

HIGH COURT OF JAMMU & KASHMIR

HCP No.243/2016

Date of decision:15.11.2016

Arif Ahmad Haji

Vs.

State & ors.

Coram:

Hon'ble Mr. Justice Mohammad Yaqoob Mir, Judge

Appearing counsel:

For the Petitioner(s): Maternal uncle of the detenu in person.

For the respondent(s): Mr. B. A. Dar, AAG, vice Mr. R. A. Khan, AAG.

i)	Whether approved for reporting in Journal/Digest:	YES
ii)	Whether approved for reporting in Media/Press:	OPTIONAL

1) Noticing the activities of the detenu prejudicial to the maintenance of public order, District Magistrate, Anantnag, vide order No.03/DMA/PSA/DET/2016 dated 04.08.2016, has ordered detention, as a result whereof, Arif Ahmad Haji has been detained and lodged in District Jail, Kathua.

2) Maternal uncle of the detenu, present in the Court, with tears in his eyes, repeatedly made submission that the detenu, a 19 year old boy, is totally innocent, his mother is likely to turn mad, further added that he has never indulged in any activity, at random he has been arrested and shown involved in two cases regarding which he has already

been released on bail by the court of competent jurisdiction.

3) Order of detention regarding activities prejudicial to the maintenance of public order has to be only for three months which period has expired on 4th November, 2016, whether thereafter it has been extended or not, is not brought to the notice of the court.

4) Be that as it may. The order of detention is otherwise liable to be quashed primarily on two grounds, one non-application of mind and second infringement of right of representation against the detention.

5) In the ground of detention it is nowhere mentioned as to whether detenu was released in connection with two cases registered as FIR No.51/2016 and 52/2016 P/S Aishmuqam, when he has been released. That would show that all facts were not brought before the detaining authority. Why prosecution has not resisted grant of bail or why application has not been filed for cancellation of bail were also the factors to be looked into by the

detaining authority before deriving subjective satisfaction for ordering detention.

6) The grounds of detention, in fact, is copy of the dossier with small inter-play of works which again shows that the detaining authority has not applied its mind. Formulation of grounds is imperative for deriving satisfaction so as to pass the preventive order.

7) Records reveal that all the material forming base for the grounds of detention has not been furnished to the detenu, as a result whereof he has been disabled from making effective representation as against the detention which in turn negates the right guaranteed under Article 22 of the Constitution.

In this view I am fortified by the judgment **Sophia Ghulam Mohammad v. State of Maharashtra (AIR 1990 SC 3051)**, wherein it has been held:

"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. A representation can 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 are supplied to the person detained, in his own language

8) Viewed thus, order of detention In the backdrop of the factual and legal position as noticed, only conclusion in-keeping therewith is that the order of detention bearing No.03/DMA/PSA/DET/2016 dated 04.08.2016, which was for three month cannot now sustain any more, shall, accordingly stand quashed. Detenu is directed to be released forthwith provided he is not required in connection with any other case.

9) Disposed of as above.

**Srinagar
15.11.2016**
"Mohammad Altaf"

**(Mohammad Yaqoob Mir)
Judge**