
(2020) 08 J&K CK 0050
In the Jammu And Kashmir High Court
Case No : Writ Petition (C) No. 591 Of 2019

Junaid Ahmad Dar @ Sahba

APPELLANT

Vs

State Of J&K And Others

RESPONDENT

Date of Decision : 18-08-2020

Acts Referred:

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

Citation : (2020) 08 J&K CK 0050

Hon'ble Judges : Ali Mohammad Magrey, J

Bench : Single Bench

Advocate : Wajid Haseeb, B.A Dar

Final Decision : Disposed Off

Judgement

Ali Mohammad Magrey, J

1. Impugned in this Habeas Corpus petition with a prayer for quashment thereof is the detention order no. DMB/PSA/76 of 2019 dated 06.10.2019, purporting to have been passed by District Magistrate, Budgam, whereunder detenu namely Junaid Ahmad Dar s/o Sanaullah Dar R/o Wadwan Budgam District, Budgam, is under detention.

2. It is submitted that the detenu is never involved in any illegal activity, such as stone pelting. 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 petitioner has further submitted that the grounds taken in the detention order and the material referred to and relied upon has no relevance because the detenu was enlarged on bail by the competent court of law but despite order was not released. Since the detenu is already facing trial before the competent court of law, therefore, there is no possibility that the detenu be implicated in anti-national protests, such as stone pelting. It is

submitted that in absence of material the detention order is passed on mere ipsidixit of detaining authority, therefore, the detention order is bad in law. Petitioner has in order to strengthening his submission referred to and relied upon (2006) 2 Supreme Court Cases 664 titled T. V Sravanan Alias S.A.R Prasana v. State through Secretary and anr.

4. The only precious and valuable right guaranteed to a detenu is of making an effective representation against the order of detention. Such an effective representation can only be made by a detenu when he is supplied the relevant grounds of detention, including the materials considered by the detaining authority for arriving at the requisite subjective satisfaction to pass the detention order. Since the material is not supplied to the detenu, the right of the detenu to file such representation is impinged upon and the detention order is resultantly vitiated. Judgements on this point, both of the Supreme Court and of various High Courts, including our own High Court, are galore. I may refer to one such judgment of the Supreme Court herein. In Ibrahim Ahmad Batti v. State of Gujarat, (1982) 3 SCC 440, the Apex Court, relying on its earlier judgments in Khudiram Das v State of W. B., (1975) 2 SCR 81; Icchu Devi Choraria v. Union of India, (1980) 4 SCC 531, in paragraph 10 of the judgment, has held as under:

"Two propositions having a bearing on the points at issue in the case before us, clearly emerge from the aforesaid resume of decided cases: (a) all documents, statements and other materials incorporated in the grounds by reference and which had influenced the mind of the detaining authority in arriving at the requisite subjective satisfaction must be furnished to the detenu alongwith the grounds or in any event not later than 5 days ordinarily and in 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".

5. In Khudiram case (supra), the Apex Court has explained what is meant by 'grounds on which the order is made' in context of the duties cast upon the detaining authority and the corresponding rights accruing to the detenu under Article 22(5).

6. In Smt. Icchu Devi Case (supra), the Supreme Court has taken the view that documents, statements and other materials referred to or relied upon in the grounds of detention by the detaining authority in arriving at its subjective satisfaction get incorporated and become part of the grounds of detention by reference and the right of the detenu to be supplied copies of such documents, statements and other materials flows directly as a necessary corollary from the right conferred on the detenu to be afforded the earliest opportunity of making a representation against the detention, because unless the former right is available the latter cannot be meaningfully exercised.

7. Learned counsel for the petitioner-detenu submitted that the Detaining Authority has not mentioned 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.

8. Heard learned counsel for the parties, perused the writ record and considered the matter. Despite directions neither detention record nor reply has been filed by the respondents.

9 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.

10. 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.

11. 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.

12. The petition is accordingly, allowed and detention order no. DMB/PSA/76 of 2029 dated 06.10.2019 purporting to have been passed by District Magistrate Budgam, under which the detenu Junaid Ahmad Dar @ Sahba S/o Sanaullah Dar R/o Wadwan Budgam, District Budgam, is under detention, is quashed, with direction for his release forthwith.

13. The petition stands accordingly disposed of.

14. No order as to costs.