

HIGH COURT OF JAMMU AND KASHMIR AT JAMMU

HC(W) No.01/2011

Date of Decision:08.06.2011

Sumit Singh

Vs.

State of J&K & Ors.

Coram:

Mr. Justice J.P.Singh, Judge.

Appearing counsel:

For Petitioner (s) : Mr. Kuldip Singh Parihar, Advocate.

For Respondent(s) : Mr.Gagan Basotra, AAG.

i) Whether to be reported
in Press/Media : **Yes**

ii) Whether to be reported
in Digest/Journal : **Yes**

The petitioner-Sumit Singh has filed this Petition questioning District Magistrate, Samba's order No.01/PSA of 2010 dated 19.08.2010, whereby he was ordered to be detained in Preventive Custody under Section 8 of the Jammu and Kashmir Public Safety Act, 1978 and for issuance of directions to set him to liberty.

Appearing for the detainee, his learned counsel Mr. Kuldip Singh Parihar submitted that the material relied upon by the Detaining Authority was supplied to him only in part and the main document on which the learned District Magistrate had relied upon, i.e., the Police Dossiers submitted by the Senior Superintendent

of Police, Samba was not supplied to him. The omission to supply the Police Dossier, according to the learned counsel, had deprived the detainee of his right to make effective Representation against the Detention to the Government thereby rendering the Detention unconstitutional.

Learned counsel further submitted that the grounds relied upon by the learned District Magistrate were stale and irrelevant, in that, in majority of the cases, the petitioner had either been acquitted or the case compromised and the satisfaction thus recorded by the District Magistrate, based on irrelevant material would render the Detention illegal.

Learned State counsel, Mr. Gagan Basotra, on the other hand, submitted that the recent activities of the detainee, when considered in the light of his past activities were sufficient enough to curtail his liberty to maintain Public Order and the Detention Order may not, therefore, warrant interference.

I have considered the submissions of learned counsel for the parties and perused the detention records made available by the learned State counsel.

It was not disputed by the learned State counsel that while supplying the Grounds of Detention and copies of the FIRs mentioned therein, the respondents did not supply the detainee, Police Dossiers, which were furnished by the Senior Superintendent of Police, Samba to the District Magistrate.

Perusal of the official records and the documents placed on records by the detainee demonstrates that the Police Dossiers were not supplied to the detainee along with the Grounds of Detention and one of the Police Dossiers appears to have been supplied to him only on November 19, 2010, i.e., after about three months of his Detention. This Dossier pertained to the detainee's activities up to 2008.

The specific plea raised by the detainee in the Petition that he was not supplied the Police Dossiers along with the Grounds of Detention has gone uncontroverted in the Counter Affidavit filed in response to the Petition.

The Police Dossier is a detailed document which while referring to the FIR and other events, reflects the opinion of the officer preparing the Dossier.

Detenue has, therefore, every right to know as to what was contained in the Dossier which had culminated in Detaining Authority's satisfaction that the detenue was required to be detained in Preventive Custody. This is so because unless the detenue would know as to what had weighed with the police concerned in recommending his detention in Preventive Custody, he may not possibly be able to make Representation much less effective Representation against the Detention, in that, he would be deprived of his right to consider the police version/dossier and submit his response thereto for consideration of the Government.

Omission of the respondents to supply the Police Dossiers on which the learned District Magistrate appears to have placed reliance, as is apparent from his order of Detention, where he refers to the initial Police Dossier and the subsequent Police Dossier as the documents on which he formed his opinion to issue the Detention Order, renders the Detention illegal, in that, the omission deprives the detenue of his right to make effective Representation to the Government against the Detention.

That apart, one of the reasons which appears to have weighed with the learned District Magistrate, as was conveyed to him in the Police Dossiers was that there was strong possibility of the detenue's indulging in threatening the victims and other witnesses in various cases registered against the detenue and his associates by exercising his might and influence. This part of the satisfaction of the learned Magistrate is not supported by any material on records. Even otherwise in the absence of any material indicating detenue's intention or attempt to threaten the witnesses or victims, such satisfaction could not have been recorded.

For all what has been said above, I, therefore, find force in the detenue's learned counsel's submission that the detenu was deprived of his right to make effective Representation to the Government against his Detention in the absence of Police Dossiers on which learned District Magistrate had relied upon to record his satisfaction in putting the petitioner in Preventive Detention.

The District Magistrate's order No.01/PSA of 2010 dated 19.08.2010 is, therefore, found illegal and in

violation of Section 13 of the Jammu and Kashmir Public Safety Act and Article 22(5) of the Constitution of India.

This Petition, therefore, succeeds and is, accordingly allowed. A direction shall issue to the respondents to set Sumit Singh alias Sapan S/o Sh. Mohan Singh to liberty from Preventive custody forthwith.

Detention Records be returned to the learned State counsel.

(J. P. Singh)
Judge

Jammu
08.06.2011
Vinod.