
(2021) 03 J&K CK 0102
In the Jammu And Kashmir High Court
Case No : Writ Petition (Crl) No. 61 Of 2020

Aijaz Ahmad Dar

APPELLANT

Vs

Ut Of J&K And Another

RESPONDENT

Date of Decision : 03-03-2021

Acts Referred:

Jammu And Kashmir Public Safety Act, 1978 — Section 13, 17(1)
General Clauses Act, 1897 — Section 21
Constitution Of India, 1950 — Article 22(5)

Citation : (2021) 03 J&K CK 0102

Hon'ble Judges : Sanjay Dhar, J

Bench : Single Bench

Advocate : Hamza Prince, Mir Suhail

Final Decision : Allowed

Judgement

1) Challenge in this petition is to order No.DMB/PSA/ 10 of 2020 dated 09.04.2020, issued by District Magistrate, Budgam-respondent No.2 herein,

whereby Aijaz Ahmad Dar S/o Ghulam Mohammad Dar R/o Nasrullapora, Budgam (hereinafter referred to as the detainee), has been placed under

preventive detention and lodged in Central Jail, Srinagar.

2) The petitioner's case, as set out in the petition, is that the detainee, without any justification and cause, was implicated in FIR No.53/2020 and

while in custody in the said case, the detainee came to be shifted to preventive custody in terms of the impugned order. The respondents are stated to

have violated the procedural safeguards, inasmuch as the petitioner was not informed about his right to make a representation against the order of

detention before the detaining authority. It has been further contended that the detainee was not furnished the material relied upon by the detaining

authority in passing the impugned order of detention, thereby depriving the detainee of his Constitutional and Statutory rights. Grounds of detention are stated to be vague, baseless, non-existent and unfounded.

3) The respondents, in their counter affidavit, have disputed the averments made in the petition and insisted that the activities of detainee are highly

prejudicial to the maintenance of public order. It is pleaded that the detention order and grounds of detention along with the material in support thereof

were handed over to the detainee and the same were read over and explained to him. The detention order is stated to have been confirmed by the

Government in terms of Section 17 (1) of the J&K Public Safety Act, vide order No.Home/PB-V/1233 of 2020 dated 26.05.2020. It is averred in the

counter affidavit that the respondents have complied with all statutory, constitutional provisions and followed all the requisite formalities and have not

violated any of them and that the order of detention has been issued validly and legally. In support of the contentions raised in counter affidavit,

respondents have placed reliance on the judgments of the Supreme Court in Haradhan Saha v. State of W. B, (1975) 3 SCC 198 and The Secretary to

Government, Public (Law and Order-F) and another v. Nabila and another, (2015) 12 SCC 127. The respondents have also produced the detention

record to lend support to the stand taken in the counter affidavit.

4) I have heard learned counsel for the parties and perused the material available on record.

5) A perusal of the detention record reveals that the detaining authority vide its communication bearing No.DMB/PSA/2020/10 dated 09.04/202,

forwarded the order of detention and the grounds of detention to the petitioner and informed him that he has a statutory right to make representation

against the said detention order to the Government. This clearly shows that the detaining authority has failed to inform the detainee about his

independent right to file representation against his detention to the detaining authority while informing him about his right to file a representation against

the detention order to the Government.

6) As already noted, the impugned detention order was passed on 09.04.2020 and as per the detention record, the same was executed on 11.04.2020.

The detention record further shows that the order of detention was approved by the Government on 15.04.2020. Thus, until the said date i.e.

15.04.2020, the detaining authority, in terms of Section 21 of the General Clauses Act, was empowered to revoke the order of detention but because

the petitioner/detenu was not informed by the respondents about his right to make a representation to the detaining authority, obviously he could not

make a representation to the detaining authority, thereby depriving him of a vital constitutional/statutory right.

7) In my aforesaid view, I am fortified by the judgment of this Court in Tariq Ahmad Dar v. State of J&K & Ors. LPA No. 43/2017, 2017 (II) S.L.J

665 (HC), wherein a Honâ??ble Division Bench of this Court has, while relying upon the Kamlesh Kumar Ishwardas Patel v. Union of India, (1995)

4 SCC 51, observed as under:

â??15. From a reading of the said decision, it is abundantly clear that non-communication of the fact that the detenu can make a

representation to the Detaining Authority, till the detention order is not approved by the Government, would constitute an infraction of a

valuable Constitutional right guaranteed under Article 22(5) of the Constitution of India as also of the right under Section 13 of the Jammu

and Kashmir Public Safety Act, 1978. Failure of such non-communication would invalidate the order of detention.

16..â?|â?|â?|â?|..

17. In view of the foregoing, we need not to consider any of the other pleas sought to be raised by the learned counsel for the appellant,

inasmuch as the detention order has been invalidated because of non-communication of the fact that the detenu could make a

representation to the Detaining Authority. The detention order having become invalid, the detenu is liable to be released forthwith insofar

as this detention order is concerned.â??

11. The aforesaid ratio is applicable to the facts of the instant case on all fours. Thus, it can safely be stated that the respondents by not informing the

petitioner about his right to make a representation to the detaining authority against the impugned order of detention, are guilty of committing infraction

of a Constitutional right guaranteed to the petitioner under Article 22(5) of the Constitution and the statutory right guaranteed to him under Section 13

of the J&K Public Safety Act. The impugned order of detention is, therefore, rendered invalid and unsustainable in the eyes of law.

8) For the reasons discussed above, the petition is allowed and the impugned detention order 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.