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**(2022) 01 J&K CK 0002**

**In the Jammu And Kashmir High Court**

**Case No : Writ Petition (Criminal) No. 35 Of 2021**

Ahtisham-UI-Haq Bhat

APPELLANT

Vs

Government Of J&K & Anr

RESPONDENT

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**Date of Decision : 27-01-2022**

**Acts Referred:**

Unlawful Activities (Prevention) Act, 1967 — Section 18, 39

**Citation : (2022) 01 J&K CK 0002**

**Hon'ble Judges : Sanjay Dhar, J**

**Bench : Single Bench**

**Advocate : Syed Musaib, Hakeem Aman Ali**

**Final Decision : Dismissed**

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## **Judgement**

Sanjay Dhar, J

1) By the medium of instant petition, petitioner has challenged legality and veracity of the detention order No.04/DMB/PSA of 2021 dated 03.03.2021,

issued by District Magistrate, Bandipora (for brevity â??Detaining Authorityâ?) whereby Shri Ahtisham ul Haq Bhat son of Late Gh. Nabi Bhat

resident of Chittaybandy Aragam Tehsil and District Bandipora (for short â??detenuâ?) has been placed under preventive detention and directed to

be lodged in Central Jail, Srinagar.

2) Petitioner has contended that the Detaining Authority has passed the impugned detention order mechanically without application of mind and that

the Constitutional and Statutory procedural safeguards have not been complied with in the instant case. It has also been urged that the allegations

made against the detainee in the grounds of detention are vague and that the detainee has been disabled from making an effective representation

against his detention as the material forming basis of the grounds of detention has not been furnished to the.

3) The respondents, in their counter affidavit, have disputed the averments made in the petition and stated that they have followed the provisions of

J&K Public Safety Act. It is contended that the detainee has been detained only after following due procedure; that the grounds of detention were

read over to the detainee; that there has been proper application of mind for detaining the detainee and that the detainee has been provided all the

material. The learned counsel for the respondents also produced the detention record to lend support to the stand taken in the counter affidavit.

4) I have heard learned counsel for parties and I have also gone through detention record.

5) Learned counsel for the petitioner, while seeking quashment of the impugned order, projected various grounds but the main ground that has

prevailed during discussion are that the detainee has been disabled from making an effective representation against his detention as the material

forming basis of the grounds of detention and the translated copies of grounds of detention have not been supplied to him.

6) On perusal of the detention record produced by learned counsel for the respondents, the ground regarding non-supply of relevant material appears

to have substance as the said record suggests that whole of the relevant material has not been supplied to the detainee. The execution report in the

record reveals that the detainee has been supplied only 02 leaves comprising copy of grounds of detention. Thus, the detainee has not been provided the

copy of dossier and the copy of the FIR No.30/2020 for the offences u/s 18, 39 of ULA(P) Act of P/S Aragam, which form the basis of the detention

order. This goes to support the contention of the petitioner that he has not been supplied the relevant material. Obviously, the petitioner has been

hampered by non-supply of the relevant material in making an effective representation against his detention before the concerned authority/Advisory

Board.

7) Non-furnishing of relevant material forming basis of the grounds of detention deprives a detainee of his Constitutional right to make a representation

against the order of detention. The denial of this Constitutional right renders the order of detention unsustainable in law. I am supported in my

aforesaid view by the judgments of the Supreme Court in Sophia Gulam Mohd. Bham v. State of Maharashtra & ors (AIR 1999 SC 3051), Thahira

Haris etc. etc. Vs. Government of Karnataka & Ors (AIR 2009 SC 2184) and Ibrahim Ahmad Bhatti alias Mohd. Akhtar Hussain alias Kandar

Ahmad Wagher alias Iqbal alias Gulam Vs. State of Gujarat and othersâ??, (1982) 3 SCC 440.

8) The cumulative effect of the aforesaid discussion leads to the only conclusion that in the instant case, the respondents have not adhered to the legal

and Constitutional safeguards while passing the impugned detention order against the petitioner. The impugned order of detention is, therefore,

unsustainable. Accordingly, the same is quashed. The detenue is directed to be released from the preventive custody forthwith provided he is not

required in connection with any other case.

9) The record, as produced, be returned to the learned counsel for the respondents.