

(2019) 03 J&K CK 0066

In the Jammu And Kashmir High Court

Case No : Habeas Corpus Petition (HCP) No. 456 Of 2018

Anees Ul Islam

APPELLANT

Vs

State Of Jammu & Kashmir And Ors

RESPONDENT

Date of Decision : 15-03-2019

Acts Referred:

Conservation Of Foreign Exchange And Prevention Of Smuggling Activities Act, 1974 — Section 3(3)
Jammu & Kashmir Public Safety Act, 1978 — Section 8(a)
Jammu And Kashmir State Ranbir Penal Code, 1989 — Section 307
Unlawful Activities (Prevention) Act, 1967 — Section 13
Jammu And Kashmir High Court Rules, 1999 — Rule 138(3)
Constitution Of India, 1950 — Article 22(5), 22(6)

Citation : (2019) 03 J&K CK 0066

Hon'ble Judges : Rashid Ali Dar, J; Sanjay Kumar Gupta, J

Bench : Division Bench

Advocate : Sajad Geelani, Asif Maqbool

Judgement

1) By virtue of order bearing No.96/DMB/PSA/2018 dated 16.11.2018, passed by respondent No.2-District Magistrate, Baramulla, in exercise of powers under clause (a) of Section 8 of the J&K Public Safety Act, 1978, Shri Annes-ul-Islam @ Annu son of Sonaulah Sheikh resident of Ganie Hamam Baramulla, has been taken into preventive custody. Veracity and legality of the said order is assailed in the instant petition on the grounds detailed out therein.

2) Respondents have filed the counter affidavit wherein they denied the allegations/grounds raised in the writ petition. Learned counsel for the respondents also produced the detention record so as to lend support to the stand taken in the counter affidavit.

3) According to learned counsel for the petitioner, in the grounds of detention, detinue has been shown involved in FIR Nos.384/2013, 81/2014, 156/2016, 263/2016, 181/2018 and 182/2018 P/S Baramulla for commission of various offence including offence under Section 307 RPC, 13 ULA Act but in these criminal

cases detainee has already been admitted to bail but this fact has not been made mention of in the grounds of detention though reference to said FIR has been made. Either detaining authority has been kept in dark or otherwise detaining authority has not applied its mind properly. While detaining a person under Public Safety Act, detaining authority is under a legal obligation to analyze all the circumstances and material and then to gather conclusion about the requirement of depriving a person of his personal liberty. Non-mention about the grant of bail is serious lapse which in turn gives rise to the inference that there is non-application of mind. Similar situation has been dealt with by the Apex Court. It is quite relevant to quote following portion from para 8 of the judgment rendered by the Hon'ble Apex Court in the case of "Anant Sakharam Raut v. State of Maharashtra and another" reported in AIR 1987 SC 137:-

"We hold that there was clear non-application of mind on the part of detaining authority about the fact that the petitioner was granted bail when the order of detention was passed. In the result we set aside the judgement of the Bombay High Court under appeal, quash the order of detention and direct that the petitioner be released forthwith....."

4) Learned counsel for the petitioner next contended that the material which formed base of the grounds of detention and consequent order of detention has not been furnished to the detainee, besides translated copies of the grounds of detention have not been furnished to him which disabled him from making an effective and purposeful representation against his detention.

5) The submission appears to have forced as nothing has been brought on record to show that the material forming base of the detention has been furnished to the detainee. Non-supply of the material would amount to violation of Article 22(5) of the Constitution of India, so deprivation of a valuable right. The Hon'ble Apex Court in its judgment captioned Thahira Haris etc. etc. Vs. Government of Karnataka & Ors, reported in AIR 2009 Supreme Court 2184, has held as under:

"27. There were several grounds on which the detention of the detainee 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 document, continued detention of the detainee 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 detainee 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 materials relied upon in the grounds of detention without any delay. The predominant object of communicating the grounds of detention is to enable the detainee at the earliest opportunity to make effective and meaningful representation against his detention.

6) It is quite apposite to quote para 10 of the judgment of the Hon'ble Apex

Court in "Ibrahim Ahmad Bhatti alias Mohd. Akhtar Hussain alias Kandar Ahmad Wagher alias Iqbal alias Gulam Vs. State of Gujarat and others", (1982) 3 SCC 440:

"10. Two propositions having a bearing on the points at issue in the case before us, clearly merge from the aforesaid resume of decided cases : (a) all documents, statements and other materials incorporated in the grounds by reference and which have influenced the mind of the detaining authority in arriving at the requisite subjective satisfaction must be furnished to the detenu along with the grounds or in any event not later than five days ordinarily and in the exceptional circumstances and for reasons to be recorded in writing not later than 15 days from the date of his detention and (b) all such material must be furnished to him in a script or language which he understands and failure to do either of the two things would amount to a breach of the two duties cast on the detaining authority under Article 22 (5) of the Constitution. Relying upon this legal position counsel for the petitioner urged before us that in the instant case a breach of the mandate contained in Article 22 (5) read with Section 3 (3) of the COFEPOSA is clearly involved because of three things that have happened, namely, (i) supply of Urdu translations of the bulk of documents and statements incorporated in the grounds and relied upon by the detaining authority was delayed beyond the normal period of 5 days without any exceptional circumstances obtaining in the matter, (ii) the alleged exceptional circumstances purporting to justify the delay and the fact that the reasons had been recorded in writing were not communicated to the detenu which has prevented him from making effective representation against his continued detention and (iii) Urdu translations of quite a few documents and statements incorporated in the grounds and relied upon by the detaining authority have not been supplied to him at all. As regards the first two aspects counsel relied upon two decisions of the Patna High Court, namely, *Bishwa Mohan Kumar Sinha v. State of Bihar and Ors.*(1) and *Bishwanath Prasad Keshari v. State of Bihar & Ors.*(2) where the Patna High Court has taken the view that not merely should the exceptional circumstances exist justifying the delayed supply of the grounds of detention but these should be communicated to the detenu to enable him to make an effective representation. Counsel urged that because of the aforesaid failure the continued detention of the petitioner must be held to be illegal. We find considerable force in these submissions made by the counsel for the petitioner."

7) Learned counsel for the petitioner also submitted that that the detenu has also been disabled from making an effective representation by not supplying him the translated copies of the ground of detention which are in English language besides being in a hyper technical language which the detenu is not in a position to understand.

8) Nothing has been brought on record to show that the translated copies of the grounds of detention have been supplied to the detenu which has prejudiced the detenu in the exercise of his right to make an effective representation

against his detention. For this, Para 13 of the judgment in Ibrahim Ahmad Batti's case (supra) shall be quite apposite to be reproduced herein:

"Lastly, Urdu translations of quite a few documents and statements referred to in the grounds of detention and relied upon by the detaining authority were admittedly not supplied to the detenu at all and the only explanation given by the counsel for the respondents at the hearing has been that most of these documents (Urdu translations whereof were not supplied) comprised statements of accounts which had figures in English with some English words written in capital letters and some documents were in Hindi and Gujarati and the record (statements of Rekha, her sister Indi and one Jayantilal Soni, all co-conspirators of the detenu, recorded during the investigation) clearly shows that the petitioner knows English figures, understands English words written in capital letters and can also converse or talk in Hindi and Gujarati and as such the non-supply of Urdu translations of these documents cannot be said to have caused any prejudice to the petitioner in the matter of making a representation against his detention. In our view, the explanation is hardly satisfactory and cannot condone the non-supply of Urdu translations of these documents. Admittedly, the petitioner is a Pakistani national and Urdu seems to be his mother tongue and a little knowledge of English figures, ability to read English words written in capital letters and a smattering knowledge of Hindi or Gujarati would not justify the denial of Urdu translations to him of the material documents and statements referred to as incriminating documents in the grounds and relied upon by the detaining authority in arriving at its subjective satisfaction. In fact, the claim made before us on behalf of the detenu that he only knows Urdu cannot be brushed aside as false especially in view of the fact that the same was accepted on the earlier occasion by the Advisory Board who had actually opined that failure to supply Urdu translations of grounds of detention and documents had vitiated the earlier order of detention and following this opinion respondent No. 1 had revoked the said order. Moreover, with the assistance of counsel on either side we have ourselves gone through many of these documents and statements and it is not possible to say that most of them are merely statements of account containing figures in English with English words written in capital letters. These documents recovered from three flats in three different societies, include, for instance, documents like bills and vouchers showing purchases made from some shops, while a large number of documents are in Hindi and Gujarati and relate to transactions in contraband articles like gold, silver, watches, etc., and comprise accounts of such transactions, the figures as well as recitals pertaining to which are entirely in Gujarati. All these, in our view, are material documents which have obviously influenced the mind of the detaining authority in arriving at its subjective satisfaction and these are all in a script or language not understood by detenu, and, therefore, the non-supply of Urdu translations of these documents has clearly prejudiced the petitioner in the exercise of his right to make an effective representation against his detention and hence the safeguard contained in Article 22(5) is clearly violated."

9) It shall be quite advantageous to quote following para from the judgment rendered in case captioned Powanammal vs. State of T. N. and another reported in 1999 (2) SCC 413:

"The amplitude of the safeguard embodied in Article 22(5) extends not merely to oral explanation of the grounds of detention and the material in support thereof in the language understood by the detainee but also to supplying their translation in script or language which is understandable to the detainee. Failure to do so would amount to denial of the rights of being communicated the grounds and of being afforded the opportunity of making a representation against the order."

10) In view of the facts of the present case and the law laid down by the Hon'ble Apex Court as quoted hereinabove, the order of detention impugned does not sustain on the above referred grounds alone, therefore, other grounds projected in the petition are not required to be dealt with.

11) The cumulative effect of the aforesaid discussion leads to the only conclusion i.e. the order of detention impugned bearing No. 96/DMB/PSA/2018 dated 16.11.2018 passed by respondent No.2-District Magistrate, Baramulla is not valid, as such, quashed. The detainee shall be released from the preventive custody forthwith provided he is not required in connection with any other case.

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

Pronounced today in terms of Rule 138(3) of J&K High Court Rules, 1999.