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Ab. Hamid Bhat Vs. State and ors.

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Court : Jammu and Kashmir

Decided On : Mar-31-2003

Reported in : 2003(3)JKJ301

Judge : Y.P. Nargotra, J.

Acts : Jammu and Kashmir Public Safety Act, 1978 - Sections 8 and 13; ; Constitution of India - Article 22

Appeal No. : HCP No. 215/2001

Appellant : Ab. Hamid Bhat

Respondent : State and ors.

Advocate for Def. : M.A. Rathore, AAG

Advocate for Pet/Ap. : G.N. Shaheen, Adv.

Judgement :

Y.P. Nargotra, J.

1. The detenue Abdul Hamid Bhat was arrested on 5the of May, 2001 in connection with FIR No.38/2001 for commission of the offences Under Section 3/25 Indian Arms Act on the allegations that he was active member of militant organisation operation Balakot of JHM; he has obtained training in handling

sophisticated weapons in POK and on being apprehended one Chinese pistol was recovered from his possession.

2. The detaining authority considered detenue's activities detrimental to the interest and security of state so passed detention order No. 16 DMP/ 2001 dated 21.6.2001 under Section 8 of Public Safety Act. The detention order was confirmed on 29.6.2001 and on 4.7.2001 the detenue was detained in preventive custody. On the same date grounds of detention in English were supplied to him after being explained to him in Urdu and Kashmiri as per the stand of the respondents.

3. Through this H.C. petition the detention order has been challenged on various grounds but in the course of arguments ld.Counsel for the petitioner has pressed into service only the grounds; one, he had not applied for bail so there was no prospect of engaging in prejudicial activities but without considering this aspect the detention order was passed; two, that the grounds of detention were not supplied to the detenue in the language which he understands. Let us proceed to consider the grounds of attack urged by the ld.Counsel for the petitioner in AIR 1990, Supreme Court which has been held:-

'An order for detention can be validly passed against a person custody and for that purpose it is necessary that the grounds of detention must show that (i) the detaining authority was aware of the fact that the detenue is already in detention; and (ii) there were compelling reasons justifying such detention despite the fact that the detenue is already in detention. The expression 'compelling reasons' in the context of making an order for detention of a person already in custody implies that there must be cogent material before the detaining authority on the basis of which it may be satisfied that (a) the detenue is likely to be released from custody in the near future, and (b) taking into account the nature of the antecedent activities of the detenue, it is likely that after his release from custody he would indulge in prejudicial activities and it is necessary to detain him in order to prevent him from engaging in such activities.'

4. It is the likelihood of the release of the detenue on bail is one of the factors which is required to be taken into consideration before passing the detention order

Under Section 8 of Public Safety Act against a person who is already in the custody of the Police. To contemplate such situation it is not necessary that the detenue should have applied for bail. The satisfaction to the fact that detenue was likely to be released on bail. In my opinion can be drawn from the nature of the offence in connection with which the detenue is in the custody. If the offence is of such a nature, in which possibility of release on bail cannot be ruled out, the satisfaction that detenue is likely to be released can be validly drawn by a detaining authority. In the present case the detenue was in custody of the Police for the commission of offence Under Section 3/25 Indian Arms Act and in the face this charge the possibility of release of the detenue on bail cannot be ruled out. Therefore in my view the first ground of challenge urged by the counsel for the petitioner has no merit.

5. Next ground taken by the Ld. Counsel to challenge the authority of the detention order is that he was not supplied the grounds of detention in the language which he understands. In AIR 1980 SC page 1751 (Apex Court held as follows:-

'In this view of the matter, the detention becomes invalid on this ground alone. I would however like to observe that in cases where the detaining authority is satisfied that the grounds are couched in a language which is not known to the detenue, it must see to it that the grounds are explained to the detenue, a translates script is given to him and the grounds bear some sort of a certificate to show that the grounds have been explained to the detenu in the language which he understands. A bare denial at the stage when Habeas Corpus petition is filed in the court by the detaining authority that these formalities were observed would be of no consequence particularly when it is hot supported by any document or by any affidavit of the person who had done the job of explaining or translation. We have pointed out in several cases that the courts frown on detention without trial and insist on the strict compliance of the constitutional safeguards enshrined in Article 22(5) to the letter of the law, because a non-compliance of these safeguards would itself be sufficient to vitiate the order of detention. Despite our repeated observations, unfortunately however the detaining authority continues to pass orders of detention in a casual or cavalier fashion with the result that the courts are compelled to release the detenus. We hope and trust that in future the

detaining authorities should fully apply their mind so as to result in a strict compliance of the constitutional safeguards contained in the Constitution, more particularly because the liberty of the subject is in peril.'

6. In view of the legal position made clear in the above quoted judgment on the question of supply of the grounds of detention, it has become settled principle of law that grounds of detention must be supplied to the detenu in the language which he can understand. The respondent in his counter affidavit in para 2 has stated as thus:-

'That, the order of detention was passed by the answering respondent and was confirmed on 29.6.2001 and the detenue was taken into preventive custody on 4.7.2001. The grounds of detention were made available/given to the detenue and the contents of grounds of detention were read over and explained to him in English, Urdu, and Kashmiri language which he understood fully and he was informed that he has a right to make representation to the Govt. against the detention order if he so desire. The detenu acknowledge the receipt on 4.7.2001 of the grounds of detention and its being read over and explained to him in english and has put his signature on the receipt which is authenticity by Superintendent Distt. Judge, Kathua. '

7. From the bare perusal of the reply of the respondent detaining authority it appears the two inconsistent versions have been given in the first part of the reply, contained in the said para of the Counter affidavit, it is stated that grounds of detention were made available/given to the detenu and the contents of the grounds of detention were read over to detenu in English, urdu, kashmiri in which he understood fully and in the later part on which and emphasis has been supplied, it is stated that grounds of detention were read over and explained to the detenu in English whereon he put his signature on the receipt. From the later part of the reply it becomes admitted position that detenu acknowledged the fact that he was explained the grounds of detention in English language only. Admittedly the ground of detention which were furnished to the detenu are in English language and in the grounds of detention itself, it is stated that the detenu has read up to only 5th primary. Therefore it also becomes clear that with the given

status of education of the detenue he was not in a position to understand fully English language.

8. From the reply of the respondent in such circumstances it cannot be accepted that detenue was explained and supplied the grounds of detention, in the language which he understood and thus thereby breach of the safeguards enshrined in Section 13 of the Public Safety Act appears to have been committed. This is also violative of the mandatory obligation imposed by Article 22 of the Constitution of India, and this lapse on the part of the detaining authority renders the detention order illegal. Consequently rendering the detention of the detenue also invalid.

9. For the aforesaid reasons the detention order No. 16/DMP/2001 dt. 21.6.2001 is hereby quashed and the respondents are directed to release the detenue forthwith, unless required in any other offence.

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