

(2018) 11 J&K CK 0128

In the Jammu And Kashmir High Court

Case No : Habeas Corpus Petition (HCP) No. 235 Of 2018

Mushtaq Ahmad Bhat

APPELLANT

Vs

State Of Jammu & Kashmir And Anr

RESPONDENT

Date of Decision : 01-11-2018

Acts Referred:

Jammu And Kashmir Public Safety Act, 1978 — Section 8(a)
Constitution Of India, 1950 — Article 22(5), 22(6)

Citation : (2018) 11 J&K CK 0128

Hon'ble Judges : Rashid Ali Dar, J

Bench : Single Bench

Advocate : Mir Shafaqat Hussain, Mir Suhail

Final Decision : Allowed

Judgement

Rashid Ali Dar, J

1. By the medium of instant petition, quashment of order No.18/DMP/PSA/18 dated 14.08.2018, Mushtaq Ahmad Bhat (hereinafter referred to as the detainee), is sought. In terms of said order, detainee has been taken into preventive custody by invoking powers under clause (a) of Section 8 of the J&K Public Safety Act as his activities were found to be prejudicial to the "security of the State" so has been lodged in District Jail, Kathua.

2. Learned counsel for the petitioner, firstly, contended that the detainee in connection with FIR No.757/2018 P/S Tral was taken into custody on 1st of August, 2018, and was admitted to bail by the Court of Judicial Magistrate 1st Class, Tral, on 13.08.2018 but was not released, instead was shown to have been taken into custody pursuant to impugned detention order. In the grounds of detention, it is nowhere mentioned that the detainee has been admitted to bail though it is stated that in that bail application has been filed before the Court and there is every likelihood of granting bail, when the bail was already granted. It means detaining authority either has not applied its mind or the full material

relatable to the detainee has not been placed before it.

3. The contention raised, on perusal of the grounds of detention as well as the detention record, is found to be correct, so non-application of mind is explicit which renders the order of detention illegal. In my view I am fortified by the judgment rendered in the case captioned Anant Sakharam Raut Vs. State of Maharashtra and others reported in AIR 1987 SC 137. Para 8 of the judgment is apt to be quoted:

"We hold 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.

4. Next it is contended that there has been non-application of mind on the part of detaining authority as the grounds of detention appear not to have been formulated by the detaining authority itself.

5. The submission appears to have substance. One of the requirements for deriving subjective satisfaction is to formulate the grounds of detention which shall form basis for passing the order of detention. In the order impugned as passed by District Magistrate, it is recorded; "Whereas on the basis of dossier placed before me by the Senior Superintendent of Police, Awantipora, vide his No.Conf/PSA/2018/9020-23 dated 06.08.2018, I am satisfied....." which shows that detaining authority has not sifted and scanned the material itself for preparation of the grounds of detention for deriving subjective satisfaction regarding detention of the detainee, which clearly shows that there has been non- application of mind on the part of detaining authority which passing the impugned detention order.

6. Learned counsel for the petitioner next contended that the detainee has been disabled from making an effective representation against the detention. In this connection it is contended that the material forming base of the grounds of detention has not been furnished to the detainee.

7. Perusal of the detention records reveals that the submission has weight. Detention records, as produced, do not carry any document/receipt which would show that the material forming base of the grounds of detention has been furnished to the detainee. Non-supply of the material amounts to violation of Article 22(5) of the Constitution of India, so deprivation of a valuable right.

8. In paras 27 and 28 of the judgment captioned Thahira Haris etc. etc. Vs. Government of Karnataka &Ors, reported in AIR 2009 Supreme Court 2184, Hon'ble Apex Court has held as under:

"27. There were several grounds on which the detention of the detainee was challenged in these appeals but it is not necessary to refer to all the grounds since on the ground of not supplying the relied upon document, continued

detention of the detainee becomes illegal and detention order has to be quashed on that ground alone.

28. Our Constitution provides adequate safeguards under clauses (5) and (6) of Article 22 to the detainee who has been detained in pursuance of the order made under any law providing for preventive detention. He has right to be supplied copies of all documents, statements and other materials relied upon in the grounds of detention without any delay. The predominant object of communicating the grounds of detention is to enable the detainee at the earliest opportunity to make effective and meaningful representation against his detention.

9. Taking conspectus of the above discussion, the petition is allowed and the impugned detention order bearing No. 18/DMP/PSA/18 dated 14.08.2018, passed by District Magistrate, Pulwama, being unsustainable, is quashed. Detainee is directed to be set free from the preventive custody forthwith, if not required in connection with any other case.

10. Detention record be returned to the learned counsel for the respondents.