

**(2019) 07 J&K CK 0020**

**In the Jammu And Kashmir High Court**

**Case No : Habeas Corpus Petition (HCP) No. 432 Of 2018**

Parvaiz Ahmad Reshi

APPELLANT

Vs

State Of Jammu & Kashmir And Others

RESPONDENT

**Date of Decision : 12-07-2019**

**Acts Referred:**

Code Of Criminal Procedure, 1973 — Section 161  
Jammu And Kashmir Public Safety Act, 1978 — Section 13  
Constitution Of India, 1950 — Article 22(5)

**Citation : (2019) 07 J&K CK 0020**

**Hon'ble Judges : Tashi Rabstan, J**

**Bench : Single Bench**

**Advocate : Mukhtar Ahmad, Adil Asmi, N. H. Shah**

**Final Decision : Disposed Off**

## Judgement

Tashi Rabstan, J

1. Impugned is Order no.67/DMA/PSA/DET/2018 dated 05.11.2018, passed by District Magistrate, Anantnag (for brevity â??detaining authorityâ?)

directing preventive detention of the person of Shri Parvaiz Ahmad Reshi son of Ab. Rehman Reshi resident of Sirgufwara District Anantnag, (for

short â??detenuâ??), on the grounds tailored in petition on hand.

2. Respondent no.2 has filed counter affidavit in opposition to the petition and strenuously resisted the petition.

3. Heard learned counsel for the parties at length and considered the matter.

4. First and foremost, impugned detention order and grounds of detention make mention of material record, such as, dossier and other connecting

documents, relied upon by detaining authority while making impugned detention order. Detention order and grounds of detention also make reference

to a communication received from Senior Superintendent of Police, Anantnag. What detaining authority (respondent no.2) at paragraph 03 of counter

affidavit filed in opposition to writ petition on hand, has stated, is worth to be noticed:

That whatever material was required to be furnished to the detenu, same stands furnished to him in the form of ground of detention?

5. From the above quoted passage of paragraph 02 of counter affidavit, it is quite intriguing that detaining authority admits that only grounds of

detention were served upon detenu. Thus, other connecting material, like FIR, dossier, statement recorded under Section 161 Cr.P.C. and

incriminating material, if any, collected during investigation of the case, heavily relied upon by detaining authority while passing impugned detention

order, has/have not been supplied to detenu so as to enable him to make an effective representation against detention order. In that view of matter,

Constitutional and Statutory rights guaranteed to detenu have been grossly violated by detaining authority. Non-compliance of this imperative

procedure and obligation has vitiated detention order.

It needs no emphasis that detenu cannot be expected to make a meaningful exercise of his Constitutional and Statutory rights guaranteed under Article

22 (5) of the Constitution of India and Section 13 of J&K Public Safety Act, 1978, unless and until the material on which detention order is based, is

supplied to him. It is only after detenu has all said material available that he can make an effort to convince detaining authority and thereafter

Government that their apprehension qua activities ascribed to him, are baseless and misplaced. If detenu is not supplied material, on which detention

order is based, he cannot be in a position to make an effective representation against his detention order. Failure on part of detaining authority to

supply material relied at the time of making detention order to detenu, renders detention order illegal and unsustainable. While saying so, I draw

support from *Dhannajoy Dass v. District Magistrate*, AIR 1982 SC 1315; *Sofia Ghulam Mohammad Bam v. State of Maharashtra & ors*, AIR 1999

SC 3051; *Union of India v. Ranu Bhandari*, 2008 Cr. L. J. 4567; *Syed Aasiya Indrabi v. State of J&K & ors.*, S.L.J. 2009 (I) 219; and *Tahira Haris*

*v. State and ors*, AIR 2009 SC 2184.

6. One more facet of the matter that requires to be glimpsed and considered, is

what respondent no.2 (detaining authority) has said in impugned detention order, grounds of detention and counter affidavit filed by him in opposition to writ petition. Respondent no.2 (detaining authority) has, both in impugned detention order and grounds of detention, mentioned that in order to prevent detenu "from acting in any manner which is prejudicial to the maintenance of public order", it is necessary to detain him. However, beguilingly, in his counter affidavit, respondent no.2 (detaining authority) has maintained that "detention of the detenue was ordered with a view to prevent him from acting in any manner, which is prejudicial to the maintenance of security of the State". [Vide: paragraph 02 of counter affidavit]. There is, thus conflict between detention order, impugned in petition, and counter affidavit sworn by detaining authority. The conflict is indicative of non-application of mind on part of detaining authority. The detaining authority appears to be not sure about the exact ground that persuaded it to make detention order.

It is pertinent to mention here that detaining authority can slap preventive detention if activities of a person proposed to be detained under the Act are "prejudicial to the security of the state" or "public order". Once detaining authority has not been able to spell out the exact ground in detention order that led to detention of detenu, non-application on the part of detaining authority is writ large on detention order. On this ground alone, detention order merits to be quashed.

7. For the reasons discussed above, the petition is disposed of and detention Order no.67/DMA/PSA/DET/2018 dated 05.11.2018, passed by District

Magistrate, Anantnag " respondent No. 2, quashed. Respondents are directed to set the detenu at liberty forthwith provided he is not required in any other case. Disposed of.

8. Detention record be returned to learned counsel for respondents.