

HIGH COURT OF JAMMU AND KASHMIR
AT SRINAGAR

HCP No.51/2017

Date of decision:29.09.2018

Manzoor Ahmad Najar v. State of J&K and anr.

Coram:

Hon'ble Mr Justice Rashid Ali Dar, Judge.

Appearance:

For the Petitioner(s): Mr. Mir Shafaqat Hussain, Adv.

For the Respondent(s): Mr. Saad Rafi Ganai, GA.

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| i) | Whether approved for reporting in Law journals etc.: | Yes/No |
| ii) | Whether approved for publication in press: | Yes/No |
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1) Initially pursuant to detention order No.DMB/PSA/12 dated 19.05.2017, Manzoor Ahmad Najar, was taken into preventive. The said detention order has been quashed vide judgment dated 21.12.2017 passed in HCP No.164/2017. It is being projected that the detinue was not released but instead has again been taken into preventive custody vide detention order No. DMB/PSA/06 of 2018 dated 27.02.2018 and lodged in Central Jail, Kotebhalwal, Jammu. The said order of detention is under challenged in the instant petition on the grounds enumerated therein.

2) Contention of the learned counsel for the petitioner is that the grounds of detention which formed base for the earlier orders of detention could not

be made base for the impugned order of detention. Once the detention orders are quashed, whatever grounds formed base, in law, cannot be used for passing fresh order of detention unless fresh facts, would emerge after release of the detainee from the custody warranting detention but when the detainee is never released, there could be no new facts so as to form base for the grounds of detention. In this connection, learned counsel placed reliance on the judgments reported in **AIR 1974 SC 1155** and **AIR 1974 SC 432**. In the said judgments the principle, as has been laid down, is that fresh order of detention on same grounds on which earlier order was passed, is illegal. It has also been settled that fresh detention can be ordered only on fresh facts.

3) Learned counsel for the petitioner further contended that the detainee has been deprived of making an effective representation in view of non-furnishing of the material forming base for his detention, which appears to have prevailing force. The respondents despite opportunities have not produced the detention records to show that the material which has been considered by the detaining authority while passing the detention order has been furnished to the detainee which would have enabled him to file an effective representation as against the detention, thus it negates the right guaranteed under Article 22(5) of the Constitution. In this view I am fortified by the judgment *Sophia Ghulam Mohd. Bham v. State of Maharashtra and others* (AIR 1999 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 detenueto 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 detainue 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.”

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

5) Detention record as produced be returned to the learned counsel for the respondents.

6) Disposed of as above.

(Rashid Ali Dar)
Judge

Srinagar
29.09.2018
“Bhat Altaf, PS”