
(2020) 02 J&K CK 0035
In the Jammu And Kashmir High Court
Case No : WP (Cr) No. 188 Of 2019

Salman Ibrahim Sheikh

APPELLANT

Vs

State Of J&K And Ors

RESPONDENT

Date of Decision : 14-02-2020

Acts Referred:

Constitution Of India, 1950 — Article 22(5)
Public Service Act 1999 — Section 14

Citation : (2020) 02 J&K CK 0035

Hon'ble Judges : Ali Mohammad Magrey, J

Bench : Single Bench

Advocate : Ashiq Ahmad, Showkat Naqashbandi

Final Decision : Disposed Of

Judgement

1. Impugned in this Habeas Corpus petition with a prayer for quashment thereof is the detention order no. 19/DMK/PSA/2019 dated 25.04.2019,

purporting to have been passed by District Magistrate Kulgam, whereunder detenu namely Salman Ibrahim Sheikh s/o Mohammad Ibrahim Sheikh

R/o Rampora, Tehsil Qaimoh, District Kulgam, is under detention.

2. Grounds pleaded in support of prayer are that respondent no. 2 has issued the detention order dated 25.04.2019 on the basis of grounds placed

before him by respondent no.3 vide communication No. Legal/PSA-22/2019/2001-04 dated 05.04.2019. 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. In his counter affidavit, respondent no.2 has stated that the detenu's activities being highly prejudicial to the sovereignty security and integrity of

the State, his detention was necessary to prevent him from indulging in such acts, which was also approved by the Government and the State Advisory

Board constituted u/s 14 of P.S. Act. During course of his submissions the respondents counsel besides reiterating the contents of counter affidavit

has contended that in circumstances of the case the impugned detention is well founded in fact and law. Detention record has been produced.

4. I have heard learned counsel and considered the matter. As per pleadings and contentions raised at bar the main ground of attack projected by

petitioner against the detention in question is, that grounds of detention were not duly communicated to him, which prevented him from making an

effective representation against the same and thereby he was deprived of an important constitutional right, and that the detaining authority did not

apply his mind while passing the detention order and has not revealed as to on what materials he assumed subjective satisfaction regarding necessity

of having the subject detained when the detenu have not filed any bail application in any court for his release in the FIRs registered against him.

5. So far as the ground taken i.e non communication of the grounds of detention is concerned, perusal of file reveals, that there is nothing to show or

suggest that the grounds of detention couched in English language were explained to the detenu in a language understood by him, as there is no

material to that effect on record. This according to the view taken by Hon'ble Apex Court in *Lallubhai Jogibhai Patel v. Union of India*, (1981)

2 SCC 427; the detenu did not know English, while the grounds of detention were drawn up in English and an affidavit filed on behalf of the

detaining authority stated that while serving the grounds of detention were fully explained to the detenu, but the Apex Court held that, was not a

sufficient compliance with the mandate of Article 22(5) which requires that the grounds of detention must be communicated to the detenu. The Apex

Court observed as under:

“Communicate” is a strong word which means that sufficient knowledge of the basic facts constituting the “grounds” should be imparted

effectively and fully to the detenu in writing in a language which he understands. The whole purpose of communicating the “grounds” to the

detenu is to enable him to make a purposeful and effective representation. If the “grounds” are only verbally explained to the detenu and nothing

in writing is left with him in a language which he understands, then that purpose is not served, and the constitutional mandate in Article 22(5) is

infringed.”

6. In view of the law laid down by the Apex Court in case titled *Lallubhai Jogibhai Patel v. Union of India* (supra) vitiates the detention order, as not

amounting to effect communication of grounds, and resultant deprivation of the right to make representation against the same.

7. That being so the grounds of challenge set up by petitioner, succeed and the detention stands vitiated. Other grounds urged do not therefore, need to

be separately addressed.

8. The petition is accordingly, allowed and detention order no. 19/DMK/PSA/2019 dated 25.04.2019 purporting to have been passed by District

Magistrate Kulgam, under which the detenu namely Salman Ibrahim Sheikh s/o Mohammad Ibrahim Sheikh R/o Rampora, Tehsil Qaimoh, District

Kulgam, is under detention, is quashed with direction for his release forthwith.

9. The petition stands accordingly disposed of. Records be returned to the concerned Govt Advocates.