
(2021) 05 J&K CK 0005
In the Jammu And Kashmir High Court
Case No : Writ Petition (Crl) No. 06 Of 2021

Mohd Iqbal

APPELLANT

Vs

Union Territory Of J&K And Others

RESPONDENT

Date of Decision : 03-05-2021

Acts Referred:

Jammu And Kashmir Public Safety Act, 1978 — Section 8
Constitution Of India, 1950 — Article 22(5)

Citation : (2021) 05 J&K CK 0005

Hon'ble Judges : Sindhu Sharma, J

Bench : Single Bench

Advocate : Ahsan Mirza, Bhanu Jasrotia

Final Decision : Allowed

Judgement

1. The District Magistrate Rajouri vide Order No. DMR/INDEX-01 of 2020 dated 30.07.2020 has placed the detenu under detention under section 8

of the Jammu and Kashmir Public Safety Act, 1978 with a view to prevent him from acting in any manner prejudicial to the maintenance of public order.

2. The impugned detention order has been challenged by the detenu through his father Mohd. Shafi. The detenu has assailed the order of detention amongst others on the following grounds:

(i) that the detenu has not been provided all the material relied upon by the Detaining Authority preventing him from making an effective

representation; (ii) that the Detaining Authority has failed to explain the grounds of detention and material relied upon by him in the language, he

understand and has, thus, deprived the detenu of his right to make an effective representation and (iii) the detention order is based on total non-

application of mind by the Detaining Authority and the same are in verbatim reproduction of the dossier.

3. Mr. Bhanu Jasrotia, learned Government Advocate has filed reply as well as produced the detention record.

4. The stand taken by him in the reply is that the Detaining Authority has complied with all the constitutional guarantees and statutory requirements as required while passing the impugned order of detention. The Detaining Authority has passed the detention order after arriving at its subjective satisfaction that the detenu was required to be placed in detention.

5. Heard learned counsel for the parties and perused the record also.

6. The detention has been challenged on the ground that the detenu was not provided all the material relied upon by the Detaining Authority while passing the order of detention. Perusal of the record reveals that the receipt of detention documents available on record reflects that the detenu has received total (6 leaves) copy of detention warrant (01 leaf), grounds of detention (04 leaves), notice of detention (01 leaf) copy of dossier () and other related documents () from the Executing Officer Inspector Aijaz Perviaz. The dossier and other related material while passing the order of detention were not supplied to the detenu. This has resulted infraction of his right to make an effective representation.

7. Non-supply of all the material relied upon by the Detaining Authority while ordering the detention of the detenu debars him of his fundamental right as guaranteed under Article 22(5) of the Constitution of India to make effective representation to Government against his detention. The detenu would not be able to exercise his right of making effective representation until and unless he is supplied with all the material relied upon by the Detaining Authority, as he must know what weighed in the mind of Detaining Authority while passing the order of detention in order to make an effective representation.

8. The Apex Court in *Sophia Ghulam Mohd. Bham V. State of Maharashtra and others*, AIR 1999 SC 3051, while considering similar proposition has observed as under:-

“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 detenu 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 detenu 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.

9. Similarly, in *S. Gurdip Singh v. Union of India and others*, (1981) 1 SCC 419, the Supreme Court, while reiterating legal position, observed that

failure to furnish documents or materials which formed the basis of detention order along with grounds of detention and even on demand subsequently

made by detenu, would amount to failure to serve grounds of detention and, therefore, would vitiate detention order and made it void ab initio.

10. It is urged that there is total non-application of mind by the Detaining Authority, while passing order of detention. The detenu was detained on the

basis of grounds of detention in which Detaining Authority has relied on FIR Nos. 21/2016, 87/2016, 101/2016 and Daily Diary report No. 10.

11. Petitioner's counsel submits that the detenu was released on bail in all the aforementioned FIRs. Record reveals that detenu was granted

bail in FIR No. 65/2020 on 28.07.2020. The Detaining Authority has, however, failed to show any awareness to this fact. The Detaining Authority is

under an obligation to consider and analyze all the circumstances and material available and then arrive at a conclusion about placing a person under

detention, however, non-mention of grant of bail in this FIR is a serious lack which give rise to inference that there is total non-application of the mind

by Detaining Authority.

12. A similar issue arose for consideration in *Anant Sakharam Raut and others V. State of Maharashtra* and another, AIR 1987 SC 137, has held as

under:

the one contention strongly pressed before us by the petitioner's counsel is that the detaining authority was not made aware at the time

the detention order was made that the detenu had moved applications for bail in the three pending cases and that he was enlarged on bail on 13-1-

1986, 14-1-1986 & 15-1-1986. We have gone through the detention order carefully. There is absolutely no mention in the order about the fact that the

petitioner was an under trial prisoner, that he was arrested in connection with the three cases, that applications for bail were pending and that he was

released on three successive days in three cases. This indicates a total absence of application of mind on the part of the detaining authority while

passing the order of detention.

that there was clear non-application of mind on the part of the detaining authority about the fact that the petitioner was granted bail

when the order of detention was passed. In the result we set aside the Judgment of the Bombay High Court under appeal, quash the order of

detention and direct that the petitioner be released forthwith..

13. In *Rushikesh Tanaji Bhoite V. State of Maharashtra & others*, (2012) 2 SCC 72, It was held that;

8. It would be, thus, seen that the order releasing the detenu on bail in the crime registered on August 14, 2010 and the order relaxing the bail

condition were passed by the Judicial Magistrate, 1st Class, Dharangaon much before the issuance of detention order dated January 10, 2011.

However, the detention order or the grounds supplied to the detenu do not show that the detaining authority was aware of the bail order granted in

favour of the detenu on August 15, 2010.

9. In a case where detenu is released on bail and is enjoying his freedom under the order of the court at the time of passing the order of detention,

then such order of bail, in our opinion, must be placed before the detaining authority to enable him to reach at the proper satisfaction.

The failure on the part of the Detaining Authority to consider this material fact of grant of bail orders vitiates the order of detention as the same

indicates non application of mind.

14. In view of the aforementioned principle of law, the detention order passed by the Detaining Authority is unsustainable. Accordingly, this petition is

allowed and impugned detention Order No. DMR/INDEX-01 of 2020 dated 30.07.2020 passed by District Magistrate, Rajouri, is quashed. The

detenu- Mohd. Iqbal S/o Mohd. Shafi is ordered to be released from the custody forthwith provided he is not required in any other case.

15. Detention record be handed over to learned counsel for the respondents by the Registry against proper receipt.