

(2020) 08 J&K CK 0045
In the Jammu And Kashmir High Court
Case No : Writ Petition (C) No. 219 Of 2019

Suhail Nisar Lone

APPELLANT

Vs

State Of J&K And Others

RESPONDENT

Date of Decision : 20-08-2020

Acts Referred:

Conservation Of Foreign Exchange And Prevention Of Smuggling Activities Act, 1974 —
Section 3(3)
Constitution Of India, 1950 — Article 22(5), 22(6)

Citation : (2020) 08 J&K CK 0045

Hon'ble Judges : Sindhu Sharma, J

Bench : Single Bench

Advocate : Wajid Haseeb, Mir Suhail

Final Decision : Disposed Off

Judgement

Sindhu Sharma, J

1. Detention order No. 08/DMP/PSA/19 dated 23.02.2019 passed by the District Magistrate, Pulwama-respondent No. 2 has been questioned by the detenu in this petition through his father.

2. The order of detention has been assailed by the detenu on the grounds that:

(i) the allegations made in the grounds of detention are vague and non-existence and same cannot form basis for passing the order of detention.

(ii) the order of detention suffers from non-application of mind as the Detaining Authority has failed to show its subjective satisfaction, while passing the impugned detention order.

(iii) the detenu has also not been supplied all the relevant material and documents relied upon by the detaining authority and referred in the grounds of detention, while passing the order of detention.

(iv) the detenu is not English literate and he understands only Urdu & Kashmiri

languages. The order of detention as well as grounds relied upon by the Detaining Authority were neither explained to him in the language he understands nor translated copies of the same were provided. Thus, the detenu has been prevented from making an effective representation against his detention which has violated his right under Article-22(5) of the Constitution.

(v) the Detaining Authority has failed to show any cogent and compelling reasons for passing the impugned order of detention, when the detenu was already in a custody in a case under Unlawful Activities (Prevention) Act and there was no likelihood of him being enlarged on bail in that case.

3. Mr. Mir Sohail, learned AAG has filed the counter affidavit and produced the detention record. It is submitted that the detenu was detained under the provisions of Public Safety Act after complying with all the constitutional and statutory requirements. The detenu was supplied with the order of detention as well as all the material relied upon by the Detaining Authority, while passing the order of detention. The contents of the detention order as well as grounds of detention were read over and explained to him in the language he understands. Execution report of the officer is also on record. The detenu was also informed of his right to make a representation against his detention. The Detaining Authority arrived at its subjective satisfaction after considering all the material and found that there were compelling reasons to place the detenu under detention under the Public Safety Act. The detenu, despite having been informed of his right to file a representation against the detention order, but he has chosen not to file any representation, as such, no prejudice is caused to him. The Advisory Board had also recommended that there were sufficient grounds for further detention of the detenu.

4. Heard learned counsel for the parties and perused the record.

5. The detenu's grievance is that he was not furnished all the documents relied upon by the Detaining Authority, while passing the order of detention. The detenu was required to be communicated all the material relied upon by the Detaining Authority in the language he understands to enable him to make a representation against the order of detention at the earliest.

6. Perusal of the record reveals that although the impugned order of detention was based on the dossier of SSP concerned but the same was not supplied to the detenu. The execution report of ASI Mushtaq Ahmad, states that notice of detention, contents of warrants and grounds of detention were read over to the detenu in English language and also explained to him in Kashmiri language. Execution report also reveals that the order of detention (01 leaf), notice of detention to the detenu (01 leaf), grounds of detention (02 leaves), Dossier of detention (nil) and other related documents (nil) total (04 leaves) were handed over to the said detenu at Central Jail, Jammu (Kot Bhalwal) on 06.03.2019 against proper receipt.

7. Thus, the detenu has not been supplied all the material relied upon by the

Detaining Authority which includes the Police Dossier. This omission has deprived the detenu of his right to make an effective representation against his detention. Since an effective representation cannot be contemplated unless the detenu knows what was contemplated by the Detaining Authority, while passing the order of detention.

8. The Hon'ble Apex Court in the judgment rendered in the case *Sophia Gulam Mohd. Bham v. State of Maharashtra & Ors.*, AIR 1999 SC 3051, has held as under:-

"The right to be communicated the grounds of detention flows from Article 22(5) while the right to be supplied all the material on which the grounds are based flows from the right given to the detenu to make a representation against the order of detention. A representation can be made and the order of detention can be assailed only when all the grounds on which the order is based are communicated to the detenu and the material on which those grounds are based are also disclosed and copies thereof are supplied to the person detained, in his own language."

9. In *Icchu Devi Choraria (Smt.) v. Union of India and others*, (1980) 4 SCC 531, the Supreme Court dealt with in great detail significance of clause (5) of Article 22 and sub-section 3 of Section 3 of COFEPOSA Act.

The court observed :

"Now it is obvious that when Clause (5) of Article 22 and Subsection (3) of Section 3 of the COFEPOSA Act provide that the grounds of detention should be communicated to the detenu within five or fifteen days, as the case may be, what is meant is that the grounds of detention in their entirety must be furnished to the detenu. If there are any documents, statements or other materials relied upon in the grounds of detention, they must also be communicated to the detenu, because being incorporated, in the grounds of detention, they form part of the grounds and the grounds furnished to the detenu cannot be said to be complete without them. It would not therefore be sufficient to communicate to the detenu a bare recital of the grounds of detention, but copies of the documents, statements and other materials relied upon in the grounds of detention must also be furnished to the detenu within the prescribed time subject of course to Clause (6) of Article 22 in order to constitute compliance with Clause (5) of Article 22 and Section 3, Sub-section (3) of the COFEPOSA Act. One of the primary objects of communicating the grounds of detention to the detenu is to enable the detenu, at the earliest opportunity, to make a representation against his detention and it is difficult to see how the detenu can possibly make an effective representation unless he is also furnished copies of the documents, statements and other materials relied upon in the grounds of detention."

10. In *S. Gurdip Singh v. Union of India and others*, (1981) 1 SCC 419, the Supreme Court, while reiterating legal position, observed that failure to furnish

documents or materials which formed the basis of detention order along with grounds of detention and even on demand subsequently made by detenu, would amount to failure to serve grounds of detention and, therefore, would vitiate detention order and made it void ab initio.

11. It is also contended that detenu is not an English literate person and can understand only Urdu and Kashmiri language. The translated copies of the detention order as well as grounds of detention was not supplied to him, thus, he was prevented from making an effective representation, this has violated his right under Article 22(5) of the Constitution of India.

12. In case of *Hadibandhu Das v. District Magistrate, Cuttak & Anr.* [1969 (1) SCR 227], it was clearly held that:

" merely oral explanation of an order without supplying him a translation in a script or language which the detenu understood amounted to a denial of right of being communicated the grounds. In the instant case, it is not even alleged in the affidavit of Mr. Shah that any translation or translated script of the grounds was furnished to the detenu."

13. The same principles were reiterated in *Raziya Umar Bakshi V. Union of India and others*, AIR 1980 SC 1751, it is held that "the service of the grounds of detention has been held on the detenu was a very precious constitutional right and the object is to enable the detenu to file an effective representation it would be anti formality to supply the ground of detention to the detenu unless he is in a position to understand the same."

14. Thus, failure of supplying material relied upon by the Detaining Authority, while passing the impugned order of detention as well as copy of the same in the language he understands, has prevented the detenu from making an effective representation which makes the impugned order of detention vitiated.

15. In view of the aforesaid discussions without referring to the other grounds raised in this petition, this petition is allowed, the impugned detention order No. 08/DMP/PSA/19 dated 23.02.2019 of Suhail Nisar Lone S/o Sh. Nisar Ahmad Lone is quashed. Accordingly, the respondents are directed to release the detenu from the custody forthwith, if he is not required in any other case.

16. Disposed of in the aforesaid terms.

17. Let the detention record be returned back to learned counsel for the respondents by the Registry forthwith.