
(2019) 03 J&K CK 0062

In the Jammu And Kashmir High Court

Case No : Habeas Corpus Petition (HCP) No. 321 Of 2018

Zahid Ahmad Rather

APPELLANT

Vs

State Of Jammu & Kashmir And Anr

RESPONDENT

Date of Decision : 15-03-2019

Acts Referred:

Jammu & Kashmir Public Safety Act, 1978 — Section 8, 13
Jammu And Kashmir High Court Rules, 1999 — Rule 138(3)
Constitution Of India, 1950 — Article 22(5)

Citation : (2019) 03 J&K CK 0062

Hon'ble Judges : Rashid Ali Dar, J; Sanjay Kumar Gupta, J

Bench : Division Bench

Advocate : Wajid Haseeb, Mir Shafaqat Hussain, Sajad Ashraf

Judgement

1. In pursuance to order No.19-DMK/PSA of 2018 dated 22.09.2018, issued by District Magistrate, Kupwara, in exercise of powers conferred under Section 8 of the J&K Public Safety Act, Zahid Ahmad Rather son of Ghulam Hassan Rather resident of Shalgund Lalpora (Lolab) District Kupwara (hereinafter referred to as the detainee), has been taken into preventive custody. By the instant petition quashment of the said order is sought on the grounds enumerated in the petition.

2. Respondents have filed the counter affidavit wherein they refuted the averments made in the petition. Learned counsel for the respondents has produced the detention record in order to lend support to the stand taken in the counter affidavit.

3. Learned counsel for the petitioner also submitted that that the detainee has also been disabled from making an effective representation by not supplying him the translated copies of the ground of detention which are in English language besides being in a hyper technical language which the detainee is not in a position to understand.

4. Nothing has been brought on record to show that the translated copies of the

grounds of detention have been supplied to the detenu which has prejudiced the detenu in the exercise of his right to make an effective representation against his detention. For this, Para 13 of the judgment in Ibrahim Ahmad Batti's case (supra) shall be quite apposite to be reproduced herein:

"Lastly, Urdu translations of quite a few documents and statements referred to in the grounds of detention and relied upon by the detaining authority were admittedly not supplied to the detenu at all and the only explanation given by the counsel for the respondents at the hearing has been that most of these documents (Urdu translations whereof were not supplied) comprised statements of accounts which had figures in English with some English words written in capital letters and some documents were in Hindi and Gujarati and the record (statements of Rekha, her sister Indi and one Jayantilal Soni, all co-conspirators of the detenu, recorded during the investigation) clearly shows that the petitioner knows English figures, understands English words written in capital letters and can also converse or talk in Hindi and Gujarati and as such the non-supply of Urdu translations of these documents cannot be said to have caused any prejudice to the petitioner in the matter of making a representation against his detention. In our view, the explanation is hardly satisfactory and cannot condone the non-supply of Urdu translations of these documents. Admittedly, the petitioner is a Pakistani national and Urdu seems to be his mother tongue and a little knowledge of English figures, ability to read English words written in capital letters and a smattering knowledge of Hindi or Gujarati would not justify the denial of Urdu translations to him of the material documents and statements referred to as incriminating documents in the grounds and relied upon by the detaining authority in arriving at its subjective satisfaction. In fact, the claim made before us on behalf of the detenu that he only knows Urdu cannot be brushed aside as false especially in view of the fact that the same was accepted on the earlier occasion by the Advisory Board who had actually opined that failure to supply Urdu translations of grounds of detention and documents had vitiated the earlier order of detention and following this opinion respondent No. 1 had revoked the said order. Moreover, with the assistance of counsel on either side we have ourselves gone through many of these documents and statements and it is not possible to say that most of them are merely statements of account containing figures in English with English words written in capital letters. These documents recovered from three flats in three different societies, include, for instance, documents like bills and vouchers showing purchases made from some shops, while a large number of documents are in Hindi and Gujarati and relate to transactions in contraband articles like gold, silver, watches, etc., and comprise accounts of such transactions, the figures as well as recitals pertaining to which are entirely in Gujarati. All these, in our view, are material documents which have obviously influenced the mind of the detaining authority in arriving at its subjective satisfaction and these are all in a script or language not understood by detenu, and, therefore, the non-supply of Urdu translations of these documents has clearly prejudiced the petitioner in the exercise of his right to make an

effective representation against his detention and hence the safeguard contained in Article 22(5) is clearly violated."

5. It shall also be quite apposite to quote following portion from para 9 of the judgment of the Hon'ble Apex Court in the case "Chaju Ram Vs. The State of Jammu & Kashmir" reported in AIR 1971 SC 263:

"..... The detenu is an illiterate person and it is absolutely necessary that when we are dealing with a detenu who cannot read or understand English language or any language at all that the grounds of detention should be explained to him as early as possible in the language he understands so that he can avail himself of the statutory right of making a representation. To hand over to him the document written in English and to obtain his thumb impression on it in token of his having received the same does not comply with the requirements of the law which gives a very valuable right to the detenu to make a representation which right is frustrated by handing over to him the grounds of detention in an alien language. We are therefore compelled to hold in this case that the requirement of explaining the grounds to the detenu in his own language was not complied with."

6. It shall be quite advantageous to quote following para from the judgment rendered in case captioned Powanammal vs. State of T. N. and another reported in 1999 (2) SCC 413:

"The amplitude of the safeguard embodied in Article 22(5) extends not merely to oral explanation of the grounds of detention and the material in support thereof in the language understood by the detenu but also to supplying their translation in script or language which is understandable to the detenu. Failure to do so would amount to denial of the rights of being communicated the grounds and of being afforded the opportunity of making a representation against the order."

7. Though in the Execution Report dated 27.09.2018, which forms part of detention record, it is submitted that the contentions of warrant and the grounds of detention were read over and explained to the detenu in Urdu and Kashmiri language which he fully understood, but no affidavit in support thereof has been filed by the officer who did the exercise of handing over the documents and conveying the contents thereof to the detenu, to file an affidavit in order to attach a semblance of fairness to his actions. Resort can, in this behalf, be had to the law laid down by the Apex Court of the country in the case of "State Legal Aid Committee, J&K versus State of J&K & others, reported in AIR 2005 SC 1270, wherein it has been held as under:

"Though several questions have been raised in this petition, it is not necessary to deal with them in detail as we find that there is no definite material to show that the requirements of Section 13 of the Jammu & Kashmir Public Safety Act, 1978, (in short the Act), requiring the grounds of order of detention to be disclosed/communicated to the person affected by the order has been complied with. Though in the affidavit filed by the State, it has been stated that the contents of

the warrants and grounds of detention were served, read over and explained to the assessee and he was informed about his right to make a representation against the detention, if he so desired, there is no material placed on record to substantiate this stand. It is stated in the affidavit that the detainee refused to receive copy of the detention order and also refused to put his signatures on the documents. The least the State could have done is to file an affidavit of the person who wanted to serve the relevant documents and an endorsement LPA (HC) 107/2017 10 of 16 to the effect that there was refusal. Even the name of the official has not been indicated in the affidavit. That would have been sufficient to comply with the requirements of Section 13 of the Act."

8. For what has been stated above, petition is allowed and the impugned detention order, being unsustainable, is quashed. Detainee is directed to be set free from the preventive custody forthwith provided he is not required in connection with any other case.

9. Detention record be returned to the learned counsel for the respondents.

Pronounced today in terms of Rule 138(3) of J&K High Court Rules, 1999.