



Jammu and Kashmir State Information Commission

جموں اینڈ کشمیر اسٹیٹ انفارمیشن کمیشن

(Constituted under the Right to Information Act, 2009)

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File No. SIC/K/SA/98/2017

Decision No. SIC/K/SA/98/2017/09

Appellant:

Shri Naveed Bukhtiyar,
C/O J&K RTI Movement.

Respondents:

1. First Appellate Authority (FAA),
O/O Deputy Commissioner,
Baramulla.
2. Public Information Officer (PIO),
O/O Deputy Commissioner,
Baramulla.

Date of Registration:

06-12-2017

Date of Decision :

05-04-2018

FINAL ORDER

1. This appeal has arisen out of RTI application filed by the appellant (the then RTI applicant) namely, Naveed Bukhtiyar on behalf of J&K RTI Movement with Public Information Officer, o/o Dy. Commissioner, Baramulla on 10/07/2017 seeking information on the following five points:

- (1) a clear photocopy of the latest version of the rules framed under the Jammu and Kashmir Public Safety Act, 1978;
- (2) a clear photocopy of the Standard Operating Procedure (SoPs) that provide guidance to the District Magistrate for the purpose of making decisions regarding the detention of any person under the J&K PSA, based on police reports/dossiers;
- (3) the total number of persons detained under J&K PSA from 4th March, 2016 till date and the complete list of detainees indicating the name, age, parentage, postal address and grounds for detention and exact place of lodgment of each detainee;
- (4) a clear photocopy of any official document that contains the procedure for ascertaining the age of a detainee under J&K PSA when such person is suspected to be a minor; and
- (5) inspection of all detention orders issued under J&K PSA and the related police reports and dossiers related to such detainees as on the date of this RTI application.

2. As there was no response from the PIO, the applicant filed a 1st Appeal before the First Appellate Authority/Addl. Dy. Commissioner, Baramulla on 25-08-2017. Aggrieved by non-disposal of the 1st Appeal by the FAA and also by non-furnishing of the information by the PIO, the applicant filed a 2nd Appeal before the State Information Commission on 30-10-2017, which was admitted by the Commission

on 06-12-2017 after having made the appellant to remove the procedural deficiencies as pointed out by the Registry.

Proceedings before the Commission:

3. The appeal came up for hearing before the Commission on 17-01-2018. None of the parties were present. Therefore, the hearing was adjourned.

4. The appeal again came up for hearing on 07-02-2018. The PIO, Mr. Irfan Bahadur, Tehsildar (Hqr) Baramullah, was present in person, while the FAA was represented by Mr. Manzoor Ahmad, Section Officer. The PIO filed a written statement to the appeal before the Commission and submitted that the RTI application filed by the appellant on 10-07-2017 was disposed of by the PIO well within the specified period on 01-08-2017 by providing information to the appellant to point 1 and 2 of the RTI application, while informing him that information related to point 3, 4 and 5 were exempted from disclosure under section 8 of the J&K RTI Act, 2009. The respondents also informed the Commission that the 1st Appeal filed by the appellant was disposed of by the FAA on 23-10-2017 holding that the information, other than the one sought under point No. 2 of his RTI application, was exempted from disclosure under sections 8 and 9 of the RTI Act. With respect to information relating to point 2, the appellant was advised to approach office of the Dy, SP Hqr Baramullah.

5. After going through the reply furnished by the PIO to the appellant on 01-08-2017 and the order dated 23-10-2017 passed by the FAA, the Commission observed that the reply furnished by the PIO to point No. 1 stating that the rules framed under J&K Public Safety Act were available on the website of Home Department was incorrect and

misleading as the Government has never framed any rules under the J&K Public Safety Act and, therefore, availability of the same on Home Department's website was not possible. Similarly, the Commission also observed that while disposing the 1st Appeal, the FAA has wrongly invoked section 9 of the RTI Act to deny information to the appellant for section 9 pertained to exemption of information from disclosure on the ground of infringement of copyright. As the PIO and the representative of the FAA present during the hearing of the appeal could not offer any explanation to the flaws indicated by the Commission in the orders of PIO and the FAA, the hearing was adjourned with a direction to the PIO and the FAA to attend the next hearing personally to put forth their case before the Commission and justify denial of information to the appellant.

6. Another hearing of the appeal took place before the Commission on 15-03-2018. The appellant, the FAA and the PIO were present in person. During the hearing, the respondents agreed to provide all information sought by the appellant except the information under point No. 5 of the RTI request relating to inspection of detention orders and related police reports including dossiers of detenues on the ground that disclosure of such information is exempted under section 8(1)(a) being related to security of the State and also under section 8(1)(f) as its disclosure would endanger the life and physical safety of the concerned persons and would also identify the source of information or assistance given in confidence for law enforcement or security purposes. However, the appellant contested the plea taken by respondents and reiterated that non-disclosure of information is a violation of the RTI Act. The hearing was adjourned to allow both parties to substantiate their respective arguments and pleas with the relevant provisions of law.

7. Feeling that a substantial question of law had emerged in this appeal for determination viz., “*whether information relating to grounds of detention and dossiers under the J&K Public Safety Act, 1978 falls under the exemptions under section 8(1)(a) and 8(1)(i) of the Act*”, the Commission felt it necessary that the appeal be heard by the Division Bench of the Commission to determine the said substantial question of law and accordingly vide interim order dated 26-03-2018, the Chief Information Commission constituted the Division Bench for hearing of the appeal.

8. The appeal came up for hearing before the Division Bench of the Commission on 04-04-2018. The parties were heard through videoconference from Srinagar office of the Commission. The appellant submitted that in the State of Jammu and Kashmir, there is rampant misuse of the powers granted to competent authorities and the police under the Jammu and Kashmir Public Safety Act, 1978. He submitted that in reply to an RTI application, the PIO of the Jammu & Kashmir High Court has disclosed that more than 700 detention orders issued under the Public Safety Act have been quashed by the Hon’ble High Court in the recent months on the ground of legal and/or procedural infirmities. This shows how the provisions of PSA relating to detention are being misused by the authorities. The purpose of seeking information in the instant appeal by the applicant is to hold the State Government and its functionaries accountable. The appellant submitted that the present endeavor is in tune with the key objective of the J&K RTI Act described in its preamble, namely, transparency of information that is required to hold the Government and its instrumentalities accountable to the governed. When the attention of the appellant was drawn towards the Judgment of Hon’ble Supreme Court in case titled *Subhash Popatlal Dave Vs. Union of India & Anr.* dated July 10, 2012

wherein the Hon'ble Supreme Court held that the provisions of the Constitution shall prevail over any enactment of the legislature, which itself is a creature of the Constitution and that since Article 22(5) deals with detention, the provisions of RTI Act have to give way to the provisions of Article 22(5) of the Constitution, the appellant argued that the said judgment of the Supreme Court was applicable at pre-execution stage of detentions and it does not apply where the detention orders have been executed and persons detained. The appellant, however, sought time to put forth his written arguments in the matter. The appeal was adjourned and the appellant was directed to submit supplementary argument in writing by the next day in view of the fact that the statutory period for deciding appeal by the State Information Commission was about to expire.

9. Accordingly, the appellant submitted supplementary arguments in writing on 05-04-2018 and also made oral submissions during the hearing on that date through videoconferencing from Srinagar office of the Commission. The arguments made and pleas taken by the appellant through written statement as well as by oral arguments in favour of disclosure of information relating to detention orders and police dossiers are briefly summarized as under:-

- (a) that the ratio decidendi of the Supreme Court judgment in *Subhash Papatlal case* cannot be correctly and legitimately employed to reject the information sought in the instant appeal which is essentially about detention orders and dossiers after detention order has been executed. The said judgment was applicable only at the pre-execution stage of detentions;

- (b) that the PIO and the FAA have denied the information whimsically by invoking all the clauses of section 8 and also section 9 without applying their mind. The appellant cited the judgment of High Court of Delhi in case *J. P. Agarwal Vs. Union of India* wherein the Hon'ble High Court has held as under:-

“The PIO is expected to apply his mind, duly analyse the material before him and then either disclose the information sought or give grounds for non-disclosure. A responsible officer cannot escape his responsibility by saying that he depends on the work of his subordinates”;

- (c) that a mere categorization of the requested information as ‘personal’ to the detenues cannot be a ground for rejection as the same has a definite relationship to the public interest as all detentions are in itself necessitated by public interest;
- (d) that dossiers prepared by police under the Public Safety Act are ‘public documents’ within the meaning of section 74 of the Evidence Act and, therefore, cannot be denied;
- (e) that Hon'ble Supreme Court has, while holding the right to privacy as implicit in the right to life and liberty guaranteed to the citizens by Article 21, held in case *R. Rajgopalan alias R. R. Gopal Vs. State of Tamil Nadu* (AIR 1995-SC 264) that once a matter becomes a matter of public record, the right to privacy no longer subsists

and it becomes a legitimate subject for comments by press and media among others;

- (f) that section 41C of the Central Code of Criminal Procedure enjoins upon the State Governments to display on the notice board kept outside control rooms at every district, the names and addresses of the persons arrested and the name and designation of police officers who made the arrests besides details about nature of the offences with which they are charged. The spirit behind this provision applies in case of detentions as well and as such, dossiers prepared by the police cannot be denied;
- (g) that the PIO has wrongly invoked section 8(1)(a) mentioning security interests of the State without demonstrating the prejudicial effect that disclosure of the grounds of detention or dossiers will have on the security interests of the State;
- (h) that in terms of section 16(6) of the J&K RTI Act, the onus to prove that the denial of access to information was justified shall be on the PIO but has failed to justify denial of information under section 8(1)(a) and 8(1)(i) of the RTI Act;
- (i) that the Hon'ble High Court of Delhi has held in cases *Bhagat Singh Vs. Chief Information Commissioner*, [146 (2008) DLT 385], *Adesh Kumr Vs. Union of India*, [WP (C) 3543/2014] and *Union of India Vs. O. P. Nahar*, [WP (C) 3616/2012] that in order to deny the information under section 8(1)(h) of the RTI Act, the public authority must form affirmative opinion that the disclosure of information would impede investigation,

apprehension or prosecution of offenders; a mere perception or an assumption that disclosure of information may impede prosecution of offenders is not sufficient. Since the PIO has failed to indicate how disclosure of information would impede prosecution in this appeal, he cannot claim exemption on this ground;

- (j) that the Hon'ble Supreme Court has held in case *The Institute of Chartered Accountants of India Vs. Shaunak H. Satya & Ors* that in dealing with information not falling under section 4(1)(b) and (c), the competent authority under the RTI Act will not read the exemptions in section 8 in a restrictive manner but in a practical manner so that the other public interests are preserved and the RTI Act attains a fine balance between its goal of attaining transparency of information and safeguarding other public interests but in the present case, the PIO has failed to achieve a balance between the public interests favouring disclosure and those favouring confidentiality of the information sought;
- (k) that section 8(2) of the J&K RTI Act requires disclosure of even such information that is exempted under one or more clauses of section 8(1) if the larger public interest outweighs the protected interest and in the present case, the larger public interest of promoting transparency and accountability and making competent authorities to exercise their powers under the Public Safety Act judiciously and properly outweigh the confidentiality clause of section 8(1) of the Act.

Decision:

10. The appellant had sought information on five points in the present appeal. The respondents have no objection to provide information on first four points, which include the details regarding total number of persons detained under the Jammu & Kashmir Public Safety Act, 1978 from 4th March, 2016 till the date of filing the RTI request, complete list of detenués indicating their name, age, parentage, postal address and exact place of their lodgment, the SOPs guiding the District Magistrates in making decisions regarding detentions and documents containing procedure for ascertaining age of minor detenués. The only information for which exemption is sought by the PIO from disclosure is the grounds of detention and the related police reports and dossiers related to detenués. Therefore, the only question to be determined by the Commission in this appeal is whether grounds of detention and police reports including dossiers can be disclosed under RTI Act.

11. In order to understand the present case properly, it is necessary to know that this is not a case of any detenué claiming the grounds on which he has been detained or the police reports and dossiers on the basis of which the detaining authority has based his satisfaction that it is necessary to detain him in order to prevent him from acting in any manner prejudicial to the security of the State or maintenance of public order. All the detenués whose information has been sought by the appellant in this appeal would definitely have received the grounds of detention together with other connected information on the basis of which they have been detained. Communication of grounds of detention to the persons detained and also the material on which such grounds are based is not only a mandatory requirement under section 13 of the Jammu and Kashmir Public Safety Act, 1978 but also a constitutional requirement under clause (5) of Article 22 of the Constitution of India. Article 22 of the Constitution guarantees certain

protections against the arrest and detention of citizens. Clause (1) guarantees that no person shall be arrested without being informed about the grounds of such arrest nor shall he be denied the right to consult, and to be defended by, a legal practitioner of his choice. Clause (2) guarantees production of arrested person before a magistrate within 24 hours of such arrest. However, Clause (3) of this Article provides that the protection available under Clauses (1) and (2) shall not be available to any person who is arrested or detained under any law providing for preventive detention. Jammu and Kashmir Public Safety Act, 1978 is a law providing for preventive detention. Therefore, the protection guaranteed to arrested person under Clauses (1) and (2) of Article 22 of the Constitution is not available to detainees under PSA. Clause (5) of Article 22, however, provides that when a person is detained in pursuance of an order made under any law providing for preventive detention, the authority making the order shall, as soon as may be, communicate to such person the grounds on which the order has been made and shall afford him the earliest opportunity of making a representation against the order. It is nobody's case that the detainees about whom information has been sought by the appellant have not been provided the grounds on which they were detained. On the other hand, the appellant seeks the grounds of detention of others (detenues) and the police reports including police dossiers relating to them. In other words, the appellant seeks grounds of detention and police dossiers of third parties. Clause (1) of section 2 of the J&K RTI Act defines 'third party' meaning a person other than the citizen making a request for information. The detainees whose information is being sought by the appellant are not parties to the request for information and hence, third parties. This aspect of the case gives rise to the claim of personal information under section 8(1)(i) as invoked by the PIO.

12. No right - be it a constitutional right or an ordinary statutory right – is absolute and unfettered. Every right comes with a certain amount of duties, responsibilities and also reasonable restrictions. Sections 8, 9 and 21 of the J&K Right to Information Act, 2009 are reasonable restrictions on the enjoyment of right to information by the citizens. The preamble of the J&K Right to Information Act, 2009 itself recognizes the fact that revelation of information in actual practice could in certain cases be in conflict with other public interests like efficient operations of the Government, optimum use of limited fiscal resources and the preservation of confidentiality of sensitive information. Therefore, emphasis has been given on harmonizing the conflicting interests between the right to have access to information and the larger public interest of confidentiality of sensitive information, efficient operations and optimum use of fiscal resources. Even otherwise, if there be a conflict between an individual right of a citizen and the rights of public at large, the individual right has to give way to larger public interest. Therefore, the existence of the provisions like sections 8, 9 and 21 in the J&K RTI Act is for harmonizing the conflicting interests between revelation of information, on the one hand, and the requirements and recognition of larger public interests including safeguarding the security of State and preservation of confidentiality of sensitive information etc., on the other hand. The Supreme Court of India, while examining the issue of right to information vis-à-vis right to privacy, in case titled *Thalappalam Ser. Coop. Bank Ltd. & Ors Vs. State of Kerala & Ors* (decided on 7 October, 2013) held as under:-

“Right to information and Right to privacy are, therefore, not absolute rights, both the rights, one of which falls under Article 19(1)(a) and the other under Article 21 of the

Constitution of India, can obviously be regulated, restricted and curtailed in the larger public interest. Absolute or uncontrolled individual rights do not and cannot exist in any modern State. Citizens' right to get information is statutorily recognized by the RTI Act, but at the same time limitations are also provided in the Act itself, which is discernible from the Preamble and other provisions of the Act."

13. Again, the Supreme Court, while explaining the importance of section 8 of the RTI Act, in case *The Institute of Chartered Accountants of India Vs. Shaunak H. Satya & Ors* has held as under:-

"....Therefore when section 8 exempts certain information from being disclosed, it should not be considered to be a fetter on the right to information, but as an equally important provision protecting other public interests essential for the fulfillment and preservation of democratic ideals. Therefore, in dealing with information not falling under section 4(1)(b) and (c), the competent authorities under the RTI Act will not read the exemptions in section 8 in a restrictive manner but in a practical manner so that the other public interests are preserved and the RTI Act attains a fine balance between its goal of attaining transparency of information and safeguarding other public interests."

14. While examining the question as to whether the RTI Act applies in cases of preventive detention, the Hon'ble Supreme Court of India in case titled *Subhash Popatlal Dave Vs. Union of India* (decided on July 10, 2012), held as under:-

"Even under sub-section (1) of section 8 of the above Act (RTI Act), the legislature made an exception to the

disclosure of information which could be contrary to the interests of the nation, subject to the provision that such information may also be allowed to be accessed in the public interest, which overweighed the personal interests of the citizen. Not much discourse is required with regard to the primacy of the provisions of the Constitution, vis-à-vis the enactments of the legislature. It is also not necessary to emphasis the fact that the provisions of the Constitution will prevail over any enactment of the legislature, which itself is a creature of the Constitution. Since clause (5) of Article 22 provides that the grounds for detention are to be served on a detenue after his detention, the provisions of section 3 of the RTI Act, 2005 cannot be applied to cases relating to preventive detention at the pre-execution stage. In other words, section 3 of the RTI Act has to give way to the provisions of clause (5) of Article 22 of the Constitution.”

15. Since the specific issue involved in the above referred case before the Hon'ble Supreme Court was supply of grounds of detention to a detenue prior to his arrest and detention, the Hon'ble court returned a verdict on permissibility of supplying the grounds at pre-execution stage. The appellant also contended that the decision of the Hon'ble Supreme Court couldn't be made applicable to post detention cases. True, the said judgment applies to pre-arrest cases. But the rationale and broad principle of law and jurisprudence underlying the said judgment of the Supreme Court is that an enactment of the legislature has to give way to a provision of the Constitution and in case of conflict between the two, the statutory law will not be applicable to whatever is covered by a provision of the Constitution. Article 22 of the

Constitution and more precisely its clause (5) deals with detention under preventive detention law. It provides that grounds of detention shall be provided to the person who is detained. Mark the words used in clause (5) '**when any person is detained**' and '**communicate to such person the grounds**'. In other words, the grounds of detention are required to be communicated only to the person who is detained. Other fundamental rights guaranteed by the Constitution are available to every citizen. The protection guaranteed under Article 22 has been guaranteed only to the person arrested or detained. No person, other than the detenu himself, can claim supply of grounds of detention in terms of clause (5) of Article 22. The provisions of any legislative enactment including the RTI Act can not be brought into aid for claiming something which is not available or permissible under Art 22 of the Constitution or for that matter under any provision of the Constitution.

16. Now, coming to the exemptions claimed by the PIO from disclosure of information sought by the appellant in so far as providing of grounds of detention and related police reports and dossiers is concerned, the following three clauses of section 8(1) of the J&K RTI Act are attracted, namely:-

- (a) information, disclosure of which would prejudicially affect the sovereignty and integrity of India, strategic, scientific or economic interests of the State or lead to incitement of an offence;*
- (f) information, the disclosure of which would endanger the life or physical safety of any person or identify the source of information or assistance given in confidence for law enforcement or security purposes;*

- (i) information which relates to personal information the disclosure of which has no relationship to any public activity or interest, or which would cause unwarranted invasion of the privacy of the individual unless the Public Information Officer or the appellate authority, as the case may be, is satisfied that the larger public interest justifies the disclosure of such information.”*

17. So far as clause (a) of section 8(1) is concerned, information can be denied by a public authority on the ground of disclosure of such information being prejudicial to the sovereignty and integrity of the State or security of the State. Almost all preventive detentions under section 8 of the J&K Public Safety Act, 1978, barring a few for preventing timber or liquor smuggling, are made only when the detaining authority is satisfied with respect to such person that with a view to preventing him from acting prejudicial to the security of the State or the maintenance of public order, it is necessary to detain him. Therefore, clause (a) of section 8(1) would always be applicable to detentions under PSA made on the ground of prejudicial effects to the security of State. However, the protection of clause (a) would not be available in case of detention under Public Safety Act for preventing a person from indulging in timber and liquor smuggling, as the security of State is not involved in such kind of detentions. Since Article 22 (5) of the Constitution provides for communicating the grounds of detention to the person who is detained, clause (a) cannot be invoked to deny such grounds to the person detained. This clause can definitely be invoked by the public authority to deny the grounds of detention of a third party to an RTI applicant, who himself is not a detenu.

18. The public authority can also deny information under clause (f) of section 8(1) if the disclosure of such information has the potential of

endangering the life or safety of the person whose information is sought or if such disclosure identifies the source of information given in confidence for law enforcement or security purposes. The grounds of detention of a detainee are prepared/made by the detaining authority on the basis of police reports and inputs from other security agencies including CID and also dossiers furnished by the security agencies. Generally, the information contained in such reports and dossiers is highly incriminating so far the person to be detained is concerned. It also specifies the source from which such reports have been collected and such information gathered. Most of the time, the information about the unlawful activities of the suspect are gathered by police or other security agencies by questioning or interrogating many other persons. The name of such other persons and information gathered from them is also reflected in these confidential reports and dossiers. If such incriminating reports and dossiers are shared with persons other than the detainee, there is every likelihood that such information may be used by such other person to the detriment of the detainee putting his life and safety to the risk and jeopardy. Besides, such disclosure would also lead to identifying the sources of such information hampering the task of law enforcement agencies. Keeping in view these aspects, the public authority would be well within its right to deny information of a third party to an RTI applicant under clause (f) on the ground of danger to the life and physical safety to such third party or on the ground of identification of the source of information.

19. As stated above, the police reports and dossiers, which form the basis for the detaining authorities to detain a person under Public Safety Act, 1978 contain and include highly accusing and incriminating information about the person proposed to be detained. Disclosure of such information to any person other than a detainee would cause

invasion of the privacy of such detenue and also make him susceptible to harassment, intimidation and blackmail at the hands of such other person. A public authority can deny information relating to the grounds of detention and police reports of a detenue to any person other than the detenue under clause (i) of section 8(1) of the Act as being personal information of the third party, unless the public authority or the PIO is of the view that larger public interest justifies disclosure of such information. In *Thalappalam Ser. Coop. Bank* case referred to in Para 12 of this order, the Supreme Court of India has held that the right of a citizen to access information should be respected, so also a citizen's right to privacy. The Hon'ble Court further ruled that public authority is not legally obliged to give or provide information even if it is held, or under its control, if that information falls under clause (j) of Sub-section (1) of section 8. The Hon'ble Supreme Court went on to hold that section 8 begins with a non obstante clause, which gives that section an overriding effect, in case of conflict, over the other provisions of the Act. Even if, there is any indication to the contrary, still there is no obligation on the public authority to give information to any citizen of what has been mentioned in clauses (a) to (j). The Apex court in para 50 of its illuminating judgment also held as under:-

“Recognizing the fact that the right to privacy is a sacrosanct facet of Article 21 of the Constitution, the legislation has put a lot of safeguards to protect the rights under Section 8(j), as already indicated. If the information sought for is personal and has no relationship with any public activity or interest or it will not sub-serve larger public interest, the public authority or the officer concerned is not legally obliged to provide those information. Reference may be made to a recent judgment

of this Court in Girish Ramchandra Deshpande v. Central Information Commissioner and others (2013) 1 SCC 212, wherein this Court held that since there is no bona fide public interest in seeking information, the disclosure of said information would cause unwarranted invasion of privacy of the individual under Section 8(1)(j) of the Act. Further, if the authority finds that information sought for can be made available in the larger public interest, then the officer should record his reasons in writing before providing the information, because the person from whom information is sought for, has also a right to privacy guaranteed under Article 21 of the Constitution.”

20. A nine judge Constitutional Bench of the Hon’ble Supreme Court has recently delivered a landmark judgment on 24 August, 2017 in case *Justice K S Puttaswamy (Retd.), and Anr. Vs. Union of India and Ors.* [Writ Petition (Civil) No. 494 of 2012] holding that the right to privacy is a fundamental right and that it is protected as an intrinsic part of the right to life and personal liberty under Article 21 and as a part of the freedoms guaranteed by Part III of the Constitution. In *para 88* of the judgment delivered by *Justice Rohinton Fali Nariman* (in this case six separate but concurrent judgments were delivered by the Constitutional Bench), the Supreme Court discussed the Right to Information Act and approvingly referred to various paragraphs, including para 62, 63 and 64, of the earlier Judgment of Supreme Court in *Thalappalam Service Co-operative Bank Limited & Ors., Vs. State of Kerala & Ors.*, (2013) 16 SCC 82 in which the Court had held that Clause (j) of section 8(1) of the Central Right to Information Act, 2005

is a statutory safeguard for protecting the right to privacy, that public authority is not legally obliged to provide information if that information falls under clause (j) of section 8(1) and that section 8 has an overriding effect on other provisions of the RTI Act. The Supreme Court has made a reference of its judgment in *Girish Ramchandra Deshpande v. Central Information Commissioner* (2013) 1 SCC 212, wherein it has been held that if there is no bona fide public interest in seeking personal information of an individual, the disclosure of said information would cause unwarranted invasion of privacy of that individual under section 8(1)(j) of the Act.

21. Clause (j) of section 8(1) of the Central Right to Information Act, 2005 corresponds to clause (i) of section 8(1) of the Jammu and Kashmir Right to Information Act, 2009.

22. In terms of section 8(2) of the RTI Act, the public authority can disclose information exempted from disclosure under section 8(1) if it is satisfied that public interest in disclosure of information outweighs the harm to the protected interests. But for satisfying itself, the public authority or the PIO has to examine each case on merits and after analyzing the public interest involved in such disclosure vis-à-vis the protected interests listed in clauses (a) to (i) of section 8(1) of the Act, it has to arrive at a decision that larger public interests justify disclosure of information. The appellant in the present case has sought all detention orders along with related police reports from 4th March, 2016 till 10th July, 2017 (the date of making RTI request). During this period, the public authority might have passed hundreds of detention orders, if not more. Had the applicant (appellant) sought the information with regard to one or few detention cases, the PIO or the public authority could perhaps examine the existence of larger public interest in the disclosure of such information. But the information being sought as it

has been sought, it would be impracticable, if not impossible, for the public authority or the PIO to know if public interest in disclosure of such huge information outweighs the harm to protected interests in each case. Therefore, the provisions of section 8(2) of the Act do not come to the rescue of the appellant in beating and overshadowing the protective clauses of (a), (f) and (i) of section 8(1) of the RTI Act.

23. In the backdrop of relevant provisions of section 8 of the J&K RTI Act, 2009 and the law laid down by the Apex Court of the Country in that regard, let us now discuss and analyse the submissions and arguments advanced by the appellant in support of his claim for disclosure of information relating to point No. 5 of his RTI application. His first argument was that Supreme Court Judgment in *Subhash Papatlal case* does not apply in the present appeal. That aspect has been discussed already in paragraph 15 of this order. The second argument of the appellant was that the PIO and FAA have wrongly invoked section 9 of the RTI Act and has referred the Judgment of Hon'ble High Court of Delhi in *J.P. Agarwal case*, wherein the Hon'ble High Court has held that the PIO should apply his mind, duly analyze the material before him and then decide an RTI request, without escaping his responsibility by saying that he depended on the work of his subordinates. The Hon'ble High Court of Delhi has stated the obvious and reminded the PIOs of their role and responsibilities under the RTI Act. The Commission pointed out this flaw in the order of the FAA (making reference of section 9) in its interim order dated 07-02-2018 and directed the FAA to offer his explanation/ clarification in this regard. The respondents accordingly dropped invocation of the provisions of section 9 in this case. That satisfies the objection of the appellant regarding taking resort by the respondents to section 9 of the Act.

24. The next argument advanced by the appellant was that mere categorization of the requested information as 'personal information' cannot be a ground for rejection as there is a definite relationship to the public interest as all detentions are necessitated by public interest. This argument does not help the cause of the appellant and in fact runs counter to his claim for disclosure. True, all detentions are necessitated by public interest. The public interest involved in detaining a person under section 8 of the Public Safety Act is to prevent such person from acting prejudicial to the security of the State or the maintenance of public order. So the larger public interest lies in safeguarding the security of the State and if the PIO is of the opinion that disclosure of certain information would adversely affect the larger public interest, he would be well within the parameters of law to deny such disclosure. It is also true that even the information exempted under clause (i) or any other clause of section 8(1) of the RTI Act is also subject to disclosure provided the public authority is satisfied that public interest in disclosure outweighs the harm to protected interests. But as discussed in para 22 of this order, it would not be possible for the PIO or the public authority to satisfy himself or itself about outweighing public interest in disclosure and possible harm to protected interests keeping in view the amount of information sought by the appellant. Sharing of confidential police reports and dossiers would still result in invasion of privacy of the concerned and violative of the right to privacy.

25. One of the arguments of the appellant was that dossiers prepared by police are public documents within the meaning of section 74 of the Evidence Act. That is a far-fetched argument. Police dossiers are internal and confidential reports and inputs about a person who is suspected of some unlawful activity and are made available to the detaining authorities for arriving at a decision about the need and

necessity of curtailing the freedom of movement of such suspect by detaining him in order to prevent him from committing an offence. Such dossiers do not come within the definition of public documents. Even otherwise, section 19 of the RTI Act gives it an overriding effect over all other laws and in case something is not permissible under the provisions of the RTI Act or something is exempted from disclosure under the RTI Act, other laws can not be invoked to defeat the provisions of RTI Act.

26. The appellant has also cited the Judgment of Hon'ble Supreme Court in *R. Rajgopalan case* for driving home the point that once a matter becomes a matter of public record, the right to privacy no longer subsists and it becomes a legitimate subject for comment by press and media among others. The reliance of the appellant on this judgment is misplaced. This case related to the freedom of press vis-a-vis the right to privacy of the citizens. It also related to questions as to whether a citizen can prevent another person from writing his life story or biography and whether the freedom of press guaranteed by Article 19(1)(a) entitles the press to publish such unauthorized account of a citizen's life and activities and if so to what extent and in what circumstances? . The Supreme Court held that the right to privacy was implicit in the right to life and liberty guaranteed to the citizens by Article 21. The Court held that legitimate comment by press and media on a matter of public record is an exception to this right. The Supreme Court delivered this judgment in the year 1994. Much water has flown down the Yamuna since *Rajgopalan case*. Now the *Thalapalam Service Co-operative case* (2013), *Girish Ramchandra Deshpande case* (2013) and *Justice K. S. Puttaswamy case* (2017) hold the field where under right to privacy has been held to be a fundamental right and section 8(1)(j) of the Central RTI Act (corresponding to section

8(1)(i) of J&K RTI Act) a statutory safeguard for protecting right to privacy.

27. The appellant has also contended that spirit behind enactment of section 41C of the Central Code of Criminal Procedure should apply with regard to disclosure of dossiers relating to detenues under PSA as there is no difference between persons accused of crimes and persons detained for security of State. Section 41C enjoins upon State Governments to get displayed on the notice board kept at control rooms at every district, the names and addresses of persons arrested, the name of police officers making the arrests and nature of offences with which they are charged. This is a fallacious argument. The Code of Criminal Procedure provides the procedure to be adopted by prosecuting machinery and the courts while investigating and prosecuting persons charged with criminal offences. Under the Public Safety Act, 1978, the persons detained are not detained for committing any offence. They are detained in order to prevent them from committing the offence. Therefore, Cr. P.C has no application in cases of preventive detention. Moreover, section 41C is an embodiment of, and in furtherance to, the Clauses (1) and (2) of Article 22 of the Constitution laying down certain protections and safeguards against arrest of citizens. Clause (3) of the said Article itself lays down that the protection of Clauses (1) and (2) shall not be available to persons detained or arrested under any law providing for preventive detention. This argument is, as such, implausible and fanciful.

28. Yet another argument of the appellant has been that the onus to prove that denial of information was justified in on the PIO under section 16(6) of the RTI Act and the PIO has failed to justify such denial. No doubt section 16(6) provides that the onus of proving that the denial of information was justified shall be on the PIO but the said

provision is to be read with the overall scheme of Right to Information Act, particularly with the provisions like sub-section (8) of section 7 and different clauses of section 8(1) of the RTI Act. While in normal course, the PIO has to justify rejection of request for information but in respect of information exempted from disclosure under section 8(1), the PIO has to justify and prove that disclosure of exempted information was in the larger public interest. So the nature of proof required from the PIO varies and while in one case he has to prove that denial was justified, in another case he has to prove that disclosure was justified. Onus in both the situations is definitely on him but it would be wrong to say that the PIO has to justify the denial of exempted information under section 8(1)(a) and 8(1)(i). In fact it is other way round.

29. The appellant has also cited the Judgments of Delhi High Court in cases titled *Bhagat Singh Vs. Chief Information Commissioner* [146 (2008) DLT 385], *Adesh Kumar Vs. Union of India* [WP(c) 3543/2014] and *Union of India Vs. O.P Nahar* [WP(c) 3616/2012] wherein the Hon'ble Delhi High Court has held that in order to deny the information under section 8(1)(h) of the RTI Act, the public authority must form affirmative opinion that the disclosure of information would impede investigation, apprehension or prosecution of offenders; a mere perception or an assumption that disclosure of information may impede prosecution of offenders is not sufficient and contended that since the PIO has failed to indicate how disclosure of information would impede prosecution in this appeal, he cannot claim exemption on this ground. The judgments cited by the appellant are not relevant to the case in hand. The Hon'ble Delhi High Court has laid down the law with respect to exemption from disclosure under section 8(1)(h) of the Central RTI Act on the ground of such information impeding the process of investigation or apprehension or prosecution of offenders. Section

8(1)(h) corresponds to section 8(1)(g) of the J&K RTI Act, 2009. Since there is no question of prosecution or investigation in cases of preventive detention under PSA, clause 8(1)(g) cannot be invoked for denying information in respect of detention orders nor have the respondents invoked this clause at any stage. Hence, this argument does not help the appellant in any way.

30. The appellant has also cited the Judgment of the Hon'ble Supreme Court in case titled *The Institute of Chartered Accountants of India Vs. Shaunak H. Satya & Ors* in support of his claim for disclosure of information. However, this judgment in fact, and in effect, negates and repudiates the claim of the appellant. The Apex Court has in fact held in this case (as referred in para 13 of this order) that section 8 of the RTI Act should not be considered to be a fetter on right to information but as an equally important provision protecting public interests. The Court has also directed the competent authorities under RTI Act to give a liberal and exhaustive meaning to this provision so that the other public interests are preserved and the RTI Act attains a fine balance between its goal of attaining transparency of information and safeguarding other public interests. This landmark judgment of the Hon'ble Supreme Court only helps the respondents in denying information relating to detention orders of third parties and the connected police reports and dossiers under section 8(1)(a), 8(1)(f) and 8(1)(i).

31. Lastly, the appellant also contended that when the detention orders and connected police reports have already been furnished to the persons detained, why should the PIO deny the same to the appellant under different clauses of section 8 of the RTI Act. Communication of grounds of detention to the person who is detained is a constitutional requirement under Clause (5) of Article 22. The purpose of such

communication is to afford an earliest opportunity to the detinue to make an effective representation against his detention. Persons other than the detinue have no such cause or right of making any representation on behalf of the detinue. Therefore, they cannot claim similar treatment or right available to a detinue. Moreover, in case the detinue himself makes his detention order or material forming the basis of such detention order, communicated to him by the detaining authority, public, he cannot claim invasion of his privacy and also cannot complain about any risk to his physical safety or harassment on account of leakage of incriminating material pertaining to him. He will have himself to blame and the public authority shall have no responsibility or accountability of detinue's such condition. A PIO has to act responsibly and has to discharge his duties in accordance with the provisions of RTI Act and he is not expected to do anything, which is not permissible under the Act.

32. Keeping in view the law as discussed hereinabove, the law declared by the Hon'ble Supreme Court referred hereinabove and also the arguments and pleadings advance from both sides, the Commission is of the view that information regarding grounds of detention under J&K Public Safety Act, 1978 and the connected material like police reports and dossiers on the basis of which such grounds have been prepared cannot be disclosed to any person other than the detinue himself as such information is exempted from disclosure under clauses (a), (f) and (i) of section 8(1) of the J&K RTI Act, 2009. The orders of PIO and FAA in so far as the information sought under Point No. 5 of the RTI application dated 10-07-2017 by the appellant has been denied are in accord with the provisions of section 8(1)(a), 8(1)(f) and 8(1)(i) of the RTI Act and, therefore, do not call for any interference by the Commission. The same are accordingly upheld. However, the rest of

the information sought by the appellant is not exempted from disclosure and the PIO is under an obligation to provide such information to the appellant. The respondents have indicated their willingness to share such information with the appellant. The appeal is accordingly disposed off with a direction to the PIO to provide information to the appellant other than grounds of detention and connected police reports and dossiers within a period of 15 days from the receipt of this order, if not already provided.

Sd/-

(Khurshid A. Ganai)

Chief Information Commissioner

Sd/-

(Mohd. Ashraf Mir)

Information Commissioner

(P.A. Ajay)

No: SIC/K/SA/98/2017_____

Dated:

Copy to:

1. First Appellate Authority (FAA), O/O Deputy Commissioner, Baramulla for information.
2. Public Information Officer (PIO), O/O Deputy Commissioner, Baramulla for information and necessary action.
3. Private Secretary to CIC for information of the HCIC.
4. Private Secretary to SIC for information of the HSIC.
5. Appellant/Sh. Naveed Bukhtiyar, C/o/ J&K RTI Movement Head Office, Malik House, Hyderpora, Near Al-Amin Hospital, Airport Road, Srinagar-190014 for information.
6. Office file.

(Sheikh Fayaz Ahmed)

Registrar

J&K State Information Commission