

HIGH COURT OF JAMMU AND KASHMIR
AT SRINAGAR

WP (Crl) no. 363/2019

Reserved on .03.06.2020

Pronounced on 08.06.2020

Fayaz Ahmad Lone

.... Petitioner(s)

Through: Mr Wajid Haseeb, Advocate

v/s

State of JK and another

Through: Mr Mir Suhail, AAG

CORAM:

HON'BLE MR JUSTICE ALI MOHAMMAD MAGREY, JUDGE

JUDGMENT

1. By the present habeas corpus petition, the detenu through his father, Gh. Qadir Lone, has challenged the detention Order No. 94/DMP/PSA/19 dated 22.08.2019, for short impugned order, issued by the District Magistrate, Pulwama, whereby the detenu, namely Fayaz Ahmad Lone S/o Gh. Qadir Lone R/o Pastuna Tehsil Tral District Pulwama, has been detained under the provisions of the Jammu and Kashmir Public Safety Act, 1978, for short Act.
2. Briefly stated the case of the petitioner is that the detenu was called to the Police Station Aripal on 14th August, 2019, and detained there in case FIR no. 39/2019 without any rhyme; reason or justification and while he was in police custody District Magistrate, Pulwama, detained him in the preventive custody under the provisions of J&K Public Safety Act, 1978, in terms of the impugned order and lodged him in Central Jail, Srinagar.
3. The challenge to the impugned order is *inter alia* made on the grounds that, the allegations against the detenu have no nexus with the detenu and have been fabricated by the police to justify the illegal action of detaining him in preventive custody; the grounds of detention are vague, non-existent and the impugned order, being based on such vague, non-existent grounds, deserves to be quashed; the detenu is innocent and has not committed any offence of whatsoever nature; the

detaining authority has not applied its mind while issuing the impugned order; the detenu was already arrested and was in police custody in connection with a case FIR no. 39/2019 and he never applied for bail in the said case, therefore, his preventive detention, despite him being in the police custody, is uncalled for; the satisfaction recorded by the detaining authority is vis-à-vis the alleged activities of the detenu being prejudicial to Security of State; the material in the shape of dossier has not been furnished to the detenu nor has he been furnished the copy of FIR, statements allegedly recorded under section 161, 164-A of the Code of Criminal Procedure, seizure memo, recovery memo as mentioned in the grounds of detention so that the detenu could have made an effective representation against his detention to the Competent Authority;

4. Reply has been filed by the respondents and the claim made by the petitioner has been resisted. It is stated in the reply, *inter alia*, that the impugned order is well reasoned and does not suffer from any illegality.

5. Heard learned counsel for the parties and considered the submissions made.

6. Learned counsel for the petitioner submits that it is unwarranted and illegal to detain an individual under the provisions of public safety Act in absence of there being any compelling circumstances warranting such exercise of power. He further submits that the detenu has not been provided the material like copy of FIR, dossier, statement under section 161, 164-A Cr. P.C, seizure memo, recovery memo. He further submits that there is a complete non-application of mind on the part of Detaining Authority as the grounds of detention are the replica of the grounds prepared by the police against the detenu, therefore, the impugned order is bad in law, therefore, deserves to be quashed.

7. Mr Mir Suhail, Learned Additional Advocate General, while resisting the claim of the petitioner, submits that the impugned order is quite in consonance with law and the safeguards, as were required to be taken in terms of the provisions of the Act, have been taken.

8. The detention records produced by the learned AAG were perused. The xerox of execution part of the impugned order reflects that the detenu has been provided with only five leaves consisting of copy of warrant, notice, grounds of detention. Admittedly the material in the shape of copy of FIR, statements recorded have not been provided to the detenu.

9. The admission on the part of the respondents, thus, makes it clear that the detenu was prevented from making an effective representation against his detention as he was not supplied the material relied upon by the respondents and has, as such, been deprived of an important constitutional right, and that the detaining authority did not apply its mind while passing the detention order. 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 alongwith 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”.

10. 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).

11. 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.

12. 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.

13. There is nothing on the file to show or suggest that the grounds of detention couched in English language were explained to the *detenu* in a language understood by him. This according to the view taken by Hon'ble Apex Court in "***LallubhaiJogibhai Patel v. Union of India, (1981) 2 SCC 427***"; the *detenu* did not know English, while the grounds of detention were drawn up in English and an affidavit filed on behalf of the detaining authority stated that while serving the grounds of detention were fully explained to the *detenu*, but the Apex Court held that, was not a sufficient compliance with the mandate of Article 22(5) which requires that the grounds of detention must be communicated to the *detenu*. The Apex Court observed as under:

“Communicate’ is a strong word which means that sufficient knowledge of the basic facts constituting the ‘grounds’ should be imparted effectively and fully to the *detenu* in writing in a language which he understands. The whole purpose of communicating the ‘grounds’ to the *detenu* is to enable him to make a purposeful *and* effective representation. If the ‘grounds’ are only verbally explained to the *detenu* and nothing in writing is left with him in a language which he understands, then that purpose is not served, and the constitutional mandate in Article 22(5) is infringed.”

15. That being so the grounds of challenge set up by petitioner succeed and the detention gets vitiated in view of the law quoted hereinabove. Other grounds urged, do not therefore, need to be separately addressed.

16. The petition is accordingly, allowed and impugned detention order no. 94/DMP/PSA/19 dated 22.08.2019, issued by the District Magistrate, Pulwama, detaining the *detenu* namely Fayaz Ahmad Lone S/o Gh. Qadir Lone R/o Pastuna,

Tehsil Tral, District Pulwama, in preventive detention, is quashed and the detenu is directed to be released from the preventive custody forthwith.

17. Records be returned to the learned AAG.

(Ali Mohammad Magrey)
Judge

Srinagar

08.06.2020

Amjad lone PS

- i) Whether the judgment is speaking : Yes/No
- ii) Whether the judgment is non-speaking: Yes/No.

