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Abdul Rahim Dar Vs. State

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Court : Jammu and Kashmir

Decided On : Apr-03-2004

Judge : Syed Bashir-Ud-Din, J.

Acts : Arms Act - Sections 7 and 25; ;Jammu and Kashmir P.S. Act, 1978 - Sections 8 and 13; ;Constitution of India - Article 22 and 22(5)

Appeal No. : HCP No. 52 2003

Appellant : Abdul Rahim Dar

Respondent : State

Advocate for Def. : M.A. Wani, Dy.AG

Advocate for Pet/Ap. : I. Sofi, Adv.

Judgement :

Syed Bashir-ud-din, J.

1. The subject Abdul Rahim Dar while in punitive custody in FIR No. 21/03 U/s 7/25 Arms Act registered at P/s Ram Munshi Bagh, Srinagar was detained under Section 8 of J&K; P.S. Act, 1978 by District Magistrate, Srinagar under his order No. DMS/PSA/109 of 2003 dated 8.3.2003 pursuant to this order the detenu was actually detained in preventive custody on 16.3.2003.The order and the detention is challanged on number of grounds. However, Ld. Counsel for the petitioner has

confined his submissions to the only ground that the copy of FIR and material referred in order and grounds of detention have not been supplied to detenu, thereby he is prejudiced to make representation against the impugned order.

2. Mr. Wani, Dy AG submits that only the grounds of detention is relied on, Copy of which has been supplied to detenu. FIR and other material has only reference in passing the order. No other material except memo of grunds is relied upon. The detenu is not prejudiced by non-supply of any material whatsoever.

3. Para 3 (iv) of the petition reads as under:-

That from the peklrusal of the grounds of detention it is clear that the respondent No.2 has assumed satisfaction on the basis of the allegations leveled in the FIR referred in the ground of detention. It also appears that there was some other material also before the respondent No.2 while passing the impugned order. Thus the material refrred and relied by the respondent No.2 in the grounds of detention is the basis sfor passing the impugned order. The respondents were bound under law to provide the said material and copies of FIR and seizure memo and record referred and relsied in the grounds of detention of the detenu. The respondents have not provided the copies of the said documents and the material referred and relsied in the grounds of detention which has rendered him unable to make representation muchless effective one against the said order of detention. This has also violated the rights of the detenu as guaranteed to him by law.

4. In counter the detaining authority Dy. Commissioner, Srinagar in reply averes :-

That the detention of the detenu is based on grounds of detention which reflect the activities of the detenu which on the face of it are highly prejudicial to the security of the State and warrante ddetention of the detenue under P.S. Act.

5. That the material in the shape of grounds of detention stands supplied to the detenue and no other material has been relied for detention of the detenu not even FIR which has a passing reference in the grounds of detention.

6. The detention order available on record reads as:-

Whereas I, District Magistrate Srinagar am satisifed on the basis of records received from SSP Srinagar that with a view to prevent Shri Abkldul Rahim Dar @Chacha S/o Shri Gh. Mohd. Dar R/0 Watpora, Bandipora, from acting in any manner prejudicial to the Security of the State it is necessary to do so.

7. A combined reading of the petition and counter averments inconjuction with the contents of detention order, fairly and cogently shows that the satisfaction of the detaining authority District Magistrate, Srinagar for passing the impugned detention order U/s 8 of J&K; P.S. Act is the records he received from SSP Srinagar. The file shows that there is dossier and other record on the file. However by their own showing the respondents have failed to supply the record which includes FIR and other material the basis of detention to the detenu. Once so the detenu is denied basic

8. material on which detention and grounds therefor are based. The detenu cannot be said to have been communicated the grounds of detention within the meaning of Article 22(5) of the Constitution and thereby right to make effective representation is denied. See Sophia Gh. Mohd. Bhan v. State of Maharashtra & Ors. (AIR 1999 SC 3051)

9. In Naseer Ahmed Sheikh v. Addl; Chief Secretary Home and Anor. (1999 SLJ: 241) a Division Bench of this court to which I was a party 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 detntion order were supplied/provided to the detenu so as to enable him to make an effective representation against the order.

10.In the circumstances the detenu cannot be said to have been provided an opporitunity and means to make meaningful and effective representation against the detention to Govt. as guranteed under Article 22 of the Constitution and Section 13 of the J&K; P.S.Act.

11. In the aforesaid view of the matter, the impugned detention order No. DMS/Misc/663-67 dated 8.3.2003 is invalid and therefore, quashed. Respondents/competent authority/officer having physical corpus of the detenu Abdul Rahim Dar S/o Gh. Mohd. Dar R/o Watpora, Bandipora aged x shall set him at libery and release him forthwith provided not required in any case, offence or matter.

12. Copy of the order be provided to detenu free of costs.

Record produced by Ld. Dy.AG Mr. M.A.Wani is returned to him in open court.

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