

HIGH COURT OF JAMMU & KASHMIR
AT SRINAGAR

HCP No.82/2014

Date of decision: **16-12-2014**

Mushtaq Ahmad Bhat

Vs.

State & of J&K & ors.

Coram:

*Hon'ble Mr. Justice Mohammad Yaqoob
Mir, Judge*

Appearing counsel:

For the Petitioner(s):	Mr. M. A. Qayoom.
For the respondent(s):	None.

1) Pursuant to detention order dated 16.08.2014, passed by District Magistrate, Srinagar, detinue has been detained and lodged in District Jail, Baramulla as the activities of the detinue were noticed to be prejudicial to the maintenance of security of State.

2) According to learned counsel, the order is illegal. Buttressing the submission, would contend that basically detinue was detained vide detention order No.DMB/PSA/2014/12 dated 26.06.2014 but same was not approved by the Government. Vide communication dated 24.07.2014 it has been conveyed to District Magistrate that the order of detention dated 26.06.2014 has not been approved under sub-section (4) of Section 8 of the J&K Public Safety Act with a further request to apply proper mind and send case back after preparing the detailed grounds of detention for approval. It is in pursuance

of the said communication, District Magistrate has passed fresh order of detention impugned dated 16.08.2014.

3) When the detaining authority on the basis of material derive subjective satisfaction for detaining a person under Section 8 of the J&K Public Safety Act, then has to pass the order. Under sub-section 4 of Section 8 of the Public Safety Act, District Magistrate has to report the fact to the Government together with the grounds on which the order has been made. The order has to remain in force only for a period of 12 days unless in the meantime it is approved by the Government. When the order dated 26.06.2014 was not approved by the Government, the necessary implication was that the order of detention would lapse on the expiry of 12 days as is the mandate of sub-section (4) of Section 8 of the Act.

4) When the District Magistrate passes an order of detention and submits the report to the Government for approval, the Government has power either to approve or not to approve the same. If not approved, on 12th day it lapses. The Government in the instant case after disapproving the action of the District

Magistrate has requested him to apply the proper mind and send the case back after preparing the detailed grounds of detention for approval, which would show that the detaining authority had not applied his mind and there was no case for detention. The necessary effect of such action was that the detainee should have been released, instead he has been kept in custody and thereafter on 16.8.2014, fresh order of detention has been passed by the District Magistrate which was impermissible as having been done in pursuance to the request made by the Government after disapproving the earlier action of the District Magistrate. The whole exercise of detaining the detainee has suffered from non-application of mind right from the very beginning. It appears that the District Magistrate had in all eventualities, without application of mind, decided to detain the detainee.

5)_____The non-application of mind is further exposed by the fact that in the grounds of detention activities attributable to the detainee pertain to the years 1983, 1987, 1991, 2009 and 2010. Nothing is shown attributable to him from the year 2010 onwards. No doubt some allegations have been leveled but neither

any case for that has been registered nor any supporting record has been produced so as to show as to whether detenue has been indulging in any such activities from the year 2010 till 2014. There are other host of grounds projected in the petition but since the order of detention is not otherwise sustainable for the reasons stated above, therefore, there is no requirement of dwelling upon other grounds. The order of detention in the given circumstances is not found to be inconsonance with law, as such, quashed. Detenue shall be released forthwith provided he is not required in connection with any other case.

6)____Petition accordingly succeeds.

(Mohammad Yaqoob Mir)
Judge

Srinagar
16.12.2014
"Mohammad Altaf"