

imran Nabi Bhat Vs. State

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Court : Jammu and Kashmir

Decided On : Apr-03-2004

Judge : Syed Bashir-Ud-Din, J.

Acts : Jammu and Kashmir Public Safety Act, 1978 - Section 8; ;Jammu and Kashmir P.S.Act - Section 13; ;[Constitution of India](#) - Article 22(5)

Appeal No. : HCP No. 85 2003

Appellant : imran Nabi Bhat

Respondent : State

Advocate for Def. : T. Khawaja, GA

Advocate for Pet/Ap. : M.Azim, Adv.

Judgement :

Syed Bashir-Ud-Din, J.

1. Subject Imran Nabi Bhat was detained U/s 8 of J&K; Public Safety Act, 1978 to prevent him from acting in any manner prejudicial to the Security of the State by District Magistrate, Srinagar (respondent No.2) under his order No. DMS/PSA/82 dated 1.11.2002. This order is under challenge in this petition. Though number of grounds are taken to question the validity of detention and the legality of the order, Ld. Counsel for petitioner has taken following lone ground to question the

detention.

2. That the order and grounds of detention is not communicated to the detenu, in as much as, detenu has not been supplied material like FIR, Dossier, seizer memo and other material relied upon by the detaining authority. The detenu has been prejudiced to make an effective and meaningful representation against the detention to the Govt.

3. Counter is filed by detaining authority and the Ld. GA Mr. T. Khawja representing respondents while acknowledging that the material like dossier, FIR & seizer memos etc. is not supplied to detenu with the grounds submits that having regard to the grounds supplied to detenu it is evident that all the material referred in the grounds is incorporated in the memo of grounds itself, thereby detenu is not prejudiced. Detenu cannot complain of non-communication of grounds and impairment of his right to make representation.

Para 1(a) & (c) of the petition reads as under:-

a/ That no order of detention, copy of FIR, dossier, seizure memo or any other material relied upon by the detaining authority has been provided to the detenu which has incapacitated him from making an effective representation;

c/ That no opportunity of making representation has been provided to the detenu against the sorder of detention nor made aware of such right;

4. In counter under para 2(a) & (c) it is stated as under:-

In reply to para (a), it is submitted that material details of the activities carried on by the detenu, which persuaded the detaining authority to issue the impugned order, have been fully narrated in the grounds of detention itself that have been properly served on the detenu. It is submitted that since the grounds of detention contained all the material details, no prejudice has been caused to the detenu in as much as the details given in the grounds of detention were sufficient to enable the detenu to make a representation against the order of detention if he so desired.

Para(c) is denied. Detenu has been informed of his right.

5. Though the detention order is not placed on the record of the petition by either side, however detention order on the detention file produced by Govt. Advocate reads as under:-

Whereas I, Abdul Hamid, IAS District Magistrate Srinagar am satisfied on the basis of records received from SSP Srinagar that with a view to prevent Shri Imran Nabi Bhat S/o Shri Gh. Nabi Bhat R/o Zainder Mohalla Srinagar, from acting in any manner prejudicial to the security of the State it is necessary to do so.

6. Now, therefore, in exercise of the powers conferred by Section 8 of the J&K; Public Safety Act 1978 I District Magistrate Srinagar hereby direct that the said Sh. Imran Nabi Bhat S/o Gh. Nabi Bhat R/o Zainder Mohalla Srinagar, be detained and lodged in Central Jail Kot Bhalwal Jammu.

7. A combined reading of the detention order, grounds and counter averments referred above would fairly show that the detention order is based on record which the detaining authority received from SSP Srinagar and this record is the basis of the grounds of detention. A further look down the grounds reveals that the detenu is stated to be a motivated activist/militant outfit of 'Albader' with alleged record of having taken part in number of incidents of firing and grenade throwing etc. at various places like Lal Chowk, Raj Bagh, Safakadal, Zaindar Mohalla, Nowhatta and Idd gah of the city of Srinagar and that he was arrested in FIR No. 107/02 U/s 302, 427, 120B RPC registered at P/S Shaheed Gunj, Srinagar. Now what is the material and documents on record of the SSP Srinagar considered by the detaining authority the basis of the detention in question, is not mentioned/detailed out. However, detention file shows that the dossier as also FIR and recoveries etc. form part of the said record. It cannot be said that these documents/material is irrelevant or that there is only passing reference thereof in the grounds. Obviously the right of detenu to get the material and documents and the basic facts, the basis of subjective satisfaction of detaining authority as even mandated by Section 13 of J&K; P.S. Act is violated. In fact the fundamental right of the petitioner as enshrined in Article 22(5) of the Constitution is breached.

8. In *Naseer Ahmad Sheikh v. Addl; Chief Secretary Home and Anor.*, Division Bench, to which I was a party (1999 SLJ: 241) observed:-

The grounds of detention give out that the alleged prejudicial activities came to be attributed on the basis of the reports made available to the detaining authority by the concerned SSP.

Nowhere is it pleaded, muchless shown, that the copy/copies of these reports of the police on which the detaining authority based its satisfaction to pass the detention order were supplied/provided to the detenu so as to enable him to make an effective representation against the order.

9. In *Sophia Ghulam Mohd. Bhan v. State of Maharashtra and Ors.* (AIR 1999 SC 3051), the Apex Court in the context of communication of grounds held:-

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 detenu 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 detenu 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.

10. For the aforesaid view of the matter, the detention is vitiated and legally infirm. The impugned detention order No. DMS/PSA//82 dated 1.11.2002 is quashed. Respondents/authority/officer having physical corpus of the detenu Imran Nabi Bhat S/o Gh. Nabi Bhat R/o Zaindfar Mohalla Habbakadal, Srinagar aged---- is directed to set him at liberty and release forthwith provided not required in any other offence, case or matter. Registry to take follow up action.

Copy of this order be given to detenu free of cost.

Record produced by Ld. GA is returned to him in open court. Srinagar

Syed Bashir-ud-din, J.

