

HIGH COURT OF JAMMU AND KASHMIR AT SRINAGAR

Case no. [WP Cri) No. 422/2019]

Reserved on 18th Dec. 2019
Pronounced on 31.12.2019

Ishtiyaq Ahmad Ganie

... Petitioner/detenu

Through: Mr. B.A Tak, adv.

vs.

State of J&K and ors.

... Respondents

Through : Mr. Showkat Naqashbandi, AAG

Coram:

Hon'ble Mr. Justice Ali Mohammad Magrey.

i) Whether approved for reporting: Yes/No.

JUDGMENT

1. Impugned in this Habeas Corpus petition with a prayer for quashment thereof is the detention order no. 67/DMK/PSA/19 dated 24.08.2019, purporting to have been passed by District Magistrate Kulgam, whereunder detenu namely Ishtiyaq Ahmad Ganie s/o Mohammad Akram Ganie R/o Sopat Tehsil Devsar District Kulgam, is under detention.
2. It is submitted that the detenu is doing fruit business he is never involved in stone pelting activities even no FIR has been registered against him ever since. The detenu belongs to a downtrodden family. It is submitted that the detenu is peace loving and law abiding citizen of the soil. It is submitted that he never affiliated in any political or militant related organization which are prejudicial to the security of the State and maintenance of public order. Since nothing is incriminating found against the detenu on the record file which suggests the passing of the impugned detention order. Therefore, the detention order deserves to be quashed.
3. Learned counsel for the petitioner-detenu has chosen to press the only ground for seeking quashment of the detention order though having taken many which has reference to the Detaining Authority not mentioning in

the order that the detenu can make a representation to the Detaining Authority which as per the learned counsel constitute an infraction of valuable constitutional right guaranteed under Article 22(5) of the Constitution of India as also of the right under section 13 of the Jammu and Kashmir Public Safety Act, 1978.

4. On notice, counter affidavit has been filed, wherein, it is submitted that in the circumstances of the case the impugned detention order is well founded in fact and law. Detention record has been produced.
5. Heard learned counsel for the parties, perused the record and considered the matter.
6. The contention raised by learned counsel for the petitioner-detenu with reference to the detaining authority having not mentioning in order about petitioner's-detenu's right to make representation a valuable constitutional right guaranteed under Article 22(5) of the Constitution of India as also of the right under section 13 of the Jammu and Kashmir Public Safety Act, 1978, has substance.
7. The Division Bench of this Court while deciding LPA HC no.43/2017 vide judgment dated 09.06.2017, reported in **2017 (II) SLJ titled "Tariq Ahmad Dar v. State of J&K and ors**, has held as under:

“....it is abundantly clear that non-communication of the fact that the detenu can made a representation to the Detaining Authority, till the detention order is not approved by the Government, would constitute an infraction of a valuable Constitutional right guaranteed under Article 22(5) of the Constitution of India as also of the right under Section 13 of the Jammu and Kashmir Public Safety Act, 1978. Failure of such non-communication would invalidate the order of detention.

8. Since the Detaining Authority has failed to mention in the detention order about the petitioner's right to make representation constitute an infraction of a valuable constitutional right guaranteed under Article 22(5) of the Constitution of India as also of the right under Section 13 of the Jammu and Kashmir P.S Act, 1978, which renders the detention order as invalid and deserves to be quashed.

9. The petition is accordingly, allowed and detention order no. 67/DMK/PSA/19 dated 24.08.2019, purporting to have been passed by District Magistrate Kulgam, under which the detenu namely Ishtiyaq Ahmad Ganie s/o Mohammad Akram Ganie R/o Sopat Tehsil Devsar District Kulgam, is under detention, is quashed, with direction for his release forthwith.
10. The petition stands accordingly disposed of. Detention record be returned to learned Additional Advocate General in open Court.
11. No order as to costs.

(Ali Mohammad Magrey)
Judge

Srinagar
31.12.2019
S.A Hussain,
Secretary

SYED AYAZ HUSSAIN
2019.12.31 12:53
I attest to the accuracy and
integrity of this document