

IN THE HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT SRINAGAR

Reserved on: 27.12.2021
Pronounced on: 27 .01.2022

WP(Crl.) No.35/2021

AHTISHAM-UL-HAQ BHAT

...PETITIONER(S)

Through: - Mr. Syed Musaib, Advocate

Vs.

GOVERNMENT OF J&K &ANR.

...RESPONDENT(S)

Through: - Mr. Hakeem Aman Ali, Dy. AG.

CORAM: HON'BLE MR. JUSTICE SANJAY DHAR, JUDGE

JUDGMENT

1) By the medium of instant petition, petitioner has challenged legality and veracity of the detention order No.04/DMB/PSA of 2021 dated 03.03.2021, issued by District Magistrate, Bandipora (for brevity "*Detaining Authority*") whereby *Shri Ahtisham ul Haq Bhat son of Late Gh. Nabi Bhat resident of Chittaybandy Aragam Tehsil and District Bandipora* (for short "*detenu*") has been placed under preventive detention and directed to be lodged in Central Jail, Srinagar.

2) Petitioner has contended that the Detaining Authority has passed the impugned detention order mechanically without application of mind and that the Constitutional and Statutory

procedural safeguards have not been complied with in the instant case. It has also been urged that the allegations made against the detainee in the grounds of detention are vague and that the detainee has been disabled from making an effective representation against his detention as the material forming basis of the grounds of detention has not been furnished to the.

3) The respondents, in their counter affidavit, have disputed the averments made in the petition and stated that they have followed the provisions of J&K Public Safety Act. It is contended that the detainee has been detained only after following due procedure; that the grounds of detention were read over to the detainee; that there has been proper application of mind for detaining the detainee and that the detainee has been provided all the material. The learned counsel for the respondents also produced the detention record to lend support to the stand taken in the counter affidavit.

4) I have heard learned counsel for parties and I have also gone through detention record.

5) Learned counsel for the petitioner, while seeking quashment of the impugned order, projected various grounds but the main ground that has prevailed during discussion are that the detainee has been disabled from making an effective

representation against his detention as the material forming basis of the grounds of detention and the translated copies of grounds of detention have not been supplied to him.

6) On perusal of the detention record produced by learned counsel for the respondents, the ground regarding non-supply of relevant material appears to have substance as the said record suggests that whole of the relevant material has not been supplied to the detainee. The execution report in the record reveals that the detainee has been supplied only 02 leaves comprising copy of grounds of detention. Thus, the detainee has not been provided the copy of dossier and the copy of the FIR No.30/2020 for the offences u/s 18, 39 of ULA(P) Act of P/S Aragam, which form the basis of the detention order. This goes to support the contention of the petitioner that he has not been supplied the relevant material. Obviously, the petitioner has been hampered by non-supply of the relevant material in making an effective representation against his detention before the concerned authority/Advisory Board.

7) Non-furnishing of relevant material forming basis of the grounds of detention deprives a detainee of his Constitutional right to make a representation against the order of detention. The denial of this Constitutional right renders the order of detention unsustainable in law. I am supported in my aforesaid view by the judgments of the Supreme Court in **Sophia Gulam Mohd. Bham v. State of Maharashtra & ors (AIR 1999 SC 3051)**, **Thahira Haris etc. etc. Vs. Government of**

Karnataka & Ors (AIR 2009 SC 2184) and Ibrahim Ahmad Bhatti alias Mohd. Akhtar Hussain alias Kandar Ahmad Wagher alias Iqbal alias Gulam Vs. State of Gujarat and others”, (1982) 3 SCC 440.

8) The cumulative effect of the aforesaid discussion leads to the only conclusion that in the instant case, the respondents have not adhered to the legal and Constitutional safeguards while passing the impugned detention order against the petitioner. The impugned order of detention is, therefore, unsustainable. Accordingly, the same is quashed. The detinue is directed to be released from the preventive custody forthwith provided he is not required in connection with any other case.

9) The record, as produced, be returned to the learned counsel for the respondents.

Srinagar
27.01.2022
“Bhat Altaf, PS”

(Sanjay Dhar)
Judge

Whether the order is speaking:
Whether the order is reportable:

Yes/No
Yes/No