

HIGH COURT OF JAMMU AND KASHMIR
AT SRINAGAR

HCP No.03/2018

Date of decision:27.04.2018

Ajaz Ahmad Bhat

v.

State of J&K and anr.

Coram:

Hon'ble Mr Justice Mohammad Yaqoob Mir, Judge.

Appearance:

For the Petitioner(s): Mr. Wajid Haseeb, Adv.

For the Respondent(s): Mr. Asif Maqbool, 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 |

1. Challenge in this petition is to the order No.156/DMB/PSA/2017 dated 26.12.2017, passed by District Magistrate, Baramulla-respondent No.2 herein, whereby Ajaz Ahmad Bhat (hereinafter referred to as the detainee), has been taken into preventive detention and lodged in Central Jail, Kotbuhulwal. By now detainee is in preventive custody for about four months.

2. Learned counsel for the petitioner highlighted various grounds while seeking quashment of the order impugned, star ground is that the detainee has been disabled from making an effective representation by not supplying him the translated copies of the ground of detention which are in English language besides being in a hyper technical language which the detainee is not in a position to understand being illiterate.

3. Submission has a prevailing force as the record as produced do not suggest that the translated copies of grounds of detention have been supplied to the detainee, therefore, infringement of right guaranteed under Article 22(5) of the Constitution. The service of the grounds of detention on the detainee is a very precious constitutional right and the object behind the same is to enable the detainee to file an effective representation. It will be an empty formality to supply the grounds of detention to the detainee unless he is in a position to understand the same. In my view I am fortified by the judgment rendered by the Hon'ble Apex Court in the case “**Chaju Ram Vs. The State of Jammu & Kashmir**” reported in **AIR 1971 SC 263**. Following portion from para 9 of the judgment shall be quite apposite to be quoted:

“....The detenu is an illiterate person and it is absolutely necessary that when we are dealing with a detenu who cannot read or understand English language or any language at all that the grounds of detention should be explained to him as early as possible in the language he understands so that he can avail himself of the statutory right of making a representation. To hand over to him the document written in English and to obtain his thumb impression on it in token of his having received the same does not comply with the requirements of the law which gives a very valuable right to the detainee to make a representation which right is frustrated by handing over to him the grounds

of detention in an alien language. We are therefore compelled to hold in this case that the requirement of explaining the grounds to the detenu in his own language was not complied with.”

4. It shall also be quite apposite to quote following portions para from paras 3 and 5 of 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*):

“3.....The service of the grounds of detention on the detenu is a very precious constitutional right and where the grounds are couched in a language which is not known to the detenu, unless the contents of the grounds are fully explained and translated to the detenu, it will tantamount to not serving the grounds of detention to the detenu and would thus vitiate the detention ex-facie.”

5.....in case where the detaining authority is satisfied that the grounds are couched in a language which is not known to the detenu, it must see to it that the grounds are explained to the detenu, a translated script is given to him and the grounds bear some sort of a certificate to show that the grounds have been explained to the detenu in the language he understands.”

5. In “**Powanammal Vs. State of T. N. and another**” reported in (1999) 2 SCC 413, Hon’ble Supreme Court has observed as under:

“.....The amplitude of the safeguard embodied in Article 22(5) extends not merely to oral explanation of the grounds of detention and the material in support thereof in the language understood by the detenu but also to supplying their translation in script or language which is understandable to the detenu. Failure to do so would amount to denial of the right of being communicated the grounds and of being afforded the opportunity of making a representation against the order.”

6. 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. 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 horse* 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**.

7. For the stated reasons and the law laid down by the Hon'ble Apex Court, the petition is allowed, and impugned detention order bearing No.156/DMB/PSA/2017 dated 26.12.2017, is quashed. Detenue is directed to be released from the preventive custody forthwith provided he is not required in connection with any other case(s).

8. Detention records as produced, after perusal, stand returned to the learned counsel for the respondents.

(Mohammad Yaqoob Mir)
Judge

Srinagar
27.04.2018
"Bhat Altaf, PS"