

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

HCP No.38/2015

CMP No.01/2015

Date of Order: 24th August, 2015

Suhail Ahmad Koul

Vs.

State of JK and Ors.

Coram:

Hon'ble Mr. Justice Mohammad Yaqoob Mir, Judge

Appearing Counsel:

For the petitioner(s) : Mr. Mian Tufail *vice* M.A. Qayoom, Adv

For the respondent(s) : Mr. Gulam Mohammad Reshi, Dy.AG

Oral

Pursuant to detention order No.DMB/PSA/06 of 2015 dated 9th June, 2015, detainee- Shri. Suhail Ahmad Koul has been detained. The said order of detention has been confirmed by the Government which culminated in issue of order bearing No.Home/PBV/792/2015 dated 14th July, 2015 where under detainee has been directed to remain detained for a period of six months.

According to learned counsel for the petitioner, the order of detention has been passed in a most casual fashion. Non-application of mind is quite apparent. Buttressing these submissions would submit that as per the own showing of the detaining authority, the detainee has been arrested on 3rd April, 2015 in connection with case registered as FIR No.92/2015 P/S Budgam for commission of the offences punishable under Section 121, 124 A, 147, 341, 336, 427, 120-B RPC and 13 Unlawful activities (Prevention) Act. In

connection with said case, the detainee has neither applied for bail nor otherwise has been released on bail.

Mr. G.M Reshi, Dy.AG was pointedly asked to show as to whether the detainee himself or on his behalf anyone applied for bail, he could not answer the same because records do not suggest so.

The purpose of passing the order of detention is to prevent a person from acting in any manner prejudicial to the security of the State etc. When a person is already in custody and is not released on bail then question is whether there can be requirement of passing order of detention.

It is now settled that when a person is in custody in connection with any other criminal case or otherwise then in that eventuality detention order can be passed provided detaining authority records sufficient reasons so as to demonstrate there that compelling circumstances persuaded the authority to pass the order of detention. Simple jugglery of words shall not be a substitute for recording sufficient reasons.

Detainee no doubt, as per records is shown to have been indulging in criminal activities. Three cases have been earlier registered i.e. FIR No.76/2010, FIR No.85/2010 and FIR No.79/2012 i.e. pertaining to the year 2010 and 2012. Thereafter till the year 2015 nothing adverse against him is available on the records as produced by learned Dy.AG.

Formulation of grounds of detention has a meaning i.e. the detaining authority after analyzing the entire records has to formulate the grounds of detention so as to derive subjective satisfaction to the effect that the detention is

imperative. What the detaining authority has done is that a copy of the dossier prepared by the Senior Superintendent of Police has been simply copied with small change of words. The position is further clear from the copy of the grounds of detention itself. In the copy of the dossier, one Para has been highlighted i.e. emphasis have been supplied, same position has been duplicated in the grounds of detention which clearly show that the detaining authority has simply acted as a mouth piece of the police authorities, ignoring the onerous duty to derive subjective satisfaction so as to deprive a person of his personal liberty.

Detention may be imperative, curtailment of liberty may be unavoidable, a person cannot be given leverage to be unbridled so as to make life of others hell or to disturb public order. For arriving to such any conclusion, the detaining authority has to lay a solid foundation in keeping view the rule of law so that act of the detaining authority may not offend the very spirit of the Article 21 of the Constitution of India. Lack of application of mind on the part of the detaining authority is quite evident, therefore, there is no scope to hold that the detaining authority has derived any subjective satisfaction for passing order of detention.

It is not discernable from the detention records as produced by the learned Dy.AG as to whether copy of the documents i.e. the material forming base for the order of detention has been furnished to the detainee or not, except that the detainee is shown to have received copy of the grounds of detention, four leaves and no other material. For enabling a person to make an effective representation, all material which has formed the base for the grounds of

detention was required to be furnished to the detenue which has not been done. As a result, whereof, right of effective representation has been denied to the petitioner which infringes his right as guaranteed under Article 22 of the Constitution of India.

In the aforesaid background, the order of detention is unsustainable, as such, quashed. Detenue be released provided not required in connection with any other case.

Disposed of as above alongwith connected CMP.

Detention record as produced is returned to learned Dy.AG.

(Mohammad Yaqoob Mir)
Judge

Srinagar:
24.08.2015
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