

(2020) 03 J&K CK 0019
In the Jammu And Kashmir High Court
Case No : WP (Crl) No. 95 Of 2019

Shahid Salam Naikoo

APPELLANT

Vs

State Of J&K And Ors

RESPONDENT

Date of Decision : 13-03-2020

Acts Referred:

Constitution Of India, 1950 — Article 22(5)

Citation : (2020) 03 J&K CK 0019

Hon'ble Judges : Ali Mohammad Magrey, J

Bench : Single Bench

Advocate : Wajid Haseeb, M.A Chasoo

Final Decision : Disposed Off

Judgement

1. Impugned in this Habeas Corpus petition with a prayer for quashment thereof is the detention order no. 160/DMS/PSA/2019 dated 26.02.2019,

purporting to have been passed by District Magistrate Shopian, whereunder detenu namely Shahid Salam Naikoo s/o Abdul Salam Naikoo R/o

Bonbazar, Shopian, District Shopian, is under detention.

2. It is submitted that the detenu applied before the competent court of jurisdiction for bail which was granted but instead of releasing he was

implicated in a case FIR No. 318 of 2018 and being in custody he was shifted to central Jail Kotabalwal Jammu to be detained under the provisions of

Public Safety Act. It is submitted that the detenu was already under custody when the detention order was passed and there were no compelling

reasons for the detaining authority to pass the detention order, and that the grounds of detention were not duly communicated to him, which renders

the detention order bad. During course of submissions, the petitioner's counsel has reiterated the contents of petition, while the State counsel

relying on his counter affidavit argued that the copy of the grounds of detention has been served on detenu against proper receipt which forms part of file, and he was duly informed about his right to make a representation, and as such the detention was fortified in fact and law.

3. Heard learned counsel for the parties.

4. Learned counsel for the parties argued in tune with their respective pleadings.

5. Learned counsel for the petitioner-detenu prayed for allowing of this petition whereas, learned counsel for the respondents defended the impugned

order and vehemently argued and submitted that this petition be dismissed.

6. The petitioner-detenu has challenged the order of detention mainly on the following grounds:

â??a) that the detenu after admitting to bail granted by the competent court of jurisdiction, was not released instead shifted to Central Jail

Kotbalwal, under PS.Act,

b) that the detaining authority has not prepared the grounds of detention itself, which is a pre-requisite for them before passing any

detention order.

c) that the respondents have not provided whole material to the detenu to enable him to make an effective representation against his

detention order.

d) that no compelling reason or circumstance was disclosed in the order or grounds of detention to take the detenu in preventive detention,

moreso in view of the fact that as on the date of passing of the aforesaid order of detention, the detenu was already in custody;

c) that no other connected material was provided to the detenu, to make an effective representation against his detention order;â??

7. In the counter it is alleged that the detenu was working as Over Ground Workder of militant organizations and also inculcate secessionist ideology in

the mind of vulnerable youth and radicalize and motivate them to resort to stone pelting on security forces and other Government establishments

aiming at demoralizing the police and other security agencies of the State.

8. The detaining authority has not spelt out as to what were â??other connected documentsâ?. The detenu has thus been not supplied complete

documents which has affected his Constitutional rights guaranteed under Article

22(5) of Constitution of India to make effective representation against his detention.

9. The detention order is rendered illegal in view of the law laid down by Honâ??ble Supreme Court in case titled Wasiud din Ahmad v. The District

Magistrte, Aligarh, UP and ors , reported in AIR 1981 SC Page 2166 has ruled as under:

â??13. This Court has forged certain procedural safeguards in the case of preventive detention of citizens. The constitutional imperative

indicated in Art. 22(5) are twofold: (1) the detaining authority must, as soon as may be, that is, as soon as practicable, after the detention,

communicate to the detenu the grounds on which the order of detention has been made, and (2) the detaining authority must afford the

detenu the earliest opportunity of making a representation against the order of detention. The right to make a representation implies what

means the right of making an effective representation. Where certain documents are relied upon in the grounds of detention the grounds

would be incomplete without such documents. The detenu, therefore, has right to be furnished with the grounds of detention along with the

documents relied upon.â??

10. For the above stated reasons and law quoted hereinabove, this petition is disposed of in the following manner:

11. The petition is accordingly, allowed and detention order no. 160/DMS/PSA/2019 dated 26.02.2019 purporting to have been passed by District

Magistrate Shopian, under which the detenu namely Shahid Salam Naikoo s/o Abdul Salam Naikoo R/o Bonbazar, Shopian, is under detention, is

quashed with direction for his release forthwith.

12. The petition stands accordingly disposed of. Records be returned to Mr. M.A Chasoo, Additional Advocate General, for respondents.

13. No order to costs.