

HIGH COURT OF JAMMU AND KASHMIR AT SRINAGAR

Case no. HCP 41/2019 ([WP Cri) No. 41/2019]

Reserved on 26th August, 2019

Announced on 25.09.2019

Masood Ahmad Bhat

... Petitioner

Through: Wife of petitioner present in person.

vs.

State of J&K and ors.

Through : Mr. Shah Aamir, AAG vice
Mr. S.H Naqashbandhi, AAG

Coram:

Hon'ble Mr. Justice Ali Mohammad Magrey.

JUDGMENT

1. The detenu, Masood Ahmad Bhat son of Abdul Rahman Bhat resident of Chidder, District Kulgam through his brother seeks quashment of detention order no. 03/DMK/PSA/2019 dated 22.01.2019 purporting to have been passed by District Magistrate Kulgam, with consequent prayer for release of the detenu forthwith.

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

“a) 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;

b) that the *detenu* has not been provided the material forming basis of the detention order, to make an effective representation against his detention order;

c) that the detaining authority has not prepared the grounds of detention by itself, which is a pre-requisite for him before passing any detention order.”

3. Notice was issued to respondents. They appeared through their learned counsel and filed counter affidavit wherein they submitted that the detention order is well founded in fact and law and seeks dismissal of the Habeas Corpus Petition.

4. Heard learned counsel for the petitioner as well as the learned counsel for the respondents, perused the writ records, despite direction the detention record was not produced.

5. Learned counsel for petitioner has submitted that the grounds taken in the detention order and the material referred to and relied upon has no relevance because the *detenu* was already in custody, therefore, there is no possibility that the *detenu* be implicated in the activities prejudicial to the security, Sovereignty and Integrity of the State. It is submitted that in absence of material the detention order is passed on mere *ipsidixit* of detaining authority, therefore, the detention order is bad in law. Petitioner has in order to strengthening his submission referred to and relied upon *(2006) 2 Supreme Court Cases 664 titled T. V Sravanan Alias S.A.R Prasana v. State through Secretary and anr.*

6. The only precious and valuable right guaranteed to a *detenu* is of making an effective representation against the order of detention. Such an effective representation can only be made by a *detenu* when he is supplied the relevant grounds of detention, including the materials considered by the detaining authority for arriving at the requisite subjective satisfaction to pass the detention order. Since the material is not supplied to the *detenu*, the right of the *detenu* to file such representation is impinged upon and the detention order is resultantly vitiated. Judgements on this point, both of the Supreme Court and of various High Courts, including our own High Court, are galore. I may refer to one such judgment of the Supreme Court herein. *In Ibrahim Ahmad Batti v. State of Gujarat, (1982) 3 SCC 440, the Apex Court, relying on its earlier judgments in Khudiram Das v State of W. B., (1975) 2 SCR 81; Icchu Devi Choraria v. Union of India, (1980) 4 SCC 531*, in paragraph 10 of the judgment, has held as under:

“Two propositions having a bearing on the points at issue in the case before us, clearly emerge from the aforesaid resume of decided cases: (a) all documents, statements and other materials incorporated in the grounds by reference and which had influenced the mind of the detaining authority in arriving at the requisite subjective satisfaction must be furnished to the detenu along with the grounds or in any event not later than 5 days ordinarily and in exceptional circumstances and for reasons to be recorded in writing not later than 15 days from the date of his detention, and (b) all such material must be furnished to him in a script or language which he understands and failure to do either of the two things would amount to a breach of the two duties cast on the detaining authority under Article 22(5) of the Constitution”.

7. In *Khudiramcase* (supra), the Apex Court has explained what is meant by 'grounds on which the order is made' in context of the duties cast upon the detaining authority and the corresponding rights accruing to the *detenu* under Article 22(5).

8. In *Smt. Icchu Devi Case* (supra), the Supreme Court has taken the view that documents, statements and other materials referred to or relied upon in the grounds of detention by the detaining authority in arriving at its subjective satisfaction get incorporated and become part of the grounds of detention by reference and the right of the *detenu* to be supplied copies of such documents, statements and other materials flows directly as a necessary corollary from the right conferred on the *detenu* to be afforded the earliest opportunity of making a representation against the detention, because unless the former right is available the latter cannot be meaningfully exercised.

09. Examining the present case on the touch stone of the above settled position of law and perusal of record, the *detenu* was not supplied the materials relied upon by the detaining authority. The *detenu* was provided material in the shape of grounds of detention with no other material / documents, as referred to in the order of detention. On these counts alone, in view of the above settled position of law, the detention of the *detenu* is vitiated, the *detenu* having been prevented from making an effective and purposeful representation against the order of detention.

10. Detenu is involved in substantive offence in FIR No.116/2018 U/Ss 13 (2), 16,18,38,39 ULA (P) Act and has not applied for bail and he is already in custody as no bail granted, therefore, can remain in custody unless released on bail.

11. Accordingly, the detention order no. **03/DMK/PSA/2019 dated 22.01.2019 is quashed and detenu, Masood Ahmad Bhat son of Abdul Rahman Bhat resident of Chidder, District Kulgam** is directed to be released from preventive custody forthwith. The matter stands accordingly disposed of, however there is no order as to the costs.

(Ali Mohammad Magrey)
Judge

Srinagar,
25.09.2019
Syed Ayaz Hussain,
Secretary