

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

**Case No:** HC (P) 395/2016

**Dated :** 27th .Dec.2016

**MASRAT ALAM BHAT**

**VERSUS**

**STATE & ORS**

**ORDER SHEET**

**CORAM:**

**HON'BLE** MR. JUSTICE MUZAFFAR HUSSAIN ATTAR- JUDGE

*Whether approved for reporting :* **yes**

**FOR THE PETITIONER/s :** MR. M.A.QAYOOM

**FOR THE RESPONDENT/s:** MR. ASIF MAQBOOL, GA

**(ORAL)**

1/ Order of detention, bearing No. 85/DMB/PSA/2016 dated 01<sup>st</sup> September, 2016, has been passed by respondent No.2, District Magistrate, Baramulla, in exercise of powers conferred upon him by section 8 of J&K Public Safety Act, 1978, on the principal ground that the detainee, while being in custody of the State authorities, has, allegedly, met some persons in the jail and gave them directions for making the ongoing agitation successful. On these allegations, case F.I.R No. 258/2016 u/s 13 ULAP Act stands registered against him in police station Baramulla on 30<sup>th</sup> August, 2016.

2/ Respondents have filed the Reply Affidavit.

3/ Mr. Qayoom, learned counsel appearing for the detainee, submitted that in view of the law laid down by Hon'ble the Supreme Court in case titled Kshetra Gogoi – petitioner **versus** State of Assam – respondents, reported in AIR 1970 SC 1664, the impugned order of detention deserves to be set aside. Learned counsel, while referring to grounds of detention, further submitted that the Detaining Authority has referred to the earlier activities, alleged against the detainee, in respect of which he was already detained several times and detention order(s) to that effect was quashed by the Court. Learned counsel submitted that while being in State custody,

it cannot be said, in law, that the detainee indulged in activities, which were prejudicial to the security of State. Mr. Qayoom, more particularly, invited attention of the Court to paragraph (4) of the aforesaid judgement.

**4/** Learned counsel for the petitioner also submitted that the bail Application, filed by the detainee, in respect of the F.I.R, in which he was taken into custody, was rejected by the Court of competent jurisdiction and no further bail Application was filed by him. Learned counsel further submitted that the detainee has been shown to be involved in many F.I.Rs and no bail has been granted in any of those F.I.Rs. Learned counsel also submitted that in view of this fact situation, there was no requirement of detaining the detainee under the Preventive Detention Laws. Learned counsel, in support of his contention, referred to and relied upon judgement of Hon'ble the Supreme Court in case titled Rekha – Appellant **versus** State of Tamil Nadu – respondents, reported in (2011) 5 SCC 244. Learned counsel, specifically, referred to paragraphs 21, 23, 26 and 27 of the said judgement to further buttress his argument that detention of the detainee is illegal. Learned counsel also referred to the judgement of this Court in the case of petitioner – detainee himself, in which case, his earlier detention was held to be illegal by the Court vide its judgement dated 29<sup>th</sup> December, 2015, which case is reported as 2016(1) JKJ 678 (HC).

**5/** Learned counsel further submitted that the entire material, upon which the Detaining Authority has relied for ordering detention of the detainee, has not been supplied to the detainee. Learned counsel also referred to the judgement of this Court reported as 2005 SLJ 251. He, accordingly, prayed for allowing of this writ petition.

6/ Mr. Asif Maqbool , learned State counsel, submitted that the activities of the detinue have, all along, been of such a great magnitude, which have the potential of adversely affecting the security of the Sate. Learned counsel referred to the grounds of detention to substantiate his argument. He, in support of his contentions, also referred to and relied upon judgement of Hon'ble the Supreme Court in case titled Secretary to Government Public (Law and Order-F) and another **versus** Nabila and another, reported as 2015 Cri, L.J 1364. Learned counsel, with permission of the Court, read the said judgement in its entirety. He, accordingly, prayed for dismissal of the writ petition.

7/ In response to the arguments of learned counsel for the respondents, Mr. Qayoom, learned counsel for the petitioner, referred to paragraph 34 of the judgement, cited at bar by the State counsel, itself.

8/ Paragraphs 6 to 11 of the judgement, reported in 2016(1) JKJ 678 (HC) are taken note of :

*“6/ Ever since, the creation of human beings, in order to allow them space for developing their moral, spiritual, mental, material and physical faculties, their conduct has been regulated by rules and norms. The conduct of human beings is being regulated by divine laws as also by man made laws. In order to attain spiritual, moral, mental and material heights, maintenance of peace in the society becomes imperative.*

*7/ Every citizen is responsible to maintain the peace in the society.*

*8/ It is said that no virtue is absolute nor even freedom. The rights of an individual in the society are regulated by norms. No individual has rights to infringe the rights of another individual/citizen.*

*9/ Liberty of an individual is his basic human right which is recognized by Article 21 of the Constitution of India. Article 21 of the Constitution of India provides that no person shall be deprived of his life and liberty except in accordance with the procedure established by law. The person, thus, can be deprived of his liberty by Authority of law alone and that too when same is required for the overall welfare of the society. If an allegation is made against a person, then Investigating Agency conduct investigation and on prima-facie establishment of charges file report before court of*

competent jurisdiction. The Court tests the veracity of allegations made in police report during the trial of the case.

10/ The Constitution in terms of Article 22 has yet recognized another mode of depriving a person of his liberty that is by detaining him under the preventive detention laws. These laws are made to prevent a person from committing the penal offences. These preventive laws are made for ensuring maintenance of security of the State as also the public order. In terms of preventive detention laws, the allegations made against a person, on which, he is sought to be detained, are not being tested by conducting the investigation in those allegations nor they are subjected to scrutiny of a regular court.

11/ For detaining a person under preventive detention laws, utmost care has to be taken by the detaining Authority in ordering for detention of a person. The activities of the person must be such, which, in the overall interest of society, would require him to be detained under preventive detention laws. The preventive detention laws are exception to the normal rule of booking a person for having committed some penal offences as in the later case the allegations are to be first investigated and thereafter tested on the anvil of trial by the court of law. As already stated same is not the position in respect of a person who is detained under preventive detention laws. The Authority can invoke preventive detention laws, thus, only in rare and extreme circumstances. The preventive detention laws cannot be pressed into services in a routine manner. The democratic societies frown upon preventive detention laws, as also their frequent invocation."

(Emphasis supplied)

9/ The democratic societies not only swear but live by democratic values and principles. Even in the face of extreme provocations, the laws of the land are to be implemented. Laws possess unique quality, in as much as, they, even at times, protect those who break them. Thus, they prove to be better than many human beings.

10/ True it is that breach of laws adversely affect the rights of other members of the society, for whose benefit those laws are framed. When a person commits an offence, he is being tried in a Court of law and on successful completion of trial, he is punished in accordance with law by the Court of competent jurisdiction. The punishment inflicted, thus, acts as a deterrent for other members of the society to commit the offence. Preventive Detention Laws are not operating in the manner the other criminal laws are operating.

Preventive Detention Laws arm the State and its authorities to take a person into preventive custody. This is being done to achieve twin purpose, viz. to prevent an individual, who is taken into preventive custody, from committing an offence ; and to ensure that the members of the society are protected from the adverse impact of the apprehended criminal acts of that individual. Preventive Detention Laws, however, cannot be a substitute for the criminal laws, wherein a person, on the basis of allegations leveled against him, as already stated, is being put on trial in a Court of law. Truth or otherwise of the allegations made against a person is being tested during trial of the case in a Court of law. A person, who is charged for commission of offence, gets complete opportunity to defend himself. However, in the matter of Preventive Detention Laws, a person is not put on trial, thus, denied the right to disprove the charges leveled against him.

**11/** In order to succeed before the Court of law, in upholding the order of detention, the State and its authorities are dutybound to show that they have, faithfully and honestly, followed the constitutional mandate and provisions of the Statute.

**12/** Reverting to the facts of this case, what has become basis for passing the impugned order of detention, is that on 11<sup>th</sup> August, 2016, four persons visited District Jail, Baramulla and requested the authorities for having a meeting with an inmate, Shri Assadullah Parray S/O Abdul Gani R/O Kathpora, Hajin, who is said to be affiliated with APHC “G” group. It is alleged in the grounds of detention that instead of meeting the aforesaid person, the visitors met the detinue, who, allegedly, advised them to activate the workers for a more visible and prominent role in the ongoing turmoil. It is in this connection that case F.I.R No. 258/2016 dated 30<sup>th</sup> August, 2016 has been registered at police station, Baramulla.

**13/** Hon'ble the Supreme Court, in Gogoi's case supra, at its paragraph (4), has, in almost identical circumstances, ruled that the ground that a person, while in State custody, maintained links with people, who had gone underground, cannot become basis for ordering his detention. It has been ruled that "*facts arising during the period of detention, are, therefore, not relevant when applying the provisions of section 13(2)*". The impugned detention, in view of the judgement passed in aforementioned case is rendered illegal.

**14/** Even otherwise, record would show that in support of case F.I.R No. 258/2016 dated 30<sup>th</sup> August, 2016, registered at police station, Baramulla, statements of four police personnel, who were posted at Sub Jail Baramulla, have been recorded. Their statements would show that Shri Assadullah Parray was lodged in Bark No.7, whereas the detainee was lodged in Bark No.8. The allegation in the FIR and statements of all these police personnel would, prima facie, show that all the police authorities, posted at Sub Jail Baramulla, have failed to discharge their duties in accordance with law because it was within the competence and authority of these police personnel to ensure that the visitors would meet only Shri Assadullah Parray, for meeting with whom they had sought permission and not the detainee. The record does not show whether those persons have been arraigned as accused in F.I.R No. 258/2016 dated 30<sup>th</sup> August, 2016. No material is placed on record to suggest that all those persons, after allegedly meeting the detainee, did actually indulge in such activities, which would either adversely impact security of the State or the public order. The record further does not show that what actually transpired between the detainee and those four persons in the alleged meeting they had with each other in the jail premises.

**15/** No reasonable person, in such circumstance, would even, for the purposes of taking a person into preventive custody, rely upon such material as the said act deprives a person of his liberty, which is guaranteed by article 21 of the Constitution of India.

**16/** The impugned detention order is rendered illegal on yet another ground as well, viz. the bail Application of the detainee was rejected by the Court of competent jurisdiction. He continued to languish in the State custody. The Detaining Authority, in this fact situation, could not assume that there is every likelihood of the detainee being released on bail.

**17/** The detention order is also rendered illegal on the further ground that the Detaining Authority has stated therein that the Senior Superintendent of Police (SSP), Baramulla, vide his communication dated 31<sup>st</sup> August, 2016, produced the material such as “*dossier and other connected documents*”. The record would show that the detainee has been served with copy of order of detention and the ground of detention comprising of four leaves. The “*other connected documents*” to which reference is made in the order of detention, have neither been spelt out in the detention order nor in the grounds of detention and even record does not show what are those “*other connected documents*”. In the matter of depriving a person of his liberty, guaranteed by article 21 of the Constitution of India, it was the duty of the Detaining Authority to reveal what were the “*other connected documents*” before the Detaining Authority, upon which he relied while passing the detention order. He was dutybound to provide copy of those documents to the detainee to enable him to make an effective representation against his detention, which is the mandate contained in article 22(5) of the Constitution of India. The detainee has been deprived from making an effective representation

against his order of detention by not providing him all the requisite documents. While dealing with similar infirmity, Hon'ble the Supreme Court in case titled Wasi-ud-Din Ahmad versus District Magistrate, Aligarh, UP & others reported in AIR 1981 SC 2166 has held that if the material on the basis of which a person is detained under preventive detention laws, is not supplied to him, then the grounds of detention are rendered incomplete, affecting the valuable constitutional right of the detenu. Relevant paragraph of the judgement supra is taken note of :

*"13. This court has forged certain procedural safeguards in the case of preventive detention of citizens. The constitutional imperative indicated in Art. 22(5) are twofold: (1) the detaining authority must, as soon as may be, that is, as soon as practicable, after the detention, communicate to the detenu the grounds on which the order of detention has been made, and (2) the detaining authority must afford the detenu the earliest opportunity of making a representation against the order of detention. The right to make a representation implies what is means the right of making an effective representation. Where certain documents are relied upon in the grounds of detention the grounds would be incomplete without such documents. The detenu, therefore, has right to be furnished with the grounds of detention along with the documents relied upon.*

**18/** In the Secretary to Government Public (Law and Order-F) and another's case supra, the High Court had quashed the detention order on the sole ground that the detention order was passed on one single incident, alleged against the detenu therein. Hon'ble the Supreme Court ruled that even one single incident can become ground for ordering the detention of the detenu. In the case on hand, the detention order of the detenu is not declared invalid just because there was only one ground available to the Detaining Authority but it



is held to be illegal in view of the elaborate discussion made in this judgement.

**19/** For the above stated reasons, this writ petition is **allowed** in the following manner :

*“By issuance of writ of Certiorari, order of detention bearing No. 85/DMB/PSA/2016 dated 01<sup>st</sup> September, 2016, passed by respondent No.2, District Magistrate, Baramulla, is **quashed** with further direction to the respondents to release the person of shri Masrat Alam Bhat S/O Abdul Majeed Bhat R/O Zaindar Mohalla, Srinagar, Kashmir, forthwith from preventive custody.”*

**20/** Registry to return the record of the case to the learned State counsel.

**21/** **Disposed** of along with CMPs.

~~TARIQ~~ Mota  
~~SRINAGAR~~  
27-12-2016

(MUZAFFAR HUSSAIN ATTAR) J

