
(2019) 12 J&K CK 0063
In the Jammu And Kashmir High Court
Case No : WP Crl No. 173 Of 2019

Mohd Younis Dar

APPELLANT

Vs

State Of J&K And Ors

RESPONDENT

Date of Decision : 30-12-2019

Acts Referred:

Constitution Of India, 1950 — Article 22(5)

Citation : (2019) 12 J&K CK 0063

Hon'ble Judges : Ali Mohammad Magrey, J

Bench : Single Bench

Advocate : B.A Dar

Final Decision : Disposed Of

Judgement

1. Impugned in this Habeas Corpus petition with a prayer for quashment thereof is the detention order no. DMB/PSA/21 of 2019 dated 03.04.2019, purporting to have been passed by District Magistrate Budgam, whereunder detenu namely Mohammad Younis Dar s/o Mohammad Sultan Dar R/o Arwah Malik Mohalla Beerwah, Budgam, District Budgam, is under detention.

2. Grounds pleaded in support of prayer are that respondent no. 2 has issued the detention order dated 03.04.2019 on the basis of grounds placed before him by respondent no.3 vide communication dated 03.04.2019. It is submitted that the detaining authority has not applied its mind while passing the detention order. It is submitted that there is total non-application of mind while passing the impugned order of detention as the detenu was already under custody when the detention order was passed. It is submitted that the authority has not explained the grounds to the detenu in the language which he understands. It is submitted that no copy of translated version was furnished to the detenu to enable him to make an effective representation against the detention order, which renders the detention order liable to be set aside.

3. Notice was issued to respondents. They appeared through their learned

counsel filed counter affidavit wherein it is submitted that the detention order is well founded in fact and law and seeks dismissal of the Habeas Corpus Petition. Detention record has also been produced.

4. Heard learned counsel for the petitioner as well as the learned counsel for the respondents, perused the records.

5. Learned counsel for petitioner 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 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 the petitioner-detenu 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; *Ichhu 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 *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).

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. 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, in view of the above settled position of law, the detention of the detenu is vitiated, the detenu having been prevented from making an effective and purposeful representation against the order of detention.

10. Accordingly, the detention order no. DMB/PSA/21 of 2019 dated 03.04.2019 is quashed and detenu, Mohammad Younis Dar s/o Mohammad Sultan Dar r/o Arwah Malik Mohalla Beerwah, District Budgam is directed to be released from preventive custody forthwith. The matter stands accordingly disposed of, however there is no order as to the costs. Records be returned to the learned Sr. Additional Advocate General.