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**(2012) 05 J&K CK 0015**  
**In the Jammu And Kashmir High Court**  
**Case No : HCP No. 321 of 2011**

Ghulam Qadir Kawa

APPELLANT

Vs

State and others

RESPONDENT

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**Date of Decision :** 18-05-2012

**Acts Referred:**

Constitution of India, 1950 — Article 22(5)  
Criminal Procedure Code, 1973 (CrPC) — Section 161  
Jammu and Kashmir Public Safety Act, 1978 — Section 13

**Citation :** (2012) 05 J&K CK 0015

**Hon'ble Judges :** Hasnain Massodi, J

**Bench :** Single Bench

**Advocate :** M. Ayoub Bhat, for the Appellant; S.A. Vakil, for the Respondent

**Final Decision :** Allowed

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## Judgement

Hasnain Massodi, Judge

1. Challenge to order No. DMB/PSA/61 OF 2011 dated 29.07.2011, of District Magistrate, Budgam 'respondent No. 2 herein, whereby one

Shri Ghulam Qadir Kawa (Qadir Kawa) son of Mama Kawa resident of Kanidajan Tehsil Charari Sharief District Budgam (herein after referred

to as 'detenue') has been placed under preventive detention, must succeed for following reasons:

1. Article 22(5) Constitution of India provides a precious and valuable right to a person detained under preventive detention law - J&K Public

Safety Act 1978. In the present case to be conveyed grounds of detention, with reasonable dispatch and informed that he has a right to make a

representation against his detention. It needs no emphasis that a detenue, on whom preventive detention order is slapped, is held in custody without

a formal charge and trial. The detainee is held in custody on a mere suspicion that his apprehended activities may be prejudicial to the maintenance

of public order or security of the State. Article 22(5), Constitution of India and Section 13 of the Act, thus make it obligatory for Detaining

Authority to provide detainee an earliest opportunity of making an effective and meaningful representation against his detention. The object is to

enable detainee to convince Detaining Authority and Government, as the case may be, that all apprehensions regarding his activities are grossly

misplaced and his detention is unwarranted. To make the Constitutional and Statutory right available to detainee meaningful, it is necessary that

detainee be informed with all possible clarity what is/are apprehended activity/ies that persuaded Detaining Authority to make detention order. In

case grounds of detention are vague, ambiguous and confusing, the detainee cannot be expected to make a representation against his detention.

2. In the instant case the detainee is alleged to have been guiding 'smugglers groups' in felling green trees, converting these trees into logs/Phads by

use of axes and sawing, fashioning these to Phads and transporting this illegal material to Payeen belt on horses/ponies. The grounds of detention

do not give the particulars of 'smugglers groups', who are alleged to have been guided by detainee in felling green trees, nor particulars of those

areas have been given, wherefrom the detainee is alleged to have been transporting the logs/Phads. The detainee, in absence of such details, could

not be expected to have been in a position to give his side of story and persuade the Detaining Authority and other respondents that the allegations

against the detainee were bereft of any basis. The grounds of detention that constitute basis for the detention order in question are ambiguous,

vague, uncertain and hazy. A person of ordinary prudence would not be in a position to explain his stand in reply to the grounds of detention

detailed by the detaining authority. The detainee has been kept guessing about the facts and events that weighed with the detaining authority and

prompted detaining authority to record subjective satisfaction regarding sufficiency of the material to warrant preventive detention of the detainee.

These are only few instances to illustrate that the grounds of detention are vague and ambiguous and bound to keep the detainee guessing about

what really was intended to be conveyed by the detaining authority. It is well settled law that even where one of the grounds relied upon by the

Detaining Authority to order detention is vague and ambiguous, Constitutional and Statutory right of the detainee to make a representation against his detention are taken to have been violated.

3. The Constitutional and Statutory safeguards, guaranteed to a person detained under preventive detention law, are meaningless unless and until

the detainee is made aware of and furnished all the material that weighed with the detaining authority while making detention order. The detention

order makes mention of a Dossier and other connecting documents to have been placed vide No. 753-56/PP/R/CS dated 29.07.2011, before the

Detaining Authority, which prompted the Detaining Authority to make the detention order, placing detainee under preventive detention, so as to

prevent the detainee 'acting in any manner which is prejudicial to the preservation of forest wealth...'. The detention record does not make a

reference to the documents in question and does not record that such documents were supplied to detainee at the time of execution of detention

order or immediately thereafter. The grounds of detention make mention of case ' Illat No. 115; Illat No. 79; Illat No. 129 of P/S Charari Sharief,

to have been registered against the detainee. The involvement of detainee in the aforementioned cases appears to have heavily weighed with the

Detaining Authority while making detention order. The detention record does not indicate that copies of aforementioned First Information Reports,

statements recorded u/s 161 Cr.P.C. and other material collected in connection with investigation of aforesaid cases, were ever supplied to

detainee. The material, mentioned above, thus assumes significance in the facts and circumstances of the case. It needs no emphasis that the

detainee cannot be expected to make a meaningful exercise of his Constitutional and Statutory rights guaranteed under Article 22 (5), Constitution

of India and Section 13, J&K Public Safety Act, 1978, unless and until the material on which the detention order is based, is supplied to detainee.

It is only after the detainee has all said material available, that the detainee can make an effort to convince Detaining Authority and thereafter

Government that their apprehension as regards activities of detainee are baseless and misplaced. If the detainee is not supplied the material, on

which detention order is based, the detainee cannot be in a position to make an effective representation against his detention order. The failure on

the part of Detaining Authority to supply material relied at the time of making the detention order to detainee, renders detention order illegal and unsustainable. While holding so.

The Detaining Authority 'respondent No. 2 did not inform the detainee that the detainee independent of his right to file representation against his

detention to the Government, has also right to submit a representation to the Detaining Authority till the detention was considered by the

Government and accorded approval. The respondent No. 2 has in effect violated Constitutional and statutory rights of the detainee, guaranteed

under Article 22(5) of the Constitution of India and Section 13 of J&K Public Safety Act. Reference in this regard may be made to the law laid

down in State of Maharashtra and others versus Santosh Shanker Acharya (AIR 2000 SC 2504).

Viewed thus, the petition is allowed and detention order No. DMB/PSA/61 OF 2011 dated 29.07.2011, passed by the District Magistrate,

Budgam 'respondent No. 2, directing detention of Shri Ghulam Qadir Kawa (Qadir Kawa) son of Mama Kawa resident of Kanidajan Tehsil

Charari Sharief District Budgam, quashed.

The respondents, in view of quashment of detention order, are stripped of any authority to detain the detainee under order No. DMB/PSA/61 OF

2011 dated 29.07.2011. Resultantly, the respondents are directed to release the detainee from preventive detention, ordered vide order No.

DMB/PSA/61 OF 2011 dated 29.07.2011.

Detention record be returned to the counsel for respondents.

Disposed of.