

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

HCP No. 558/2016

Date of Order: 22/03/2017

Shakeel Ahmad Bhat Vs. State of JK & Ors.

Coram:

Hon'ble Mr. Justice Mohammad Yaqoob Mir, Judge.

Appearing counsel:

For Petitioner (s):	Mr. Tufail, Adv. vice Mr. Nasir Qadiri, Adv.
For Respondent (s):	Mr. M. A. Wani, AAG.

i) Whether to be reported in **Journal/Digest**: Yes/No

ii) Whether to be reported in **Media/Press**: Yes/No

Oral:

1. Vide Order No. 12/DMP/PSA/2016 dated 30/07/2016, detinue has been detained as his activities were noticed to be prejudicial to the "security of the State". The period of six months as initially fixed has expired on 30th January 2017. Whether thereafter the period has been extended or not is not known, neither learned AAG could apprise the Court about the same.

2. Learned counsel for the petitioner rightly pointed out that the lack of application of mind in passing the order of detention is quite apparent from the face of the record. While buttressing his submission invited attention of the Court towards the grounds of detention

wherein learned Magistrate while formulating the grounds of detention has recorded as under:

“The activities as projected in the foregoing paras of the instant dossier are highly prejudicial to State and maintenance of the public order.”

3. Whereas in the order of detention, impugned dated 30th July 2016, it has been mentioned that “the Magistrate is satisfied that there are sufficient grounds which persuaded him to prevent the detenue from acting in any manner “prejudicial to the security of the State”. It appears that the learned Magistrate himself has not been certain as to whether activities of the detenue were prejudicial to the “maintenance of the public order” or “the security of the State”. It appears that the order of detention has been passed in a casual manner which is impermissible because right to liberty is precious.

4. Non-application of mind is further exposed by the fact that the learned Magistrate in the order of detention impugned has reflected as:

“Whereas on the basis of the dossier placed before him by the Superintendent of Police, Pulwama”.

This means he has not done what he was required

to do. He had to scrutinize the material collected and based on that he had to formulate the grounds of detention which would form basis for the order of detention.

5. Invasion to the personal liberty may be permissible under certain cases when there is threat to maintenance of public order or to security of State etc, but at the same time, authorities are required to take care of the safeguards so as to avoid infringement of guaranteed right under Article 21 as well as protections available under Article 22 Constitution of India.

6. Viewed thus, the impugned order dated 30-07-2016, is not sustainable, same is quashed. Detenue shall be released forthwith, provided he is not required in any other case.

Disposed of as above.

(Mohammad Yaqoob Mir)
Judge

SRINAGAR
22nd March 2017
"Aasif"