

(2019) 05 J&K CK 0003

In the Jammu And Kashmir High Court

Case No : Habeas Corpus Petition (HCP) No. 289 Of 2018

Ajaz Ahmad Sofi @APPELLANT@Hash State Of Jammu & Kashmir

Date of Decision : 03-05-2019

Acts Referred:

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

Citation : (2019) 05 J&K CK 0003

Hon'ble Judges : Ali Mohammad Magrey, J

Bench : Single Bench

Advocate : Mir Shafaqat Hussain, Mir Suhail

Judgement

1. Impugned in this Habeas Corpus petition with a prayer for quashment thereof is the detention order no.DMR/INDEX-17 of 2018 dated 28.08.2018, purporting to have been passed by District Magistrate Rajouri, whereunder detenu namely Ajaz Ahmad Sofi s/o Ghulam Ahmad Sofi R/o Bun Bazar Batanpora, District Shopian, is under detention.

2. Learned counsel for the petitioner has chosen to press the only ground for seeking quashment of the detention order though having taken many which has reference to the Detaining Authority not mentioning in the order that the detenu can make a representation to the Detaining Authority which as per the learned counsel constitute an infraction of valuable constitutional right guaranteed under Article 22(5) of the Constitution of India as also of the right under section 13 (1) of the Jammu and Kashmir Public Safety Act, 1978.

3. In his counter affidavit, respondent no.2 has stated that the detenu's activities being highly prejudicial to the security of the state and public order, his detention was necessary to prevent him from indulging in such acts, which was also approved by the Government and the State Advisory Board constituted u/s 14 of P.S. Act. During course of his submissions the respondents counsel besides reiterating the contents of counter affidavit has contended that in circumstances of the case the impugned detention is well founded in fact and law. The detention record has been produced.

4. Heard learned counsel for the parties, perused the writ record as also detention record and considered the matter.

5. The contention raised by learned counsel for the petitioner with reference to the detaining authority having not mentioning in order about petitioner's right to make representation a valuable constitutional right guaranteed under Article 22(5) of the Constitution of India as also of the right under section 13 (1) of the Jammu and Kashmir Public Safety Act, 1978, has substance. The relevant portion of the communication addressed to the detenu is extracted below:

"...Now therefore, in terms of Section 13(1) of the Public Safety Act, 1978, you may make a representation before the Government against the said order, if you so desire....

6. So far as the ground taken i.e non communication of the grounds of detention is concerned, perusal of file reveals, that there is nothing to show or suggest that the grounds of detention couched in English language were explained to the detenu in a language understood by him, as there is no material to that effect on record. This according to the view taken by Hon'ble Apex Court in "LallubhaiJogibhai Patel v. Union of India, (1981) 2 SCC 427"; the detenu did not know English, while the grounds of detention were drawn up in English and an affidavit filed on behalf of the detaining authority stated that while serving the grounds of detention were fully explained to the detenu, but the Apex Court held that, was not a sufficient compliance with the mandate of Article 22(5) which requires that the grounds of detention must be communicated to the detenu. The Apex Court observed as under:

"Communicate' is a strong word which means that sufficient knowledge of the basic facts constituting the 'grounds' should be imparted effectively and fully to the detenu in writing in a language which he understands. The whole purpose of communicating the 'grounds' to the detenu is to enable him to make a purposeful and effective representation. If the 'grounds' are only verbally explained to the detenu and nothing in writing is left with him in a language which he understands, then that purpose is not served, and the constitutional mandate in Article 22(5) is infringed."

In view of the law laid down by the Apex Court in case titled LallubhaiJogibhai Patel v. Union of India (supra) vitiates the detention order, as not amounting to effect communication of grounds, and resultant deprivation of the right to make representation against the same.

7. Further the Division Bench of this Court while deciding LPA HC no.43/2017 vide judgment dated 09.06.2017, reported in 2017 (II) SLJ titled "Tariq Ahmad Dar v. State of J&K and ors, has held as under:

"....it is abundantly clear that non-communication of the fact that the detenu can made 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.

8. Since the Detaining Authority has failed to mention in the detention order about the petitioner's right to make representation 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 P.S Act, 1978, which renders the detention order as invalid and deserves to be quashed.

9. In view of above, the petition is accordingly, allowed and detention order no. DMR/INDEX-17 dated 28.08.2018, purporting to have been passed by District Magistrate Rajouri, under which the detenu namely Ajaz Ahmad Sofi s/o Ghulam Ahmad Sofi R/o Bun Bazar Batanpora, District Shopian, is under detention, is quashed with direction for his release forthwith.

10. Detention record be returned to the learned State Counsel.