

(2021) 09 J&K CK 0047
In the Jammu And Kashmir High Court
Case No : Case No. ([WP Cri) No. 33 Of 2020

Mohammad Asif Raina

APPELLANT

Vs

Union Territory Of J&K And Ors

RESPONDENT

Date of Decision : 28-09-2021

Acts Referred:

Constitution Of India, 1950 — Article 22(5)

Citation : (2021) 09 J&K CK 0047

Hon'ble Judges : Ali Mohammad Magrey, J

Bench : Single Bench

Final Decision : Disposed Of

Judgement

Ali Mohammad Magrey, J

1. Detenu, Mohd Asif Raina son of Kaleemullah R/o Arreh, District Kulgam through his cousin seeks quashment of detention order no. 32/DMK/PSA/2019 dated 22.07.2019 purporting to have been passed by District Magistrate, Kulgam, with consequent prayer for release of the detenu forthwith.

2. The petitioner-detenu has challenged the order of detention on the following grounds:

"a) that no compelling reason or circumstance was disclosed in the order or grounds of detention to take the detenu in preventive detention, moreso in view of the fact that as on the date of passing of the aforesaid order of detention, the detenu was already in custody;

b) that the detenu has not been provided the material forming basis of the detention order, to make an effective representation against his detention order;

c) that the impugned order has been passed without proper application of mind.

d) that the detention order was not provided to the detenu within the statutory period".

3. Notice was issued to respondents. They appeared through their learned counsel and filed counter affidavit wherein they submitted that the detention order is well founded in fact and law and seeks dismissal of the Habeas Corpus Petition.

4. Heard learned counsel for the petitioner-detenu as well as the learned counsel for the respondents, perused the writ records as also the copy of detention record was produced by the learned counsel for the respondents.

5. Learned counsel for detenu has submitted that the grounds taken in the detention order and the material referred to and relied upon has no relevance because the detenu was already in custody, therefore, there is no possibility that the detenu be implicated in the activities prejudicial to the public security of the state. 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. Learned counsel for petitioner has in order to strengthening his submission referred to and relied upon (2006) 2 Supreme Court Cases 664 titled T. V Sraavanan Alias S.A.R Prasana v. State through Secretary and anr.

6. 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".

7. In Khudiramcase (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).

8. 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.

9. 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."

10. In view of the law laid down by the Apex Court in aforesaid cases vitiates the detention order, as not amounting to effect communication of grounds, and resultant deprivation of the right to make representation against the same.

11. Examining the present case on the touch stone of the above settled position of law and perusal of record, the detenu was not supplied the materials relied upon by the detaining authority. The detenu was provided material in the shape of grounds of detention with no other material / documents, as referred to in the order of detention. On these counts alone, the detention of the detenu is vitiated, the detenu having been prevented from making an effective and purposeful representation against the order of detention.

12. Accordingly, the detention order No. 32/DMK/PSA/2019 dated 22.07.2019 is quashed and the detenu, Mohd Asif Raina son of Kaleemullah R/o Arreh,, District Kulgam is directed to be released from preventive custody forthwith. No order as to costs.

13. Registrar Judicial to send a copy of this order to Director General of Prisons and also concerned Jail authorities for compliance.

Disposed of.