

HIGH COURT OF JAMMU & KASHMIR
AT SRINAGAR

HCP No.170/2016

Date of decision:**19-11-2016**

Shahnawaz Ahmad Bhat

Vs.

State of J&K & others

Coram:

Hon'ble Mr. Justice Mohammad Yaqoob Mir

Appearing counsel:

For the Petitioner(s): Mr. M. Amin Khan
For the respondent(s): Mr. R. A. Khan, AAG.

i) Whether to be reported in Digest/Journal: **YES**

ii) Whether to be reported in Press/Media: **OPTIONAL**

1) Noticing the activities of the detenu prejudicial to the maintenance of public order, District Magistrate, Anantnag, vide order No.39/DMS/PSA/2016 dated 17.08.2016, has ordered his detention, as a result whereof, has been detained and lodged in District Jail, Kathua.

2) Order of detention regarding activities prejudicial to the maintenance of public order has to be initially a period of three months which has expired on 17.8.2016, whether thereafter it has been extended or not, is not brought to the notice of the court.

3) Learned counsel for the petitioner contended that the detenu has been deprived of making effective representation in view of non-furnishing of the copy of

the dossier and other material forming base for his detention, which appears to have prevailing force because respondents have not produce the record in order to negate the submission.

4) One of the requirements for deriving subjective satisfaction is to formulate the grounds of detention which shall form basis for passing the order of detention. In the order impugned as passed by District Magistrate, it is recorded; "*Whereas on the basis of dossier detention placed before me by the Superintendent of Police, Shopian, vide his No.CS/D-1/2016-6092 dated 17.08.2016, I am satisfied...*", which shows that Detaining Authority has not sifted the material for preparation of the grounds of detention. Copy of the grounds of detention is placed on file but not referred to in the order of detention. Non-application of mind is clear, therefore, an invasion to personal liberty was impermissible.

5) Right to liberty as guaranteed under Article 21 of the Constitution can be negated in view of Article 22(3) (b) of the Constitution, which is an exception to Article 21 of the Constitution. The said exception authorizes the concerned authorities to pass preventive detention but while passing such orders, the authority concerned

is required to be alive to the personal liberty of a person. Such power has to be exercised in a manner, which may not have the trappings of depriving a person of the guaranteed liberty. In short, an exceptional case has to be made out for passing the preventive order, even then procedural safeguards are to be respected. Breach in observing the procedural safeguards gives right to the detenu to claim that he has been prejudiced as his liberty has been curtailed de horse the law. In this connection it shall be quite relevant to quote paras 37 and 38 of the judgment rendered by a Bench of three Hon'ble Judges of the Hon'ble Apex Court in case captioned ***Rekha Vs. State of Tamil Nadu and anr***, reported in **(2011) 5 SCC 244**:

“37. As observed in Abdul Latif Abdul Wahab Sheikh v. B. K. Jha vide SCC para 5:(SCC p.27)

“5....The procedural requirements are the only safeguards available to a detenu since the court is not expected to go behind the subjective satisfaction of the detaining authority. The procedural requirements are, therefore, to be strictly complied with if any value is to be attached to the liberty of the subject and the constitutional rights guaranteed to him in that regard.”

As observed by Mr. Justice Douglas of the United States Supreme Court in Joint Anti-Fascist Refugee Committee v. McGrath:(US p. 179)

“...It is procedure that spells much of the difference between rule of law and rule of whim or caprice. Steadfast adherence to

strict procedural safeguards are the main assurances that there will be equal justice under law".

38. Procedural rights are not based on sentimental concerns for the detenu. The procedural safeguards are not devised to coddle criminals or provide technical loopholes through which dangerous persons escape the consequences of their acts. They are basically society's assurances that the authorities will behave properly within rules distilled from long centuries of concrete experience".

6) The cumulative effect of the aforesaid position leads to only one conclusion i.e. the order of detention impugned is not valid, as such, is quashed. The detenu is ordered to be released from the preventive custody forthwith provided he is not required in connection with any other case

7) Disposed of as above.

**(Mohammad Yaqoob Mir)
Judge**

**Srinagar
19.11.2016**

"Mohammad Altaf"