
(2019) 12 J&K CK 0064
In the Jammu And Kashmir High Court
Case No : WP Cri No. 147 Of 2019

Asif Ahmad Bhat

APPELLANT

Vs

State And Ors

RESPONDENT

Date of Decision : 30-12-2019

Acts Referred:

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

Citation : (2019) 12 J&K CK 0064

Hon'ble Judges : Ali Mohammad Magrey, J

Bench : Single Bench

Advocate : S.A Naqashbandi

Final Decision : Allowed

Judgement

1. Impugned in this Habeas Corpus petition with a prayer for quashment thereof is the detention order no. 10/DMK/PSA/2019 dated 28.02.2019, purporting to have been passed by District Magistrate Kulgam, whereunder detenu namely Asif Ahmad Bhat s/o Mohammad Amin Bhat R/o Tundgano, Yaripora District Kulgam, is under detention.

2. It is submitted that the detenu is implicated in a false and fictitious FIR. The allegations leveled against the detenu in the grounds of detention are vehemently denied to be correct, as the same are baseless. Therefore, the detention order deserves to be quashed.

3. Learned counsel for the petitioner-detenu 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 of the Jammu and Kashmir Public Safety Act, 1978.

4. In his counter affidavit, respondent no.2 has stated that the detenu's activities being prejudicial to the security of the State, 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. Detention record was produced.

5. Heard learned counsel for the parties, perused the record and considered the matter.

6. The contention raised by learned counsel for the petitioner-detenu with reference to the detaining authority having not mentioning in order about petitioner's-detenu'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 of the Jammu and Kashmir Public Safety Act, 1978, has substance.

7. 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. The petition is accordingly, allowed and detention order no. 10/DMK/PSA/2019 dated 28.02.2019, purporting to have been passed by District Magistrate Kulgam, under which the detenu namely Asif Ahmad Bhat s/o Mohammad Amin Bhat R/o Tungdanoo, Yaripora District Kulgam, is under detention, is quashed, with direction for his release forthwith.

10. The petition stands accordingly disposed of. Detention record be returned to learned Additional Advocate General.

11. No order as to costs.