

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

**HCP No.39/2015**

Date of decision:24-09-2015

Javaid Ahmad Najar

Vs.

State & ors.

**Coram:**

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

**Appearing counsel:**

**For the Petitioner(s):** Mr. M. A. Qayoom.

**For the respondent(s):** Mr. G. M. Reshi, Dy. AG.

i) Whether approved for reporting  
in Journal/Digest:

**YES**

ii) Whether approved for reporting  
in Media/Press:

**OPTIONAL**

1) Pursuant to order No.DMB/PSA/05 dated 09.06.2015, passed by District Magistrate, Budgam, Javaid Ahmad Najar has been detained under Public Safety Act and lodged in District Jail, Kupwara.

2) According to the learned counsel for the petitioner, the detainee had been in custody in connection with case FIR No.92/2015 of P/S Budgam for the commission of offence punishable under Section 121, 124-A, 147, 341, 336, 427, 120-B RPC and 13ULA(P) Act, and while in custody has been ordered to be detained under Public Safety Act. No compelling reason has been recorded for passing the impugned order which was a requirement as the detainee was already in custody. Further, the material forming base for the detention has not been supplied to the detainee

disabling him from making an effective and purposeful representation against his detention.

3)\_\_\_\_\_It is settled that a person in custody in connection with criminal cases can be detained under the provisions of preventive laws provided there are compelling circumstances for so doing otherwise the order of detention shall be bad. In this connection, it is quite apt to quote following para from the judgment **T. P.Moideen Koya vs. Government of Kerala and ors.** reported in **2004 (8) SCC 106:**

“.....in law there is no bar in passing a detention order even against a person who is already in custody in respect of a criminal offence if the detaining authority is subjectively satisfied that detention order should be passed and that there must be cogent material before the authority passing the detention order for inferring that the detenu was likely to be released on bail”

4)\_\_\_\_\_It is not forthcoming from records as made available that the material forming base for the order of detention has been furnished to the detenue when the detenue admittedly was arrested in connection with aforesaid case. The statements recorded under Section 161 Cr. P.C in connection therewith were also required to be furnished to the detenue. The non supply of the material has disabled the detenue from making an effective representation so as to show his innocence.

Non supply of material forming base for detention is violative of the right guaranteed under Article 22(5) of the Constitution.

- 5)\_\_\_It shall be quite advantageous to quote following para from the judgment rendered in case captioned **Powanammal** vs. **State of T. N. and another** reported in **1999 (2) SCC 413**:

“The amplitude of the safeguard embodied in Article 22(5) extends not merely to oral explanation of the grounds of detention and the material in support thereof in the language understood by the detenue but also to supplying their translation in script or language which is understandable to the detenue. Failure to do so would amount to denial of the rights of being communicated the grounds and of being afforded the opportunity of making a representation against the order.”

- 6)\_\_\_The object of passing the order of detention is to deter a person from acting in any manner prejudicial to the security of the State or public order. When the movement of the person is already under curtailment i.e. he is in custody in connection with a case, then there is no requirement of passing an order of detention unless, of course, there exist such circumstances which warrant passing of order of detention. Preventive laws have the effect of depriving a person of his liberty which is precious but deprivation thereof at times becomes indispensable. However, for justifying such deprivation, the safeguards as are provided

by law are also required to be respected. A person who dares to cause any type of insecurity or threatens security of the State has to be dealt with iron hand but for so doing the Constitutional safeguards as are available are also to be respected.

7)\_\_\_\_\_It is further contended that the dossier has been reproduced verbatim in the grounds of detention. Only word “dossier” is replaced by the word “grounds of detention”, which according to learned counsel for the petitioner, would show that the detaining authority has not applied its mind. Formulation of grounds is imperative for deriving satisfaction so as to pass the preventive order. On this count, while contending that the order of detention is invalid, learned counsel relied on the judgment captioned **Fiaz Ahmad through his Mother Atiqah Begum Vs. State of J&K & anr (2010(II) S. L. J. 872)**, wherein, while noticing the same position and while relying on the judgment captioned **Jai Singh & Ors. Vs. State of J&K (AIR 1985 Sc 764)**, it was held that there was no due application of mind by the detaining authority in passing the order of detention.

8)\_\_\_\_\_Next contention is that the order of detention has not been furnished to the detenu which renders the order of detention as bad. In support of this contention, learned

counsel has relied on the judgments captioned **Abdul Rashid Saraf Vs. State & another (S.L. J. 1988 J&K 346)** and **Ghulam Muhammad Hajam Vs. State of J&K (S. L. J. 1991 J&K 364)**. In both the two judgments it has been held that supply of detention order to the detainee is mandatory, failure renders the detention illegal.

9) Viewed thus, the order of detention No.DMB/PSA/05 dated 09.06.2015 being unsustainable is quashed. Detenue shall be released forthwith provided he is not required in connection with any other case.

10) Petition succeeds as above.

11) Detention records as produced be returned to the learned AAG.

(Mohammad Yaqoob Mir)  
Judge

**Srinagar**  
**24.09.2015**  
"Mohammad Altaf"