

(2017) 04 J&K CK 0004
In the Jammu And Kashmir High Court
Case No : 361 of 2016

Shahid Ahmad Bhat

APPELLANT

Vs

State of J&K & Ors.

RESPONDENT

Date of Decision : 27-04-2017

Acts Referred:

Citation : (2017) 04 J&K CK 0004

Hon'ble Judges : Ramalingam Sudhakar

Bench : SINGLE BENCH

Advocate : Mir Shafakat, R. A. Khan

Judgement

1. Instant Habeas Corpus Petition has been filed, challenging the order of Detention bearing No.48/DMA/PSA/DET/2016 dated 16.09.2016. In

this case, it is alleged that detention order has been passed to prevent the detinue to act in any manner prejudicial to the maintenance of public

order. In the grounds of detention, it is stated that the detinue is 22 year old, B. Tech. student, however, he has been detained to prevent the

maintenance of public order.

2. The grounds of detention refers to certain incidents which happened on 9.07.2016, where the detinue is said to have joined an unruly mob,

armed with lathies and stones, attacked the police and FIR No. 153/2016, was registered in Police Station Bijbehera. Again on 19.07.2016, an

unruly mob at National Highway near Semthan pelted stones upon private vehicles with intention to hamper the traffic and FIR No. 168/2016 was

registered in the same police Station. Similarly on 22.07.2016, detinue was a member of an unruly mob, equipped with stone and lathies resorted

to stone pelting upon police/CRPF personal at Sangam Chowk and case FIR No.

171/2016 in the same police Station was registered. Again on

08.08.2016 detinue along with other miscreants led an unruly mob and resorted to stone pelting on the vehicles, causing immense damage to the

public property. A case FIR No. 194/2016 was registered in the same Police Station. Another incident is reported to have happened on

22.08.2016 wherein an unruly mob raising anti-national slogans and resorted to stone pelting on vehicles, plying on National Highway, due to

which one truck driver lost control and got injured and an FIR No. 220/2016, was registered in the same police station.

3. From these activities the Detaining Authority came to the conclusion that the regular action against the petitioner/detinue will serve no purpose in

controlling him from indulging in the activities which are prejudicial to the maintenance of Public order. Therefore, the provisions of Jammu and

Kashmir Public Safety Act, 1978, was invoked to prevent/deter the detinue from carrying out the said activities.

4. Challenging the same on the ground that the documents relied upon have not been served upon the detinue and he has been deprived to make

an effective representation against the detention order is specifically urged in the grounds of writ petition.

5. In response to the writ petition, respondents have filed the counter affidavit and in paragraph 4 a bald statement is made that whatever material

is required to be furnished to the detinue, same has been supplied to him in the form of grounds of detention.

6. Ongoing through the original record, what has been served to the detinue is a copy of detention order and a letter, recorded as two leaves

which makes it clear that the documents relied upon have not been given to the detinue, thereby preventing the detinue to make an effective

representation against the detention order to the Detaining Authority. On this count the detention order deserves to be quashed.

7. This issue has also been discussed by this Court in HCP No. 678/2016, titled as Danish Ahmad Dar v. State and ors. and various other cases.

8. Reliance has been placed on Paragraph Nos. 27 & 28 of the decision of the Hon"ble Supreme Court in case Titled "" Thahira Haris V.

Government of Karnataka, reported in AIR 2009 SC, 2184, which are reproduced as under:-

27. There were several grounds on which the detention of the detnue was challenged in these appeals but it is not necessary to refer

to all the grounds since on the ground of not supply the relied upon documents, continue detention of the detenue become 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 detenue 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 material relied upon in the grounds of detention without any delay. The predominant object of communicating

the grounds of detention is to enable the detenu at the earliest opportunity to make effective and meaningful representation against his

detention.

9. Accordingly, the detention order bearing No. 48/DMA/PSA/DET/2016 dated 16.09.2016, is hereby quashed. The respondents are directed to

release the detenue, namely, Shahid Ahmad Bhat, S/O Ghulam Mohammad Bhat R/O Semthan Tehsil Bijbehara, Anantnag, Kashmir from

preventive custody forthwith, if not required in any other case.

10. Record is returned to learned AAG in the open Court.