/Media | : | Yes |
| ii) | Whether to be reported
in Digest/Journal | : | Yes |
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Farid Ahmed Naik has filed this Petition through his father Ghulam Nabi Naik questioning District Magistrate, Ramban's Order No. DMR/PSA/OF 2010/27 dated 30.10.2010 whereby the petitioner was ordered to be detained in preventive custody under Section 8 of the Jammu and Kashmir Public Safety Act, 1978.

Appearing for the detainee, his learned counsel Mr. Thakur submitted that the petitioner was already in police custody in FIR No.117/2010 registered at Police Station Banihal under Sections 17, 20, 21 & 40 of the Unlawful Activities (Prevention) Act and his detention in preventive custody was unwarranted, in that, it had been ordered without recording requisite satisfaction that the detainee was likely to be

released from custody and when so released would indulge in activities prejudicial to the security of the State.

Learned counsel further submitted that the detention was even otherwise unwarranted because the District Magistrate had issued the Detention Order mechanically reproducing those grounds of detention which had been furnished to him by the Superintendent of Police and without applying his independent mind thereto as to whether or not the detention was warranted under law.

Learned State counsel, Mr. B.R.Chandan produced the detention records urging that though the District Magistrate had not recorded in the grounds of detention that the detenu was likely to be released on bail or otherwise and would indulge in activities prejudicial to the security of the State, yet on the basis of the facts appearing from the Police Dossier, the detention was warranted in the interest of the security of the State and the Detention Order may not, therefore, warrant interference by the Court.

I have considered the submissions of learned counsel for the parties and gone through the Detention records.

It is well settled proposition of law that preventive detention may be ordered in respect of a person who was already in Custody, provided, however, that there was material

available with the Detaining Authority indicating that the detainee was likely to be released from custody and when so released would indulge in activities for which his detention may be warranted under the laws providing for such detention.

Perusal of the Police Dossier and the grounds of detention reveal that the detainee was in police custody in FIR No. 117/2010 registered at Police Station Banihal under Sections 17, 20, 21 & 40 of the Unlawful Activities (Prevention) Act when he was ordered to be detained in preventive custody by the learned District Magistrate.

There is, however, not even a whisper in the grounds of detention that the detainee was likely to be released from custody and when so released would indulge in subversive and unlawful activities prejudicial to the security of the State.

Although the Superintendent of Police had indicated in his Dossier that in case of detainee's release on bail, there was likelihood that the detainee would indulge in anti-national activities; but this does not appear to have been taken note of by the learned District Magistrate. In any case when the Detention Order was issued by the learned District Magistrate, there was no such apprehension that the detainee was likely to be released on bail, in that, his Bail Application stood rejected by the learned Sessions Judge, Ramban, more than a month ago.

The detainee's learned counsel's submission that the District Magistrate's order was a result of non-application of mind, is found substantiated, in that, a bare reading of the grounds of detention indicates that barring affecting changes in the Nouns and Pronouns, the District Magistrate has reproduced verbatim the grounds of detention which were furnished to him by the Superintendent of Police, Ramban.

The non-application of mind in issuing the Detention Order is, therefore, apparent.

District Magistrate's order dated 30.10.2010 thus suffers from the vice of non-application of mind and is even otherwise unsustainable, in that, while issuing orders for preventive custody of the detainee, neither had he recorded requisite satisfaction that the detainee was likely to be released from custody and when so released would indulge in activities prejudicial to the security of the State nor was there any material on the basis whereof such a finding could be arrived at.

For all what has been said above, the detainee's detention becomes unsustainable.

This Petition, therefore, succeeds and is, accordingly, allowed quashing District Magistrate, Ramban's Order DMR/PSA/OF 2010/27 dated 30.10.2010 whereby Farid Ahmed Naik was ordered to be detained in preventive custody.

A direction shall, therefore, issue to the respondents to release forthwith the detenue from the preventive custody.

Detention records be returned to the learned State counsel.

(J. P. Singh)
Judge

Jammu.
31.05.2011
Pawan Chopra