

Ghulam Mohd. Dar Vs. State

Ghulam Mohd. Dar Vs. State

SooperKanoon Citation : sooperkanoon.com/899001

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 - Section 8; ;[Constitution of India](#) - Article 22(5)

Appeal No. : HCP No. 53 2003

Appellant : Ghulam Mohd. Dar

Respondent : State

Advocate for Def. : T. Khawaja, GA

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

Judgement :

Syed Bashir-ud-din, J.

1. Detenu was arrested on 7.2.2003 in FIR No. 21/03 U/s 7/25 Arms Act registered at Ram Munshi Bagh, Srinagar. He was detained under Section 8 of J&K; P.S.Act, 1978 by District Magistrate, Srinagar under his order DMS/PSA/110 of 2003 dated 8.3.2003. The impugned detention order is challenged notwithstanding number of grounds taken in the petition on the ground that the detenu has not been supplied copy of FIR and other material referred in the order and grounds of detention. In

absence of supply of copies of documents and material relied in the grounds for detention, he has not been able to make effective representation against the order to the Govt, thereby his right under Article 22(5) is violated. It is further alleged that the detenu is not able to understand English language and the only language he understands is Kashmiri language. He was not provided copy of the grounds in Kashmiri language. He was not also made to understand the grounds. Even on this score his right has been impaired by failure to communicate the grounds.

2. Despite repeated opportunities counter has not been filed. It was in this background that on 25.11.2003 respondents were given last opportunity to file counter within four weeks and the Registry put under directions to list the case for hearing thereafter. In absence of counter and that too when despite repeated opportunities there is no return to the rule nisi, uncontroverted assertions made in the petition have to be treated as admitted.

3. In the face of allegations and plea in the petition supported by affidavit that the detention order is illegal, it is incumbent upon the respondents and the detaining authority to show that the detention is valid according to law.

4. In *Mohi-ud-din v. District Magistrate, Beed and Ors.*(AIR 1987 SC 1979), it is observed:-

5. It is enough for the detenu to say that he is under wrongful detention and the burden lies on the detaining authority to satisfy the court that the detention is not illegal or wrongful and that the petitioner is not entitled to the relief claimed. This court on more occasions than one has dealt with the question and it is now well settled that it is incumbent on the State to satisfy the court that the detention of the petitioner/detenu was legal and in conformity not only with the mandatory provisions of the Act, but also strictly in accord with the constitutional safeguards embodied in Art. 22(5).

6. By failure to file counter, the allegation that the subject not having been communicated the ground is denied Opportunity to make representation and thereby violation Article 22(5) of the Constitution, is to be assumed.

7. In the detention record Photostate copy of the detention order with endorsement for communicating the order to detenu on its back shows that the detention order is explained and handed over to the detenu but it does not even show that thumb impression or signature of the detenu is obtained. Besides it is not attested. Its authenticity for drawing presumption as official record is doubtful. Similarly Photostate Copy of the receipt to show that the grounds with material is supplied to the detenu though bearing some thumb impression allegedly attested by Dy. Superintendent Central Jail, is equally suspicious. It is not attested and free from doubt. It also steers in the eye that cutting lines have been drawn on the seal and Signature of Dy. Superintendent and the name of the detenu on the above so called receipt.

8. In such circumstances the least one can say is that the detention of the subject is not shown according to law. The communication of the order and opportunity to file representation against detention to the Govt. is violated. In this view of the matter, detention is bad and is vitiated. The impugned detention order No. DMS/PSA/110 of 2003 dated 8.3.2003 is quashed. Respondents/detaining authority/officer having physical corpus of the detenu Gh. Mohd. Dar S/o Mohd. Subhan Dar R/o Khema Bandipora are/is directed to set him at liberty and release him forthwith provided he is not required in any other case, offence or matter.

Copy of the order be provided to detenu free of cost.

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

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com