

HIGH COURT OF JAMMU AND KASHMIR AT SRINAGAR

HCP No. 16/2017

Date of Decision:30.05.2017

Bilal Ahmad Beigh v. State of J&K & ors.

Coram:

Hon'ble Mr. Justice Ramalingam Sudhakar, Judge.

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

Mr. Mir Shafaqat Hussain for the petitioner.

Mr. Asif Maqbool, GA, for the Respondents.

1. The writ petition is filed challenging the detention order No. 205/DMB/PSA/2016 dated 28.12.2016 passed by District Magistrate, Baramulla.

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 detenu is 34 years old and Middle class pass. On 27.05.2016, the detenu alongwith other associates attacked the Police personnel and Security forces at Konchipora Tangmarg, and started pelting stones, for which a case stands registered in the Police Station, Tangmarg.

4. On 12.08.2016, the detenu allegedly alongwith other miscreants / rioters while defying curfew restrictions, resorted to heavy stone pelting on Police party and Security forces who were deployed for maintaining law and order at Druroo, National Highway, for which FIR No. 58/2016 was registered in Police Station, Tangmarg.

5. On 13.08.2016, the detenu allegedly alongwith other miscreants / rioters while chanting anti national / Pro Pakistan slogans, appeared from Dooru area, challenging the sovereignty and Integrity of India by delivering anti national speeches, for which FIR No: 59/2016 was registered in Police Station, Tangmarg.

6. Again on 15.08.2016, allegedly the detenu alongwith other rioters while leading the unruly mob started pelting stones on police party and security forces deployed for maintaining law and order at Village Chandilooru, for which a case under FIR No: 60/2016 was registered in Police Station, Tangmarg, against the detenu.

7. Keeping in mind the above activities which are threat to maintenance of public peace, 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.

8. 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.

9. In the counter filed by the respondents, the grounds of detention have been reiterated. The grounds taken in the detention order are denied and insofar as supply of documents it is stated in the counter as follows:

“That the material which was relied by the detaining authority, same stands furnished to the detainee besides grounds of detention alongwith detention order was supplied to the detainee against proper receipt.”

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 28th 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, reported in 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 aforesaid reasons, the impugned detention order is liable to be set aside. Accordingly, Habeas Corpus petition is **allowed**, detention order No:

205/DMB/PSA/2016 dated 28.12.2016 passed by District Magistrate, Baramulla is quashed and detenu, namely, Bilal Ahmad Beigh S/o Abdul Hamid Beigh R/o Rinan Bonpora, Handwara, District Kupwara, be set at liberty, if not required in any other case.

13. The detention record which was produced by the respondents during the course of hearing is returned to him in the open Court.

14. Disposed of.

Srinagar:
30.05.2017:
TASADUQ:
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(Ramalingam Sudhakar)
Judge