

HIGH COURT OF JAMMU & KASHMIR
AT SRINAGAR

HCP No.60/2017	Date of decision: 08-06-2017
Mohammad Amin Parray	
Vs.	
State of J&K & ors.	

Coram:

Mr. Justice Mohammad Yaqoob Mir, Judge

Appearing counsel:

For the Petitioner(s):	Mr. M. A. Qayoom.
For the respondent(s):	None.

i)	Whether to be reported in Digest/Journal:	YES/NO
ii)	Whether to be reported in Press/Media:	YES/NO/OPTIONAL

- 1.** Earlier order of detention bearing No.41/DMS/ PSA/2016 dated 17.08.2016, has been quashed vide judgment dated 31.12.2016, rendered in HCP No.424/2016. Impugned order of detention bearing No.84/DMS/PSA/2017 has been passed on 21.01.2017. No fresh material has been brought to the notice of the Court which could be taken as a persuading factor for the detaining authority in ordering fresh detention. Perusal of the records suggests that whatever grounds were available for passing earlier detention order, same have been made base for passing fresh order of detention impugned dated 21.01.2017
- 2.** It is settled that when an order of detention is quashed, the material which formed base for quashed order of detention can't form base for ordering fresh detention, unless, of course, some new material is collected by the investigating agency which would warrant preventive

custody. On this count, order of detention impugned is bad.

3. Learned counsel for the petitioner further highlighted various grounds while seeking quashment of the order impugned, star ground is that the detenue has been disabled from making an effective representation by not supplying the material forming base for the grounds of detention and the consequent order of detention. Further added that the detenue is illiterate not able to understand English language. The grounds of detention are in English language besides being in a hyper technical language, therefore, detenue could not understand the same.
4. There is nothing on record to suggest that the material forming basis for detention and the translated copy of grounds of detention has been supplied to the detenue, therefore, infringement of right guaranteed under Article 22(5) of the Constitution.
5. The Hon'ble Apex Court in the judgment rendered in the case of **"Sophia Gulam Mohd. Bham v. State of Maharashtra & ors"** (AIR 1999 SC 3051), has held as under:

"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 detenue 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 detenue 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.”

- 6.** In paras 27 and 28 of the judgment captioned **Thahira Haris etc. etc. Vs. Government of Karnataka & Ors**, reported in **AIR 2009 Supreme Court 2184**, Hon’ble Apex Court has held as under:

“27. There were several grounds on which the detention of the detenue was challenged in these appeals but it is not necessary to refer to all the grounds since on the ground of not supplying the relied upon document, continued detention of the detenue becomes illegal and detention order has to be quashed on that ground alone.

28. Our Constitution provides adequate safeguards under clauses (5) and (6) of Article 22 to the detenue who has been detained in pursuance of the order made under any law providing for preventive detention. He has right to be supplied copies of all documents, statements and other materials relied upon in the grounds of detention without any delay. The predominant object of communicating the grounds of detention is to enable the detenue at the earliest opportunity to make effective and meaningful representation against his detention.

- 7.** It shall also be quite apposite to quote following para from the judgment rendered by the Hon’ble Apex Court in the case captioned “**Smt. Raziya Umar Bakshi Vs. Union of India**” (*AIR 1980 SC 1751*):

“.....In case of Hadibandhu Das v. District Magistrate, Cuttak & Anr. [1969 (1) SCR 227], it was held that merely oral explanation of an order without supplying him a translation in a script or language which the detenu understood amounted to a denial of right of being communicated the grounds. In the instant case, it is not even alleged in the affidavit of Mr. Shah that any translation or translated script of the grounds was furnished to the detenu.”

8. In “**Nandoli Mohamed Rafeeq Vs. Union of India and others**” reported in (2004) 12 SCC 218, Hon’ble Supreme Court held that “the document was supplied to the detinue to facilitate his right to make effective representative against order of detention, the document being in language not known to him, his continued detention was violative of Article 22(5) as he has been deprived of his right to make an effective representation.

9. The constitutional philosophy of personal liberty is an idealistic view, the curtailment of liberty for reasons of States' security, public order, disruption of national economic discipline etc. being envisaged as a necessary evil to be administered under strict constitutional restrictions. In **Smt. Ichhu Devi Choraria v. Union of India & ors** (AIR 1980 SC 1983), this judicial commitment was highlighted in the following words:

"The Court has always regarded personal liberty as the most precious possession of mankind and refused to tolerate illegal detention, regardless of the social cost involved in the release of a possible renegade"

"This is an area where the Court has been most strict and scrupulous in ensuring observance with the requirement of the law and even where a requirement of the law is breached in the slightest measure, the Court has not hesitated to strike down the order of detention".

10. Personal liberty protected under Article 21 of the Constitution of India is so sacrosanct and so high in the scale of constitutional values that it is the obligation of the detaining authority to show that the impugned detention meticulously accords with the procedure established by law. 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, still then procedural safeguards are to be respected. Breach in observing the procedural safeguards gives right to the detainee to claim that he has been prejudiced as his liberty has been curtailed *de hors* the law. In this regard, support can be had from 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**.

11. In view of the facts of the present case and the law laid down by the Hon'ble Apex Court as quoted hereinabove, the order of detention impugned No.84/DMS/PSA/2017 dated 21.01.2017 is unsustainable, as such, quashed. Detenue, namely, Mohammad Amin Parray S/o Ghulam Nabi Parray R/o Kumdalan Tehsil & District Shopian is directed to be released from the preventive detention forthwith provided he is not required in connection with any other case.

12. Disposed of as above.

(Mohammad Yaqoob Mir)
Judge

Srinagar
08.06.2017
"Bhat Altaf"