

(2017) 03 J&K CK 0005
In the Jammu And Kashmir High Court
Case No : 691 of 2016

Javaid Ahmad Naikoo

APPELLANT

Vs

State of J&K & others

RESPONDENT

Date of Decision : 22-03-2017

Acts Referred:

Constitution of India, Article 21, Article 22(5), Article 22(3)(b) -
Amendment of the Schedule - Protection against arrest and detention in certain cases
- Protection against

Citation : (2017) 03 J&K CK 0005

Hon'ble Judges : Mohammad Yaqoob Mir

Bench : SINGLE BENCH

Advocate : M. Ayoub Bhat, M. A. Wani

Final Decision : Disposed Of

Judgement

1. Impugned is the order of detention bearing No.104/DMP/PSA/16 dated 17.11.2016, passed by District Magistrate, Pulwama, in terms

whereof, detenue has been detained and lodged in District Jail, Kathua.

2. Learned counsel for the petitioner contended that the detenue has been deprived of making an effective representation in view of non-furnishing

of the material forming base for his detention, which appears to have prevailing force. The respondents have not placed anything on record to show

that the material which has been considered by the detaining authority while passing the detention order has been furnished to the detenue so as to

enable him to file an effective representation as against the detention which in turn negates the right guaranteed under Article 22(5) of the

Constitution. In this view I am fortified by the judgment Sophia Ghulam Mohd. Bham v. State of Maharashtra and others (AIR 1999 SC 3051),

wherein it has been held:

.....The right to be communicated the grounds of detention flows from Article 22(5) while the right to be supplied all the material on

which the grounds are based flows from the right given to the detainee to make a representation against the order of detention. A

representation can be made and the order of detention can be assailed only when all the grounds on which the order is based are

communicated to the detainee and the material on which those grounds are based are also disclosed and copies thereof are supplied

to the person detained, in his own language.

3. One of the requirements for deriving subjective satisfaction is to formulate the grounds of detention which shall form basis for passing the order

of detention. In the order impugned as passed by District Magistrate, it is recorded; ""Whereas on the basis of dossier placed before me by the

Superintendent of Police, Awantipora, vide his No.Conf/PSA/2016 dated 10.11.2016, I am satisfied..."", which shows that Detaining Authority has

not sifted the material for preparation of the grounds of detention. Copy of the grounds of detention is placed on file but not referred to in the order

of detention. Non-application of mind is clear, therefore, an invasion to personal liberty was impermissible.

4. Right to liberty as guaranteed under Article 21 of the Constitution can be negated in view of Article 22(3) (b) of the Constitution, which is an

exception to Article 21 of the Constitution. The said exception authorizes the concerned authorities to pass preventive detention but while passing

such orders, the authority concerned is required to be alive to the personal liberty of a person. Such power has to be exercised in a manner, which

may not have the trappings of depriving a person of the guaranteed liberty. In short, an exceptional case has to be made out for passing the

preventive order, still then procedural safeguards are to be adhered. Breach in observing the procedural safeguards gives right to the detainee to

claim that he has been prejudiced as his liberty has been curtailed de hors the law. In this view, I am fortified by the judgment rendered by a

Bench of three Hon'ble Judges of the Hon'ble Apex Court in case captioned Rekha Vs. State of Tamil Nadu and anr, reported in (2011) 5 SCC

244.

5. The cumulative effect of the aforesaid position leads to the only one conclusion i.e. the order of detention impugned is not valid, as such, quashed. The detainee is ordered to be released from the preventive custody forthwith provided he is not required in connection with any other

case

6. Disposed of as above.