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**HIGH COURT OF JAMMU AND KASHMIR AT SRINAGAR**  
(Through V.M)

Case no. ([WP Cri) No. 177/2020

Reserved on 03.06.2021

Pronounced on. 28.06.21

Majid Ahmad Bhat

...Petitioner

Through: Mr. G.N Shaheen, adv.

vs.

Union Territory of J&K and ors

....respondents.

Through : Mr. Mir Suhail, AAG

Coram: **Hon'ble Mr. Justice Ali Mohammad Magrey.**

**JUDGMENT**

Impugned in this Habeas Corpus petition with a prayer for quashment thereof is the detention order no. 36/DMP/PSA/20 dated 09.11.2020, purporting to have been passed by District Magistrate, Pulwama, whereunder detenu namely Majid Ahmad Bhat s/o Abdul Ahad Bhat R/o Karimabad Tehsil Pulwama is under detention.

2. The detenu, through his father, challenges the aforesaid detention order through the medium of aforesaid petition, inter alia, on the grounds that the order of detention suffers from non-application of mind;

“a) that no compelling reason or circumstance was disclosed in the order or grounds of detention to take the detenu in preventive detention, moreso in view of the fact that as on the date of passing of the aforesaid order of detention, the detenu was already in custody under FIR no. 256/2017, the detenu applied for bail but instead booked in case FIR no. 223/2018 , u/s 302, 307. 120-B RPC and 7/27 A. Act.

b) that there is total non application of mind while passing the detention order without reflecting any plausible ground;

c) that the detenu has not been provided the material forming basis of the detention order, to make an effective representation against his detention order;

d) that the detaining authority has not prepared the grounds itself, which is a pre-requisite for him before passing any detention order;

e) that while passing the order of detention against the detenu, the respondent no.2 has violated all the procedural safeguards enshrined in Art. 22 (5) of the Constitution of India;

f) that the allegations made in the grounds of detention are vague, non-existent and no prudent man can make a representation against such allegations and passing of detention order on such grounds is unjustified and unreasonable.”

3. Notice was issued to respondents. They appeared through their learned counsel and filed counter affidavit wherein they submitted that the detention order is well founded in fact and seeks dismissal of the Habeas Corpus petition.

4. The learned counsel for the petitioner has raised primarily four issues before the Court questioning the validity of the detention. The first point taken by the learned counsel for the petitioner is that the detention order was passed while the detenu was already in custody in respect of the criminal case under FIR No. 256/2017. In these circumstances, it was submitted by the learned counsel for the petitioner, the detaining authority ought to have satisfied himself with the fact that there was imminent likelihood of release of the detenu in that case and that it was necessary to detain the detenu in order to prevent him from indulging in prejudicial activities. According to the learned counsel for the petitioner-detenu, there is no such satisfaction recorded in the grounds of detention. He placed reliance on the decision of the Supreme Court in the case titled, “*Anant v. State of Maharashtra reported as AIR 1987 Supreme Court, 137; Surya Prakash Sharma v. State of U.P. and others: 2017 (II) SLJ 650; AIR 1999 Supreme Court 3051; 1994 SCC (Cri) 1691; 2007 (I) SLJ 136*, to submit that since the said satisfaction was not recorded, the detention order was vitiated.

5. The second point taken by the learned counsel for the petitioner was that non-supply of relevant material/ documents also vitiated the detention order. In this context, it was the case of the petitioner-detenu that no documents at all were supplied to the petitioner-detenu. The non-supply of relevant documents seriously undermines the

capacity of a detenu to make an effective representation against the detention order and that itself would be a ground to declare the detention void.

6. The third point raised by the learned counsel for the petitioner was based on non-application of mind of the detaining authority with reference to having not mentioned that the detenu was already in custody while passing the detention order.

7. The fourth point raised by the learned counsel for the petitioner-detenu was based on vagueness in grounds of detention.

8. The learned counsel for petitioner (detenu) further submits that the detenu has not been provided the material referred to in the grounds of detention resultantly the right of making effective representation against the impugned order of detention, as enshrined under Article 22 (3) of the Constitution, has been violated.

9. On the other hand, Mr. Mir Suhail, learned GA, defended the order of detention, and he responded to each of the points. With regard to the first point he submitted that there is a mention in the grounds of detention about the arrest of the detenu with reference to the FIR Nos. 256/2017 and 223/2018. Therefore, according to him, the detaining authority was aware of the fact that the detenu was already in custody when the detention order was passed. He, therefore, submitted that the point raised by the learned counsel for the petitioner on this score was untenable.

10. With regard to the plea of non-supply of material/ documents, Mr. Mir Sushail, learned GA, mailed photo copy of the record pertaining to the detention. On going through the same, I find that there is a signed document said to have been signed by the detenu, Majid Ahmad Bhat in the shape of receipt.

11. Based upon the said receipt, Mr. Mir Suhail, learned GA submits that the grounds of detention had been supplied along with other relevant documents and, therefore, the petitioner-detenu cannot make any grievance on this ground.

12. With regard to the non-application of mind, detaining authority having mentioned the reason for detaining the detenu activities are jeopardizing the peace security and tranquillity of the UT of J&K and in the grounds of detention as prejudicial to the Security of the State. It is submitted that there is not non-application of mind, the security of the State or jeopardizing the peace security and tranquillity of the State is almost the same. With regard to plea of vagueness of the grounds is concerned, Mr. Mir Suhail, learned GA submits that the grounds are clear and without any ambiguity.

13. Mr. Mir Suhail, learned GA, submits that insufficiency of supply of material shall not form a ground for vitiating the detention of the detenu. He further submits that the detenu was required to file representation on the material whatever supplied and could have projected the grounds of non-supply of the material before the detaining authority, which he has failed, therefore, non-supply of material vitiates the detention, has no substance. He further averred that there is no non application of mind or vagueness in grounds. He has referred to and relied upon the Judgment reported as *AIR 2001 Supreme Court 301 titled R. Keshava Vs. M. B. Prakash and Ors.*

14. Mr. Mir Suhail, GA further, submits that the impugned order of detention is well founded in fact and law and there is nothing bad about it. He submits that the detenu has been provided the material relied upon by the detaining authority while detaining him. He further submits that the detenu has also been informed about his right of making representation against his detention. He submitted that the detaining authority has fully applied its mind while issuing the detention order and there is nothing on record to controvert it. Learned State Counsel referred to and relied upon the law laid down in **1981 (4) SCC 216; AIR (SC) 1975 1143; 2002 (6) SCC 735 ; AIR 2000 SC 301.**

15. I have heard learned counsel and considered the matter and perused the records. As per pleadings and contentions raised at bar the main ground of attack projected by petitioner against the detention in question is, that grounds of detention were not duly communicated to him, which prevented him from making an effective representation

against the same and thereby he was deprived of an important constitutional right, and that the detaining authority did not apply his mind while passing the detention order and has not revealed as to on what materials he assumed subjective satisfaction regarding necessity of having the subject detained when the detenu have not filed any bail application in any court for his release in the FIR(s) registered against him.

16. So far as the ground taken i.e non communication of the grounds of detention is concerned, perusal of file reveals, that there is nothing to show or suggest that the grounds of detention couched in English language were explained to the detenu in a language understood by him, as there is no material to that effect on record. This according to the view taken by Hon'ble Apex Court in "***LallubhaiJogibhai Patel v. Union of India, (1981) 2 SCC 427***"; the *detenu* did not know English, while the grounds of detention were drawn up in English and an affidavit filed on behalf of the detaining authority stated that while serving the grounds of detention were fully explained to the *detenu*, but the Apex Court held that, was not a sufficient compliance with the mandate of Article 22(5) which requires that the grounds of detention must be communicated to the *detenu*. The Apex Court observed as under:

“Communicate’ is a strong word which means that sufficient knowledge of the basic facts constituting the ‘grounds’ should be imparted effectively and fully to the *detenu* in writing in a language which he understands. The whole purpose of communicating the ‘grounds’ to the *detenu* is to enable him to make a purposeful *and* effective representation. If the ‘grounds’ are only verbally explained to the *detenu* and nothing in writing is left with him in a language which he understands, then that purpose is not served, and the constitutional mandate in Article 22(5) is infringed.”

17. In view of the law laid down by the Apex Court in case titled ***LallubhaiJogibhai Patel v. Union of India*** (supra) vitiates the detention order, as not amounting to effect communication of grounds, and resultant deprivation of the right to make representation against the same.

18. That being so the grounds of challenge set up by petitioner, succeed and the detention stands vitiated. Other grounds urged do not therefore, need to be separately addressed.

19. The petition is accordingly, allowed and detention order no. **36/DMP/PSA/20 dated 09.11.2020** purporting to have been passed by District Magistrate Pulwama, under which the detenu namely **Majid Ahmad Bhat s/o Abdul Ahad Bhat R/o Karimabad Tehsil Pulwama** under detention., is quashed with direction for his release forthwith.

20. The petition stands accordingly disposed of. No order as to the costs.

21. Registrar Judicial to send a copy of this order to Director General of Prisons and also concerned Jail authorities for compliance.

(Ali Mohammad Magrey )  
Judge

Srinagar  
28.06.2021  
S.A Hussain,  
Secretary

i)Whether the order is speaking: Yes/No.  
ii)Whether the order is reportable : Yes/No

