
(2021) 05 J&K CK 0054
In the Jammu And Kashmir High Court
Case No : Writ Petition (Crl) No. 30 Of 2020

Sajad Ahmad Bhat

APPELLANT

Vs

Union Territory Of J&K And Anr

RESPONDENT

Date of Decision : 28-05-2021

Acts Referred:

Jammu And Kashmir Public Safety Act, 1978 — Section 8, 8(4), 13, 19
General Clauses Act, 1977 — Section 21
Constitution Of India, 1950 — Article 22(5)

Citation : (2021) 05 J&K CK 0054

Hon'ble Judges : Vinod Chatterji Koul, J

Bench : Single Bench

Advocate : M A Qayoom, Mir Suhail

Final Decision : Disposed Of

Judgement

1. Petitioner has challenged the validity of Detention Order No. DMB/PSA/02 of 2020 dated 27.01.2020 passed by District Magistrate, Budgam,

detaining Sajad Ahmad Bhat S/o Ghulam Hassan Bhat R/o Nagam Chadoora, Budgam under clause (a) of Section 8 of the Jammu and Kashmir

Public Safety Act 1978 to prevent him from acting in any manner prejudicial to the security of the State..

2. The order of detention though challenged on various grounds, yet learned counsel for petitioner has vehemently urged that detenu was not informed

that while making a representation against his detention to the Government, he had also a right to make a representation before the detaining authority,

and therefore, his constitutional and statutory procedural safeguards have been violated. Another submission of learned counsel for petitioner is that

grounds of detention are replica of police dossier.

3. Counter affidavit has been filed. Learned counsel for respondents has produced the detention record. He submits that the detenu was detained for his activities which were considered to be prejudicial to the security of the State. He was detained by virtue of detention order No. DMB/PSA/02 of 2020 dated 27.01.2020 passed by the District Magistrate, Budgan. All the procedural safeguards and constitutional guarantees were complied with by the detaining authority. The order of detention was issued after arriving at its requisite subjective satisfaction that his detention was imperative. All the material relied upon by the detaining authority was communicated to the detenu in the language he understands. The case of the detenu was also referred to the Advisory Board for its opinion, and the Board vide its opinion dated 18.02.2020 found that there was sufficient cause for the detention of the detenu. Pursuant to the opinion of the Board, the Government vide order No. Home/PB-V/552 of 2020 dated 26.02.2020 has confirmed the order of detention.

4. I have heard learned counsel for parties and considered the matter.

5. Perusal of detention record would reveal that while passing impugned order of detention, a communication bearing no. DMB/PSA/2020/02 dated 27.01.2020, was addressed by detaining authority to detenu, informing him to make a representation to the Government against the detention order.

Thus, it becomes evident from the detention record that detenu has not been informed about his right to make the representation to the detaining authority and time for making such a representation has also not been given. It is imperative upon the detaining authority to inform the detenu that he has a right to make a representation to the detaining authority as well as to the Government and not only that he is to be informed about the time within which such representation is to be made. This right of the detenu is guaranteed under Article 22(5) of the Constitution of India.

It is pertinent to mention here that prior to Government's approval of detention order, which is to be done within 12 days of detention order, in terms of Section 8 (4) of the J&K Public Safety Act, 1978 (for short 'Act of 1978') detaining authority also has power to revoke detention order.

This power is clearly relatable to Section 21 of the General Clauses Act, Samvat, 1977, which has been saved by virtue of Section 19 of the Act of 1978. Till the Government's approval to detention order is granted, since the

detaining authority had the power to revoke the detention order, a representation could have been made to the detaining authority for revoking detention order. It was incumbent upon detaining authority to have informed detenu that he could also make a representation to detaining authority, if he so desired. Since detaining authority did not communicate to detenu that such a representation could be made to detaining authority, this in itself amounted to infraction of provisions of Section 13 of the Act of 1978 read with Article 22(5) of the Constitution of India. Reliance in this regard is placed on *State of Maharashtra and others v. Santosh Shankar Acharya*, (2000) 7 SCC 463. In the present case detaining authority did not inform the detenu that the detenu, independent of his right to file a representation against his detention to the Government, has also right to submit a representation to detaining authority till detention was considered by the Government and accorded approval thereto. Detaining authority has, in essence, violated Constitutional and Statutory rights of detenu, guaranteed under Article 22(5) of the Constitution of India and Section 13 of the Act of 1978 and resultantly vitiates impugned detention.

6. The Honâ??ble Division Bench, while considering a similar issue in *Tariq Ahmad Dar vs. State of J&K and others*, 2017 (II) SLJ, 665 (HC) and relying on the judgment of the Constitutional Bench in *Kamlesh Kumar Ishwardas Patel vs. Union of India*, (1995) 4 SCC 51, has held as under:

â??â??. This being the position, it goes without saying that even under the Maharashtra Act , a detenu will have a right to make a representation to the detaining authority so long as the order of detention has not been approved by the State Government and consequently non-communication of the fact to the detenu that he has a right to make representation to the detaining authority would constitute an infraction of the valuable constitution right guaranteed to the detenu under Article 22 (5) of the Constitution and such failure would make the order of detention invalid. We, therefore, see no infirmity with the impugned judgement of the Full Bench of the Bombay High Court to be interfered with by this Court. These appeals accordingly fail and stand dismissed.â??

â??From a reading of the said decision, it is abundantly clear that non-communication of the fact that the detenu can make a representation to the detaining authority, till the detention order is not approved by the government,

would constitute an infraction of a valuable Constitutional right

guaranteed under article 22 (5) of the Constitution of India as also of the right under Section 13 of the Jammu and Kashmir Public Safety Act, 1978.

Failure of such non communication would invalidate the order of detentionâ??.

7. The detenu had a right to move a representation to the detaining authority till the detention order is approved. In the present case, the detaining

authority has failed to inform the detenu about his right to make a representation before it. This has resulted in infraction of a statutory and constitutional rights guaranteed to detenu.

8. In view of the settled proposition of law as stated above which squarely applies to the present case, the detention of the detenu is unjustified.

9. Another ground that has been argued during the course of arguments is that there has been non application of mind on the part of the detaining

authority as the grounds of detention are more or less a xerox copy of the dossier.

10. From a perusal of the record, the ground projected appears to have substance. The grounds of detention, in this case are, in fact, a replica of

dossier with interplay of some words here and there. This exhibits non application of mind and in the process deriving of subjective satisfaction has

become a causality. While formulating the grounds of detention, the detaining authority has to apply its own mind. It cannot simply reiterate whatever

is written in the dossier. Here it will be apt to notice the observations of the Supreme Court in the case of â??Jai Singh and ors vs. State of J&Kâ?

(AIR 1985 SC 764), which are reproduced hereunder:

â??First taking up the case of Jai Singh, the first of the petitioners before us, a perusal of the grounds of detention shows that it is a

verbatim reproduction of the dossier submitted by the Senior Superintendent of Police, Udhampur, to the District Magistrate requesting that

a detention order may kindly be issued. At the top of the dossier, the name is mentioned as Sardar Jai Singh, fatherâ??s name is mentioned

as Sardar Ram Singh and the address is given as village Bharaoh, Tehsil Reasi. Thereafter it is recited â??The subject is an important

member of â?|â?|â?|

Thereafter follow various allegations against Jai Singh, paragraph by paragraph. In the grounds of detention, all that the District

Magistrate has done is to change the first three words "the subject is" into "you Jai Singh, S/o Ram Singh, resident of village

Bharakh, Tehsil Reasi". Thereafter word for word the police dossier is repeated and the word "he" wherever it occurs referring to Jai

Singh in the dossier is changed into "you" in the grounds of detention. We are afraid it is difficult to find proof of non-application of

mind. The liberty of a subject is a serious matter and is not to be trifled with in this casual, indifferent and routine manner."

11. From a perusal of the aforesaid observations of the Supreme Court, it is clear that the grounds of detention and the dossier, if in similar language,

go on to show that there has been non application of mind on the part of the detaining authority. As already noted, in the instant case, it is clear from

the record that the dossier and the grounds of detention contain almost similar wording which shows that there has been non application of mind on the

part of the detaining authority. The impugned order of detention is, therefore, unsustainable in law on this ground alone.

12. For the afore-stated reasons, this petition is disposed of and impugned detention order DMB/PSA/02 of 2020 dated 27.01.2020 passed by District

Magistrate, Budgam is quashed. Accordingly, the respondents are directed to release the detenu namely Sajad Ahmad Bhat S/o Ghulam Hassan Bhat

R/o Nagam Chadoora, Budgam from the custody forthwith, if he is not required in any other case.

13. Detention record be returned to the learned AAG .