

(2019) 05 J&K CK 0018

In the Jammu And Kashmir High Court

Case No : Habeas Corpus Petition No. 390 Of 2018

?Mohammad Azhar Ud Din Parray @APPELLANT@Hash State And Ors

Date of Decision : 09-05-2019

Acts Referred:

Public Safety Act, 1978 — Section 19
Constitution Of India, 1950 — Article 22(5)

Citation : (2019) 05 J&K CK 0018

Hon'ble Judges : Ali Mohammad Magrey, J

Bench : Single Bench

Advocate : Mir Shafqat Hussain, Feroz Ahmad Sheikh

Final Decision : Disposed Off

Judgement

1. Impugned in this Habeas Corpus petition with a prayer for quashment thereof is the detention order no. 20/DMB/PSA of 2018 dated 04.10.2018, purporting to have been passed by District Magistrate, Bandipora, whereunder detenu namely Mohd Azhar ud din parray s/o Abdul Rehman Parray R/o Chandergeer Tehsil Hajin, District Bandipora, is under detention.

2. Grounds pleaded in support of prayer are that after having been quashed the earlier detention order no. 22/DMB/PSA of 2017-18 dated 10th Feb. 2018, passed in HCP no. 41/2018, the detenu was again detained for 2nd time in terms of the detention order impugned in this petition on one and the same grounds reflected in the grounds of detention, wherein it is submitted that his further detention was necessary to prevent him from indulging in the activities highly prejudicial to the security of the State, accordingly while in police custody he was ordered to be detained in preventive custody vide impugned detention order passed by District Magistrate, Bandipora. The earlier detention order was challenged in H.C. Petition No 41/2018 which was allowed vide judgment dated 06.06.2018 but instead of releasing him from custody the authorities ordered to be detained by the instant detention order impugned in this petition. During arguments the counsel has further elucidated the contents of petition with reference to annexures placed on record, and contended that neither the

detention in question was legal nor were grounds thereof duly communicated to the detenu even though quite vague and unfounded.

3. In his counter affidavit, respondent no.2 has stated that the detenu's activities being highly prejudicial to the security of the State, his further detention was necessary to prevent him from indulging in such acts. 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. Detention record produced by the state counsel.

4. I have heard learned counsel for the parties, perused the detention record 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 impugned detention order and thereby he was deprived of an important constitutional right, and that the detaining authority did not apply 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 even while he was already ordered to be set at liberty under court order passed in HCP no. 41/2018.

5. So far as the first 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 "Lallubhai Jogibhai 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 Lallubhai Jogibhai 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. Regarding other ground urged at bar relating to passing of second detention order the question that needs consideration is whether such course was permissible in terms of section 19 of the Public Safety Act 1978. This section permits passing of second detention order where the earlier order passed in respect to a person is revoked or modified by the Government or is not legal on account of any technical defect. In the instant case the earlier detention order has been quashed by the court and, therefore, the authorities were not competent to pass fresh detention order on basis of same facts and circumstances as indicated above, on this ground alone the second detention order impugned in the instant petition, deserves to be quashed.

8. 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.

9. The petition is accordingly, allowed and detention order no. 20/DMB/PSA of 2018 dated 04.10.2018 purporting to have been passed by District Magistrate Bandipora, under which the detenu namely Mohd Azhar ud din parray s/o Abdul Rehman Parray R/o Chandergeer Tehsil Hajin, District Bandipora, is under detention, is quashed with direction for his release forthwith.

10. No order as to costs.

11. The petition stands accordingly disposed of. Records of the case produced in this case be returned to Mr. Feroz Ahmad Sheikh, Dy AG.