

HIGH COURT OF JAMMU AND KASHMIR
AT SRINAGAR

HCP No.227/2018

Date of decision:31.10.2018

Shabir Ahmad Shah

v.

State of J&K and another

Coram:

Hon'ble Mr Justice Rashid Ali Dar, Judge.

Appearance:

For the Petitioner(s): Mr. I. Sofi, Adv.

For the Respondent(s): None.

i)	Whether approved for reporting in Law journals etc.:	Yes/No
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ii)	Whether approved for publication in press:	Yes/No
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1) By the medium of instant petition, petitioner has assailed the validity of order of detention bearing No.05-DMK/PSA of 2018 dated 10.08.2018, passed by District Magistrate, Kupwara, while invoking powers under Section 8 of the J&K Public Safety Act, 1978.

2) Host of grounds have set forth while seeking quashment of the impugned detention order but the star ground is that the grounds of detention is the verbatim copy of the dossier which shows that the grounds of detention have not been formulated by the detaining authority, thus there is non-application of the part of detaining authority.

3) While going through the records available on the file, the submissions appears to have substance. Only word “dossier” is replaced by the word “grounds of detention”, which shows that the detaining authority has not applied its mind.

Formulation of grounds is imperative for deriving subjective satisfaction so as to pass the preventive order. In the judgment captioned “*Fiaz Ahmad through his Mother Atiqah Begum Vs. State of J&K & anr* (2010(II) S. L. J. 872), while noticing the same position and while relying on the judgment captioned “*Jai Singh & Ors. Vs. State of J&K*” (AIR 1985 SC 764), it was held that there was no due application of mind by the detaining authority in passing the order of detention.

4) 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 and such power shall 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 order of preventing a person from acting in any manner which shall be prejudicial, in the instant case, to the security of the State but while doing so procedural safeguards are to be respected. Breach in observing the procedural safeguards gives right to the detenu to claim that he has been prejudiced as his liberty has been curtailed de hors the law. In this connection it shall be quite relevant to quote paras 37 and 38 of 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:

“37. As observed in Abdul Latif Abdul Wahab Sheikh v. B. K. Jha vide SCC para 5:(SCC p.27)

“5....The procedural requirements are the only safeguards available to a detenu since the court is not expected to go behind the subjective satisfaction of the detaining authority. The procedural requirements are, therefore, to be strictly complied with if any value is

to be attached to the liberty of the subject and the constitutional rights guaranteed to him in that regard.”

As observed by Mr. Justice Douglas of the United States Supreme Court in Joint Anti-Fascist Refugee Committee v. McGrath:(US p. 179)

“...It is procedure that spells much of the difference between rule of law and rule of whim or caprice. Steadfast adherence to strict procedural safeguards are the main assurances that there will be equal justice under law”.

38. Procedural rights are not based on sentimental concerns for the detenu. The procedural safeguards are not devised to coddle criminals or provide technical loopholes through which dangerous persons escape the consequences of their acts. They are basically society’s assurances that the authorities will behave properly within rules distilled from long centuries of concrete experience”.

5) In view of the preceding analysis, petition is allowed and detention order No. 05-DMK/PSA of 2018 dated 10.08.2018 is quashed. Detenue is directed to be set free from the preventive custody, if not required in connection with any other case.

(Rashid Ali Dar)
Judge

Srinagar
31.10.2018
“Bhat Altaf, PS”