

HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT JAMMU

HCP No. 36/2024

Pronounced on: 05.08.2024

Makhan Din

.... Petitioner/Appellant(s)

Through:- Mr. A.P. Singh, Advocate with
Mr. Nikhil Verma, Advocate.

V/s

UT of J&K and another

.....Respondent(s)

Through:- Mr. Sumeet Bhatia, G.A.

CORAM: HON'BLE MRS. JUSTICE SINDHU SHARMA, JUDGE
JUDGMENT

1. The petitioner has challenged the order of detention No. PSA/123 dated 23.02.2024, issued by the District Magistrate, Kathua, placing him under detention with a view to prevent him from acting any manner prejudicial to the maintenance of public order.
2. The contention of the petitioner is that the detaining authority has ordered the detention on the basis of grounds of detention mechanically, without any proper application of mind. No sufficient grounds were recorded by the detaining authority to justify that the alleged activities of petitioner are threat to public order. It is also submitted that the petitioner was not supplied all the relevant material relied upon by the detaining authority while passing the order of detention nor he was informed of his right to make a representation to the detaining authority, which has resulted in infraction of his valuable rights. This has resulted in violation of procedural safeguards provided to him.

3. Counter affidavit has been filed and detention record has also been produced.
4. The respondents submit that the petitioner is habitual criminal having criminal background and has repeatedly indulged in criminal activities. The activities of the petitioner were highly prejudicial to the maintenance of public order.
5. The respondents submit that the petitioner has been detained on the basis of the dossier supplied by the District Magistrate, Kathua, and the Detaining Authority, after carefully examining the same, has arrived at a subjective satisfaction that his detention is necessary for maintenance of peace. All the material relied upon by the Detaining Authority, while passing the order of detention, has been furnished to the petitioner. The grounds of detention have been read over and explained to the petitioner in the language he understands, and he was also informed of his right to make a representation against his detention before the Detaining Authority. It is further stated that all the statutory requirements and constitutional guarantees have been fulfilled and complied with by the Detaining Authority. The impugned order issued is legal and valid and the learned counsel for the respondents has also submitted that the grounds urged in this petition by the petitioner are misconceived and untenable being without any merit.
6. Heard learned counsel for the parties and perused the record.
7. The impugned order of detention has been assailed on multiple grounds, however, the learned counsel for the petitioner has laid emphasized on these grounds: -

- a. That the petitioner has not been informed about his right to make representation before the detaining authority.
 - b. The petitioner could not make an effective representation against the detention as he was neither provided the translated copies of grounds of detention nor the same was explained to him.
8. The petitioner emphasizes that failure to inform him of his right to make a representation before the Detaining Authority has resulted in infraction of the rights available to him. It is submitted that the petitioner was unable to make an effective representation due to the lack of material supplied to him, as neither the translated copies of the ground of detention have been provided to him, nor the same have been read over and explained to him in the language he understands, as such, the same has prevented him from making an effective representation against the order of detention.
9. The detention order itself reveals that the petitioner was not informed of his right to make a representation before the Detaining Authority, although, he was informed of his right to make a representation before the Home Department, this in itself amounted to infraction of the provisions of Section 13 of the Jammu and Kashmir Public Safety Act, 1978 read with Article 22(5) of the Constitution of India.
10. In support of his submission, the petitioner has placed reliance on the judgment of the Hon'ble Apex Court in "**State of Maharashtra and others vs. Santosh Shankar Acharya**", (2000) 7 SCC 463, wherein it was held that non-communication of the fact that the petitioner could

make a representation to the Detaining Authority would constitute an infraction of a valid constitutional right guaranteed to the petitioner under Article 22(5) of the Constitution of India and such failure would make the order of detention invalid. Relevant paragraph of the judgment is reproduced as under: -

“The only logical and harmonious construction of the provisions would be that in a case where an order of detention is issued by an officer under sub-section (2) of Section 3 of the Act, notwithstanding the fact that he is required to forthwith report the factum of detention together with the grounds and materials to the State Government and notwithstanding the fact that the Act itself specifically provides for making a representation to the State Government under Section 8(1), the said detaining authority continues to be the detaining authority until the order of detention issued by him is approved by the State Government within a period of 12 days from the date of issuance of detention order. Consequently, until the said detention order is approved by the State Government the detaining authority can entertain a representation from a detenu and in exercise of his power under the provisions of Section 21 of Bombay General Clauses Act could amend, vary or rescind the order, as is provided under Section 14 of the Maharashtra Act. Such a construction of powers would give a full play to the provisions of Section 8 (1) as well as Section 14 and also Section 3 of the Maharashtra Act. This being the position, non-communication of the fact to the detenu that he could make a representation to the detaining authority so long as the order of detention has not been approved by the State Government in a case where an order of detention is issued by an officer other than the State Government under sub-section (2) of Section 3 of the Maharashtra Act would constitute an infraction of a valuable right of the detenu under Article 22(5) of the Constitution and the ratio of the Constitution Bench decision of this Court in Kamlesh Kumars case (supra) would apply notwithstanding the fact that in Kamlesh Kumars case (supra) the Court was dealing with an order of detention issued under the provisions of COFEPOSA.”

11. It is next submitted that the petitioner was not provided all the material relied upon by the Detaining Authority while passing the order of detention and the grounds of detention have not been explained to him in the language which he understands. This apart, the petitioner, being an illiterate, required a clear explanation of the grounds in the language he understands to exercise his right to representation and it was incumbent upon the Detaining Authority to explain the grounds of detention to him as early as possible in the language he understands so that he could avail himself of the statutory right of making a representation.

12. Reliance in this regard has been placed on the judgment of the Hon'ble Apex in '**Chaju Ram vs. State of J&K**', AIR 1971 SC 263, wherein it was held that:

“.....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.”

13. The respondents have submitted that the grounds of detention were explained to the petitioner in the language that he understands. The Detaining Authority had actually explained and translated the grounds of detention to the petitioner. The petitioner should have been explained the grounds of detention in the language he understands. There is no certificate on record to show the same.
14. The petitioner was detained earlier vide detention order No. PSA/102 dated 22.05.2020. This detention order was quashed on the ground that the grounds of detention have not been explained to the petitioner in Gojri language which he understands. Record in this petition reveals that he has been explained the grounds of detention in Hindi and Dogri language and not in Gojri language. There is no explanation regarding same nor it has been stated that he understands the same. This apart, there is no certificate of the person to show that the same has been explained to him. This has resulted in infraction of a valuable right provided to the detenu under Article 22(5) of the Constitution of India.
- Article 22(5) of the Constitution of India provides as under: -

(5) When any person is detained in pursuance of an order made under any law providing for preventive detention, the authority making the order shall, as soon as may be, communicate to such person the grounds on which the order has been made and shall afford him the earliest opportunity of making a representation against the order.

15. The communication of grounds is required to be made to enable the petitioner to make a representation. Communication means imparting to the petitioner sufficient and effective knowledge of the facts and

circumstances on which the order of detention is passed and such communication in such language which the petitioner understands. Service of grounds is a very precious constitutional right where the grounds were in a language not known to the petitioner and unless the same are fully explained to the petitioner in language he understands or translate the same, it would vitiate the detention. It shall also be pertinent to reproduce Paras 3 and 5 of the judgment rendered by the Hon'ble Apex Court in **“Raziya Umar Bakshi vs. Union of India and others”**, AIR 1980 SC 1751, wherein it was held that:

“3. The service of the ground of detention on the detenu is a very precious constitutional right and where the grounds are couched in a language which is not known to the detenu, unless the contents of the grounds are fully explained and translated to the detenu, it will tantamount to not serving the grounds of detention to the detenu and would thus vitiate the detention ex-facie.

5. In this view of the matter, the detention becomes invalid on this ground alone. I would however like to observe that in cases where the detaining authority satisfied that the grounds are couched in a language which is not known to the detenu, it must see to it that the grounds are explained to the detenu, a translated script is given to him and the [grounds bear some sort of a certificate to show that the grounds have been explained to the detenu in the language which he understands. A bare denial at the stage when Habeas Corpus petition is filed in the court by the detaining authority that these formalities were observed would be of no consequence particularly when it is not supported by any document or by any affidavit of the person who had done the job of explaining or translation. We have pointed out in several cases that the courts frown on detention without trial and insist on the strict compliance of the constitutional safeguards enshrined in Article 22(5) to the letter of the law, because a non-compliance of these safeguards would itself, be sufficient to vitiate the order of detention. Despite our repeated observations, unfortunately, however the detaining

authority continues to pass orders of detention in a casual or cavalier fashion with the result that the courts are compelled to release the detenus. We hope and trust that in future the detaining authorities should fully apply their mind so as to result in a strict compliance of the constitutional safeguards contained in the Constitution, more particularly because the liberty of the subject is in peril.”

16. In view of the aforesaid facts and law laid down by the Apex Court, the impugned detention order is unsustainable in the eyes of law and is liable to be quashed. Accordingly, this petition is allowed and the impugned detention Order No. PSA/123 dated 23.02.2024, passed by the District Magistrate, Kathua, detaining the petitioner-Makhan Din S/o Swar Din, R/o Chak Dese Choudhrian, Tehsil Mehreen, District Kathua, is quashed. The respondents are directed to release the petitioner from the custody forthwith, provided he is not required in any other case.
17. Detention record be handed over to learned counsel for the respondents by the Registry forthwith.

(Sindhu Sharma)
Judge

Jammu:

05.08.2024

Michal Sharma/PS

Whether approved for speaking : *Yes/No*
Whether approved for reporting : *Yes/No*