

## HIGH COURT OF JAMMU AND KASHMIR AT SRINAGAR

HCP No. 131/2016

**Date of Decision:30.05.2017**

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Shakeel Ahmad Itoo	v.	State of J&K & ors.
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**Coram:**

**Hon'ble Mr. Justice Ramalingam Sudhakar, Judge.**

i.	Whether approved for reporting	NET	:	Yes/No
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ii. Whether approved for reporting in Digest/Journal	:	Yes/No
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**Appearing counsel:**

Mr. M. A. Qayoom for the petitioner.

Mr. Mohammad Iqbal Dar, AAG, for the Respondents.

1. The writ petition is filed challenging the detention order No. 30/DMS/PSA/2016 dated 04.07.2016 passed by District Magistrate, Shopian.

2. The detenu has been detained under the Provisions of Section 8 of the Jammu and Kashmir Public Safety Act, 1978, to restrain him from indulging in activities which disturb peace and public order.

3. The grounds of detention reveal that the detainee is 45 years old graduate. During Shri Amarnath Ji land row of year 2008, the detenu alongwith other associates arranged huge public gatherings/rallies in District Shopian and staged protest demonstrations against the Government and also spread hatred and disaffection towards the State and Government of India. The detainee is also alleged to have instigated the people who resorted to violence and pelted stones upon Government establishments, disrupted vehicular traffic and erected blockades on the main roads to restrict the normal traffic movements. for which cases stands registered in the concerned Police Stations.

4. On 28.06.2012, the detenu allegedly alongwith other miscreants provoked the people against the State Government and by provocative speeches the sentiments of the people were raised to such an extent that the whole atmosphere became surcharged and the people resorted to heavy anti-national and anti-State sloganeering, for which FIR No. 57/2012 was registered in Police Station, Zainapora.

5. On 31.07.2012, the detenu allegedly alongwith other miscreants / rioters staged protest demonstrations against the District Administration and law enforcing agencies and instigated the youth for stone pelting which resulted in injuries to some police personnel and damage to Hospital Building, for which FIR No: 251/2012 was registered in Police Station, Shopian.

6. On 18.08.2012, the detenu alongwith other associates took out a protest demonstration at Village Tulran challenging the sovereignty and Integrity of India by delivering anti national speeches, for which FIR No: 276/2012 was registered in Police Station, Shopian.

7. On 13.09.2013, the detenu allegedly alongwith other miscreants pelted stones on the security forces and caused huge damage to the Government buildings and vehicles of CRPF. In this connection FIR No: 139/2013 was registered in Police Station, Shopian.

8. Again on 06.11.2013, 30.05.2014, 24.07.2014 and 29.07.2014, the detenu along with his associates provoked the general public especially the youth of Shopian against the law enforcing agencies and caused more and more disturbance and forced the shopkeepers and business units of the District Shopian to observe shutdown which caused

huge losses to the people related to business sector which in turn caused huge financial losses to the State as well. In this connection various FIRs bearing Nos: 152/2013, 122/2014, 183/2014 and 187/2014 were registered in Police Station, Shopian, against the detenu.

9. On 10.11.2015 the detenue alongwith his associates pasted posters in the general area of the Shopian District whereunder the people of the area were threatened to refrain from the participation in democratic process or to face dire consequences, for which FIR No. 255/2015 was registered in Police Station, Shopian.

10. On 07.04.2016 the detenue alongwith his associates participated on the funeral of slain terrorist Amanullah Haq Malla and delivered hatred speeches to the gathering and raised anti national slogans and also provoked the youth to pelt stones on security forces/Police, for which FIR No. 57/2016 was registered in Police Station, Shopian.

11. Keeping in mind the above activities which are threat to maintenance of public peace, the detaining authority was left with no option but to pass the detention order of the detenu under the provisions of the Jammu and Kashmir Public Safety Act, 1978.

12. Challenging the said detention order, the writ petition has been filed, *inter alia*, on the ground that the relevant documents have not been served on the detenu which affect the rights of the detenu to make an effective representation and a right to make a representation to the detaining authority has not been specified.

13. In the counter filed by the respondents, the grounds of detention have been reiterated. The grounds taken in the writ

petition are denied and insofar as supply of documents is concerned, it is averred therein that the entire material was furnished to him. Perusal of the detention record shows that except the grounds of detention nothing else was served upon the detenu.

10. With regard to the first issue, i.e., non-supply of relied upon documents, the same was considered by this Court in HCP No.522/2016 dated 28<sup>th</sup> February, 2017, wherein this Court at Paragraph No. 5 has observed as under:

*“5. In this case, the right of the detenu to make a meaningful representation to the competent Authority against his detention order has been affected because from the grounds of detention it is evident that two FIRs registered against the detenu are primarily the reasons for which the respondents have detained the detenu under the provisions of the J&K Public Safety Act, 1978, and the said relied upon documents for detaining the detenu have not been supplied to him, therefore, this Court has no hesitation to hold that the detention is bad on this ground alone.*

11. The Hon’ble Supreme Court in case titled ***Thahira Haris V. Government of Karnataka, AIR 2009 SC 2184***, while dealing with the aforesaid issue held as follows:

*“27. There were several grounds on which the detention of the detenu was challenged in these appeals but it is not necessary to refer to all the grounds since on the ground of not supplying the relied upon documents, continued detention of the detenu becomes illegal and detention order has to be quashed on that ground alone.*

*28. Our Constitution provides adequate safeguards under clauses (5) and (6) of Article 22 to the detenu who has been detained in pursuance of the order made under any law providing for preventive detention. He has right to be supplied copies of all documents, statements and other material relied upon in the grounds of detention without any delay. The predominant object of communicating the grounds of detention is to enable the detenu at the earliest opportunity to make effective and meaningful representation against his detention.”*

12. In view of the above, the detention order is liable to be set aside.

13. The second contention relating to denial of opportunity to make a representation to the Detaining Authority was considered in **HCP No. 634/2016**, in case titled **Abdul Rehman Tantray vs. State of J&K**. Paragraph Nos. 5 to 7 whereof are reproduced as under:

*“5. It is pleaded that neither the detention order nor the aforesaid intimation in terms of Section 13 of the Jammu & Kashmir Public Safety Act, makes it clear that detainee will be entitled to make a representation to the detaining authority. Prejudice to the detainee is pleaded stating that his right to make effective representation to the detaining authority who has issued the detention order is denied. To buttress this argument, learned counsel for the detainee relied upon the decisions of this Court in ‘**Bashir Ahmad Sheikh v. State of J&K & Ors., 2011 (1) JKJ HC 82**’ and ‘**Shabir Ahmad Malik v. State of J&K & Ors. 2011 (1) JKJ HC 171**’. Further reliance is also placed on the decision of the Hon’ble Supreme Court in the case of ‘**State of Maharashtra & Ors. v. Santosh Shankar Acharya, AIR 2000 SC 2504**’, where provisions of Sections 3(2), 8(1) of the Maharashtra Prevention of Dangerous Activities of Slumlords, Bootleggers, Drugs Offenders and Dangerous Persons Act, 1981, were considered in the light of the plea that the detaining authority did not provide an opportunity to the detainee to make a representation to the Detaining Authority and therefore, it was held to be bad.*

*6. Considering the language used in Section 8(1) of the Maharashtra Act, the Hon’ble Supreme Court held that if the detention order is passed by an Officer other than the State Government the right to make representation to the said detaining authority cannot be taken away. The reliance was placed on the provisions of Section 21 of the Bombay General Clauses Act, 1904.*

*7. In this case also the detention order has been passed by the District Magistrate, however, right to make a representation to that authority has not been granted, however, it is specifically mentioned that representation is to be made to the Government. Thereby detainee has been put to great prejudice as he is unable to make a representation to the said authority.”*

14. In view of the aforesaid reasons, the impugned detention order is liable to be set aside. Accordingly, Habeas

Corpus petition is **allowed**. Detention order No: 30/DMS/PSA/2016 dated 04.07.2016 passed by the District Magistrate, Shopian, is quashed and detenu, namely, Shakeel Ahmad Itoo S/o Late Gh. Nabi Itoo R/o Manihal Tehsil Barbugh (Imamsahib), District Shopian, be set at liberty, if not required in any other case.

15. The detention record produced by learned counsel for the respondents is handed over to him in the open Court.

16. Disposed of.

Srinagar:  
30.05.2017:  
TASADUQ:  
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**(Ramalingam Sudhakar)**  
**Judge**