
(2020) 03 J&K CK 0069
In the Jammu And Kashmir High Court
Case No : Writ Petition (C) No. 340 Of 2019

Asif Khursheed

APPELLANT

Vs

State Of J&K And Others

RESPONDENT

Date of Decision : 31-03-2020

Acts Referred:

Public Service Act, 1999 — Section 14
Constitution Of India, 1950 — Article 22(5)

Citation : (2020) 03 J&K CK 0069

Hon'ble Judges : Ali Mohammad Magrey, J

Bench : Single Bench

Advocate : Mohammad Ashraf Wani, Sajad Ashraf

Final Decision : Allowed

Judgement

Ali Mohammad Magrey, J

1. Impugned in this Habeas Corpus petition with a prayer for quashment thereof is the detention order no. 45-DMK/PSA of 2019 dated 16.08.2019, purporting to have been passed by District Magistrate Kupwara, whereunder detenu namely Asif Khursheed s/o Khursheed Ahmad Bhat R/o Bhat Mohalla Qalam Abad, District Kupwara, is under detention.

2. Grounds pleaded in support of prayer are that respondent no. 2 has issued the detention order dated 16.08.2019 on the basis of grounds placed before him by the concerned SSP, as the grounds of detention are ditto copy of the dossier. It is submitted that the detaining authority has not applied its mind while passing the detention order. It is submitted that there is total non-application of mind while passing the impugned order of detention as the detenu was already under custody when the detention order was passed. It is submitted that the authority has not explained the grounds to the detenu in the language which he understands. It is submitted that no copy of translated version was furnished to the detenu to enable him to make an effective representation against the

detention order, which renders the detention order liable to be set aside.

3. In his counter affidavit, respondent no.2 has stated that the detenu's activities being highly prejudicial to the sovereignty and 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.

4. I have heard learned counsel and considered the matter. As per pleadings and contentions raised at bar the main ground of attack projected by petitioner against the detention in question is, that grounds of detention were not duly communicated to him, which prevented him from making an effective representation against the same and thereby he was deprived of an important constitutional right, and that the detaining authority did not apply his mind while passing the detention order and has not revealed as to on what materials he assumed subjective satisfaction regarding necessity of having the subject detained when the detenu have not filed any bail application in any court for his release in the FIRs registered against him.

5. 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."

6. 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. That being so the grounds of challenge set up by petitioner, succeed and the detention stands vitiated. Other grounds urged do not therefore, need to be separately addressed.

8. The petition is accordingly, allowed and detention order no. 45-DMK/PSA of 2019 dated 16.08.2019 purporting to have been passed by District Magistrate Kupwara, under which the detenu namely Asif Khursheed s/o Khursheed Ahmad Bhat R/o Bhat Mohalla Qalam Abad, District Kupwara, is under detention, is quashed with direction for his release forthwith.

9. The petition stands accordingly disposed of. Records be returned to the learned Govt Advocate. No order as to the costs.

10. Registrar Judicial to send a copy of this order to Principal Secretary to Home Department, UT of J&K; Director General of Prisons and also concerned Jail authorities for compliance.