

**IN THE HIGH COURT OF JAMMU AND KASHMIR
AT SRINAGAR**

Date of Decision:05.05.2020

HCP No.416/2018

Shabir Ahmad ShahPetitioner(s)

Through: - Mr. Wajid Haseeb, Advocate

V/s

State of J&K & Ors.Respondent(s)

Through: - Mr. Mir Suhail, AAG

**CORAM: HON'BLE MR. JUSTICE DHIRAJ SINGH THAKUR,
JUDGE**



1) The present Habeas Corpus Petition has been filed for quashing the order of detention dated 22nd of October, 2018, issued by the District Magistrate, Pulwama, who, purportedly, in exercise of the power vested in him under Section 8(a) of the Jammu & Kashmir Public Safety Act, 1978, has ordered the detention of the petitioner with a view to prevent him from acting in any manner prejudicial to the security of the State.

2) The basis of the order of detention passed by the District Magistrate, Pulwama, as is reflected from the records, purportedly, is that the petitioner was an over ground worker of the banned terrorist organization, Hizbul Mujahideen, and that he was active in propagating terrorism and radicalization of the youth encouraging them to carry out subversive activities. It is alleged that in the year 2002, the petitioner was arrested by Delhi Police Special Cell for his involvement in FIR No.45/2002 registered

under Section 3/5 and Section 20 of the POTA Act, in which he was subsequently released. It is alleged that on account of his connection with fundamentalist elements, the petitioner had been assigned the task of transportation of illegal arms and ammunitions from one place to another by the banned terrorist organizations. It is alleged that in the year 2006, the petitioner was found involved in unlawful and subversive activities and, accordingly, was arrested by Police Station, Parimpora, in FIR No.157/2006 registered under Sections 120-B, 121-A RPC and 7/27 Arms Act. The petitioner was also stated to have been detained in District Jail, Kathua, under the provisions of Public Safety Act and subsequently released in the year 2008. In the year 2016, the petitioner is again stated to have indulged in subversive activities and was again arrested, in connection with FIR No.137/2016 under Sections 147, 341, 379 and 506 RPC registered in Police Station, Tral. It is also alleged that the petitioner had continued to help the militants and enabled them to transport arms and ammunitions from one place to another through safe routes and facilitating them to use the same in subversive activities in the area besides providing vital information regarding movement of police and security forces to the militants thereby ensuring their prolonged sustenance. It is in those circumstances that the order impugned was passed with a view to prevent the petitioner from indulging in the activities which are prejudicial to the security of the State.

3) The main ground, on which the order of detention has been challenged, as urged by the learned counsel for the petitioner, is that the petitioner had not been furnished the requisite material which formed the basis of the order of

detention. It was asserted that the petitioner had not been provided the copies of the FIRs, which found a mention in the grounds of detention.

4) Response has been filed by the respondents, in which a general stand is taken that the material relied upon by the detaining authority stood furnished to the detenu against proper receipt

5) Records have been produced by the respondents which include the execution report of the Executing Officer, ASI Maharaj Krishan. Execution report reveals that what was supplied to the petitioner was in all 04 leaves which included order of detention (01 leaf), grounds of detention (02 leaves), dossier of detention (01 leaf) and other related documents (nil). If that be the case, then, admittedly, other than order of detention and the grounds of detention, various documents in the shape of FIRs registered against the petitioner, which formed the basis of the order of detention, thus, were not supplied at all to the petitioner, which was otherwise prerequisite.

6) In *Sophia Gulam Mohd. Bham v. State of Maharashtra & Ors*, AIR 1999 SC 3051, the Apex Court clearly held that a person detained in pursuance of an order of preventive detention had to be provided the grounds on which the order was made and that he also is required to be afforded an earliest opportunity of making a representation against that order. It was held that 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. It was further held that a representation could 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 supplied to the person detained, in his own language.

7) In **Thahira Haris Vs. Government of Karnataka & Ors, AIR 2009 Supreme Court 2184**, the Apex Court after noticing various judgments on similar issue, held that it was imperative for valid continuance of detention that the detenu be supplied all the documents, statements and other materials relied upon in the grounds of the detention, failing which the right of the detenu of making a representative as enshrined in Article 22(5) of the Constitution would be violated.

8) In the present case, it is quite clear that the petitioner had not been provided the requisite documents, in particular various FIRs mentioned in the grounds of detention, thus preventing the petitioner from making an effective representation before the concerned authorities. The order of detention, in those circumstances, cannot be sustained in law. The same is, accordingly, **quashed**. The petitioner be released forthwith, if not required in any other case. It is, however, made clear that since the order of detention has been quashed on technical grounds, it would be open to the respondents to pass a fresh order, if they deem it necessary, strictly in compliance with the mandate of law.

9) Records be returned to the learned counsel for the respondents against proper receipt.

**SD/-
(DHIRAJ SINGH THAKUR)
JUDGE**

Srinagar

05.05.2020

“Bhat Altaf, PS”

Whether the order is speaking : Yes/No

Whether the order is reportable : Yes/No