Kumail vs State Of U.P. And 3 Others on 1 August, 2019

Equivalent citations: AIRONLINE 2019 ALL 2996

Bench: Manoj Misra, Virendra Kumar Srivastava

HIGH COURT OF JUDICATURE AT ALLAHABAD

"AFR"

Court No. - 42

Case :- HABEAS CORPUS WRIT PETITION No. - 437 of 2019

Petitioner :- Kumail

Respondent :- State Of U.P. And 3 Others

Counsel for Petitioner :- Zia Naz Zaidi,Brijesh Sahai

Counsel for Respondent :- G.A.,A.S.G.I.,Raj Kumari Devi,Raj Kumari Devi

Hon'ble Manoj Misra,J.

Hon'ble Virendra Kumar Srivastava,J.

Heard Ms. Zia Naz Zaidi for the petitioner; Sri Deepak Mishra, learned AGA, for respondents 1, 2 and 3; Smt. Raj Kumari Devi for respondent no.4 and perused the record.

This habeas corpus petition seeks release of the petitioner, Kumail son of Anjum, currently in detention at District Jail Aligarh, after quashing the detention order dated 14th January, 2019, passed by the District Magistrate, Aligarh (for short DM) in exercise of his power under Section 3(2) read with Section 3(3) of the National Security Act, 1980 (for short Act, 1980).

A perusal of the record, in particular the return filed on behalf of Superintendent District Jail,

Aligarh (third respondent), would reveal that the detenu was admitted in District Jail, Aligarh on 03.11.2018, pursuant to remand order, dated 3.11.2018, issued by the Chief Judicial Magistrate, Aligarh in case crime no.716 of 2018 under sections 147, 148, 149, 302, 504, 506, 120-B, 34 IPC, P.S. Civil Lines, District Aligarh; and, thereafter, another remand was obtained on 15.11.2018 for keeping him in custody also in case crime no.746 of 2018, under section 3/25 Arms Act, P.S. Civil Lines, Aligarh. While in judicial custody in connection with the above two cases he was served with the impugned detention order.

At the outset, the learned counsel for the petitioner, by relying on averments made in paragraphs 22 to 27 of the petition, submitted that since the petitioner was already in jail, in connection with a murder case, and no order of acquittal or grant of bail was passed, his preventive detention could have been directed only after drawing satisfaction that there was real possibility of him being released on bail in the immediate future. But neither such satisfaction has been recorded in the order of detention, or in the grounds of detention, nor there existed material on record to enable such satisfaction. It is urged that even in the return filed by the DM existence of such satisfaction has not been disclosed.

It has been submitted that in a case where detenu is already confined in jail, the order of preventive detention could be passed (1) if the authority passing the order is aware of the fact that detenu is actually in custody; (2) if he has reason to believe on the basis of reliable material placed before him (a) that there is a real possibility of his being released on bail; (b) that on being so released he would in all probability indulge in prejudicial activity; and (c) if it is felt essential to detain him to prevent him from so doing.

It has been submitted that in the instant case though the DM has disclosed his awareness that the petitioner is in jail and has applied to the court of sessions for bail but has not recorded satisfaction that there is real possibility or likelihood of him being released on bail. Therefore the detention order is vitiated. It has been submitted that mere pendency of bail application is not sufficient, because the prayer for bail can be opposed. What is relevant is the satisfaction, on the basis of material put forth before the detaining authority, that there is real possibility of the detenu being enlarged on bail in the immediate future. Such satisfaction may be drawn on the basis of bail order granted to co-accused or on the facts of the case or having regard to the nature of the offence in connection with which the detenu is in jail.

It has been urged that the petitioner in paragraphs 22 to 27 of his writ petition has challenged the existence of material before the detaining authority to draw such satisfaction and had also questioned existence of such subjective satisfaction but in the return filed by the DM neither material has been disclosed nor claim with regard to drawing such satisfaction has been made. Under the circumstances, it is urged, the detention order is vitiated for non application of mind on a relevant aspect.

In support of the above contention, learned counsel for the petitioner has placed reliance on decisions of the apex Court in (1991) 1 SCC 128: Kamarunnissa Vs. Union of India; (2011) 5 SCC 244: Rekha Vs. State of Tamil Nadu through Secretary to Government and another; and 2015 (16)

SCC 253: Champion R. Sangma Vs. State of Meghalaya and others.

Per Contra, learned AGA submitted that although in the detention order or grounds of detention the District Magistrate has not specifically used the words that there is real possibility or likelihood of the applicant being released on bail but, admittedly, bail application was filed by the petitioner which was pending in the court of session, therefore, the District Magistrate was justified in passing the detention order after drawing satisfaction that the detenu on being released on bail would indulge in such activity which might be prejudicial to the maintenance of public order. He submitted that the incident narrated in the grounds of detention was an incident of murder, by use of firearms, in public street, which had disturbed the even tempo of the society at large, therefore, even though there may be a solitary case cited against the detenu but from the facts of the case it could be reasonably gathered that the petitioner is a criminal minded person and would repeat such activity. The learned AGA placed reliance on a recent two-judges bench decision of the apex court in the case of Union of India & Another V. Dimple Happy Dhakad (Criminal Appeal No.1064 of 2019, arising out of SLP (Crl.) No.5459 of 2019, decided on 18th July, 2019) to contend that it is not always necessary for the detaining authority to record satisfaction in the grounds of detention or detention order that there is real possibility or likelihood of the detenu being released on bail in the immediate future, if otherwise existence of that satisfaction can be found from the records.

Before we proceed to examine the weight of rival submissions, it would be useful for us to examine the law as to when a preventive detention order can be passed when the detenu is already in jail in connection with some case. This issue came for consideration before a five-judges Constitution Bench of the Apex Court in Rameshwar Shaw v. D.M., Burdwan, (1964) 4 SCR 921 : AIR 1964 SC 334 : (1964) 1 Cri LJ 257. The apex court held as follows:

> "13. The question which still remains to be considered is: can a parson in jail custody, like the petitioner, be served with an order of detention whilst he is in such custody? In dealing with this point, it is necessary to State the relevant facts which are not in dispute. The petitioner was arrested on January 25, 1963. He has been in custody ever since. On February 15, 1963 when the order of detention was served on him, he was in jail custody. On these facts, what we have to decide is: was it open to the detaining authority to come to the conclusion that it was necessary to detain the petitioner with a view to prevent him from acting in a prejudicial manner when the petitioner was locked up in jail? We have already seen the logical process which must be followed by the authority in taking action under Section 3(l)(a). The first stage in the process is to examine the material adduced against a person to show either from his conduct or his antecedent history that he has been acting in a prejudicial manner. If the said material appears satisfactory to the authority, then the authority has to consider whether it is likely that the said person would act in a prejudicial manner in future if he is not prevented from doing so by an order of detention. If this question is answered against the petitioner, then the detention order can be properly made. It is obvious that before an authority can legitimately come to the conclusion that the detention of the person is necessary to prevent him from acting in a prejudicial manner, the authority has to be satisfied that if the person is not detained, he would

act in a prejudicial manner and that inevitably postulates freedom of action to the said person at the relevant time. If a person is already in jail custody, how can it rationally be postulated that if he is not detained, he would act in a prejudicial manner? At the point of time when an order of detention is going to be served on a person, it must be patent that the said person would act prejudicially if he is not detained and that is a consideration which would be absent when the authority is dealing with a person already in detention. The satisfaction that it is necessary to detain a person for the purpose of preventing him from acting in a prejudicial manner is thus the basis of the order under Section 3(1)(a), and this basis is clearly absent in the case of the petitioner. Therefore, we see no escape from the conclusion that the detention of the petitioner in the circumstances of this case, is not justified by Section 3(1)(a) and is outside its purview. The District Magistrate, Burdwan who ordered the detention of the detenu acted outside his powers conferred on him by Section 3(1)(a) when he held that it was necessary to detain the petitioner in order to prevent him from acting in a prejudicial manner. That being so we must hold that Mr Garg is right when he contends that the detention of the petitioner is not justified by Section 3(1)(a)."

(Emphasis Supplied) Following the decision rendered in Rameshwar Shaw's case (supra), in Binod Singh v. District Magistrate, Dhanbad, (1986) 4 SCC 416 : 1986 SCC (Cri) 490, in absence of recording of satisfaction by the detaining authority, either in the grounds of detention or the order of detention, with regard to the detenu being already in jail and that there was imminent possibility of his being released on bail, a two judges-bench of the apex court scrutinized the affidavit filed by the District Magistrate to find out whether there existed any satisfaction in that regard. Upon finding that there existed none, the apex court quashed the order of detention. The relevant portion of the judgment is extracted below:

"5.....From the affidavit of the District Magistrate it does not appear that either the prospect of immediate release of the detenu or other factors which can justify the detention of a person in detention were properly considered in the light of the principles noted in the aforesaid decision and especially in the decisions in Rameshwar Shaw v. District Magistrate, Burdwan and Ramesh Yadav v. District Magistrate, Etah, though there was a statement to the effect that the petitioner was in jail and was likely to be enlarged on bail. But on what consideration that opinion was expressed is not indicated especially in view of the fact that the detenu was detained in a murder charge in the background of the fact mentioned before. His application for bail could have been opposed on cogent materials before the court of justice.

6. In this case there were grounds for the passing of the detention order but after that the detenu has surrendered for whatever reasons, therefore the order of detention though justified when it was passed but at the time of the service of the order there was no proper consideration of the fact that the detenu was in custody or that there was any real danger of his release. Nor does it appear that before the service there was consideration of this aspect properly. In the facts and circumstances of this case,

therefore, the continued detention of the detenu under the Act is not justified.

7. It is well settled in our constitutional framework that the power of directing preventive detention given to the appropriate authorities must be exercised in exceptional cases as contemplated by the various provisions of the different statutes dealing with preventive detention and should be used with great deal of circumspection. There must be awareness of the facts necessitating preventive custody of a person for social defence. If a man is in custody and there is no imminent possibility of his being released, the power of preventive detention should not be exercised. In the instant case when the actual order of detention was served upon the detenu, the detenu was in jail. There is no indication that this factor or the question that the said detenu might be released or that there was such a possibility of his release, was taken into consideration by the detaining authority properly and seriously before the service of the order. A bald statement is merely an ipse dixit of the officer. If there were cogent materials for thinking that the detenu might be released then these should have been made apparent. Eternal vigilance on the part of the authority charged with both law and order and public order is the price which the democracy in this country extracts from the public officials in order to protect the fundamental freedoms of our citizens. In the affidavits on behalf of the detaining authority though there are indications that transfer of the detenu from one prison to another was considered but the need to serve the detention order while he was in custody was not properly considered by the detaining authority in the light of the relevant factors. At least the records of the case do not indicate that. If that is the position, then however disreputable the antecedents of a person might have been, without consideration of all the aforesaid relevant factors, the detenu could not have been put into preventive custody. Therefore, though the order of preventive detention when it was passed was not invalid and on relevant considerations, the service of the order was not on proper consideration.

8. .....

9. The order of detention, therefore, is set aside....."

(Emphasis Supplied) In N. Meera Rani v. Govt. of T.N., (1989) 4 SCC 418 : 1989 SCC (Cri) 732, a three-judges Bench of the Apex Court in paragraphs 22 and 23 of the judgment, as reported, observed /held as follows:

"22. We may summarise and reiterate the settled principle. Subsisting custody of the detenu by itself does not invalidate an order of his preventive detention and the decision must depend on the facts of the particular case; preventive detention being necessary to prevent the detenu from acting in any manner prejudicial to the security of the State or to the maintenance of public order etc. ordinarily it is not needed when the detenu is already in custody; the detaining authority must show its awareness to the fact of subsisting custody of the detenu and take that factor into account while

making the order; but, even so, if the detaining authority is reasonably satisfied on cogent material that there is likelihood of his release and in view of his antecedent activities which are proximate in point of time he must be detained in order to prevent him from indulging in such prejudicial activities, the detention order can be validly made even in anticipation to operate on his release. This appears to us, to be the correct legal position.

23. Applying the above settled principle to the facts of the present case we have no doubt that the detention order, in the present case, must be quashed for this reason alone. The detention order read with its annexure indicates the detaining authority's awareness of the fact of detenu's jail custody at the time of the making of the detention order. However, there is no indication therein that the detaining authority considered it likely that the detenu could be released on bail."

(Emphasis Supplied) In Kamarunnissa v. Union of India, (1991) 1 SCC 128 : 1991 SCC (Cri) 88, a two-judges bench of the apex court, after going through the earlier decisions including the Constitution Bench decision in Rameshwar Shaw's case (supra), observed and summarized the legal principles as follows:

"12. In Vijay Narain Singh this Court stated that the law of preventive detention being a drastic and hard law must be strictly construed and should not ordinarily be used for clipping the wings of an accused if criminal prosecution would suffice. So also in Ramesh Yadav v. District Magistrate, Etah this Court stated that ordinarily a detention order should not be passed merely on the ground that the detenu who was carrying on smuggling activities was likely to be enlarged on bail. In such cases the proper course would be to oppose the bail application and if granted, challenge the order in the higher forum but not circumvent it by passing an order of detention merely to supersede the bail order. In Suraj Pal Sahu v. State of Maharashtra the same principle was reiterated. In Binod Singh v. District Magistrate, Dhanbad it was held that if a person is in custody and there is no imminent possibility of his being released therefrom, the power of detention should not ordinarily be exercised. There must be cogent material before the officer passing the detention order for inferring that the detenu was likely to be released on bail. This inference must be drawn from material on record and must not be the ipse dixit of the officer passing the detention order. Eternal vigilance on the part of the authority charged with the duty of maintaining law and order and public order is the price which the democracy in this country extracts to protect the fundamental freedoms of the citizens. This Court, therefore, emphasized that before passing a detention order in respect of the person who is in jail the concerned authority must satisfy himself and that satisfaction must be reached on the basis of cogent material that there is a real possibility of the detenu being released on bail and further if released on bail the material on record reveals that he will indulge in prejudicial activity if not detained. That is why in Abdul Razak Abdul Wahab Sheikh v. S.N. Sinha, Commr. of Police this Court held that there must be awareness in the mind of the detaining authority that the detenu is in custody at

the time of actual detention and that cogent and relevant material disclosed the necessity for making an order of detention. In that case the detention order was quashed on the ground of non-application of mind as it was found that the detaining authority was unaware that the detenu's application for being released on bail was rejected by the Designated Court. In N. Meera Rani v. State of Tamil Nadu the case law was examined in extenso. This Court pointed out that the mere fact that the detenu was in custody was not sufficient to invalidate a detention order and the decision must depend on the facts of each case. Since the law of preventive detention was intended to prevent a detenu from acting in any manner considered prejudicial under the law, ordinarily it need not be resorted to if the detenu is in custody unless the detaining authority has reason to believe that the subsisting custody of the detenu may soon terminate by his being released on bail and having regard to his recent antecedents he is likely to indulge in similar prejudicial activity unless he is prevented from doing so by an appropriate order of preventive detention. In Shashi Aggarwal v. State of Uttar Pradesh it was emphasized that the possibility of the court granting bail is not sufficient nor is a bald statement that the detenu would repeat his criminal activities enough to pass an order of detention unless there is credible information and cogent reason apparent on the record that the detenu, if enlarged on bail, would act prejudicially. The same view was reiterated in Anand Prakash v. State of Uttar Pradesh and Dharmendra case. In Sanjay Kumar Aggarwal v. Union of India the detenu who was in jail was served with a detention order as it was apprehended that he would indulge in prejudicial activities on being released on bail. The contention that the bail application could be opposed, if granted, the same could be questioned in a higher forum, etc. was negatived on the ground that it was not the law that no order of detention could validly be passed against a person in custody under any circumstances.

13. From the catena of decisions referred to above it seems clear to us that even in the case of a person in custody a detention order can validly be passed (1) if the authority passing the order is aware of the fact that he is actually in custody; (2) if he has reason to believe on the basis of reliable material placed before him (a) that there is a real possibility of his being released on bail, and (b) that on being so released he would in all probability indulge in prejudicial activity and (3) if it is felt essential to detain him to prevent him from so doing. If the authority passes an order after recording his satisfaction in this behalf, such an order cannot be struck down on the ground that the proper course for the authority was to oppose the bail and if bail is granted notwithstanding such opposition, to question it before a higher court. What this Court stated in the case of Ramesh Yadav was that ordinarily a detention order should not be passed merely to pre-empt or circumvent enlargement on bail in cases which are essentially criminal in nature and can be dealt with under the ordinary law. It seems to us well settled that even in a case where a person is in custody, if the facts and circumstances of the case so demand, resort can be had to the law of preventive detention."

Before a three-judges bench of the Apex Court in Rekha v. State of T.N., (2011) 5 SCC 244 : (2011) 2 SCC (Cri) 596, a question arose whether a preventive detention order can be lawfully passed against a person already in jail even if he had not applied for bail. While holding that in certain circumstances it can be passed, in paragraphs 8 to 11 of the judgment, the apex court observed / held as follows:

> "8. It has been held in T.V. Sravanan v. State, A. Shanthi v. Govt. of T.N., Rajesh Gulati v. Govt. of NCT of Delhi, etc. that if no bail application was pending and the detenu was already, in fact, in jail in a criminal case, the detention order under the preventive detention law is illegal. These decisions appear to have followed the Constitution Bench decision in Haradhan Saha v. State of W.B. wherein it has been observed: (SCC p. 209, para 34):
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> "34. ... where the person concerned is actually in jail custody at the time when an order of detention is passed against him and is not likely to be released for a fair length of time, it may be possible to contend that there could be no satisfaction on the part of the detaining authority as to the likelihood of such a person indulging in activities which would jeopardise the security of the State or public order."

9. On the other hand, Mr Altaf Ahmed, learned Senior Counsel appearing for the State of Tamil Nadu, has relied on the judgments of this Court in A. Geetha v. State of T.N. and Ibrahim Nazeer v. State of T.N. wherein it has been held that even if no bail application of the petitioner is pending but if in similar cases bail has been granted, then this is a good ground for the subjective satisfaction of the detaining authority to pass the detention order.

10. In our opinion, if details are given by the respondent authority about the alleged bail orders in similar cases mentioning the date of the orders, the bail application number, whether the bail order was passed in respect of the co-accused in the same case, and whether the case of the co-accused was on the same footing as the case of the petitioner, then, of course, it could be argued that there is likelihood of the accused being released on bail, because it is the normal practice of most courts that if a co-accused has been granted bail and his case is on the same footing as that of the petitioner, then the petitioner is ordinarily granted bail. However, the respondent authority should have given details about the alleged bail order in similar cases, which has not been done in the present case. A mere ipse dixit statement in the grounds of detention cannot sustain the detention order and has to be ignored.

11. In our opinion, the detention order in question only contains ipse dixit regarding the alleged imminent possibility of the accused coming out on bail and there was no reliable material to this effect. Hence, the detention order in question cannot be sustained."

In Champion R. Sangama Vs. State of Meghalay and another (2015) 16 SCC 253, the apex court, after following the apex court's decision in Kamarunnissa's case (supra), quashed the order of detention upon finding that the detenu was already in jail and the detaining authority had not recorded satisfaction that there was reliable material before the authority on the basis of which it

would have reason to believe that there was real possibility of his release on bail. The relevant portion of the decision is found in paragraphs 14 and 15 of the judgment, as reported, which are extracted below:

> 14. In the instant case, though the detention order and even the grounds of detention record the factum of the appellant's being in custody, no satisfaction has been recorded by the detaining authority that there was reliable material before the authority on the basis of which it would have reasons to believe that there was real possibility of his release on bail. It is not mentioned as to whether any bail application was even moved by the appellant or not, what to take out likely fate of such an application. The order is also conspicuously silent on the aspect as to whether there was any probability of indulging in activity if the appellant would be released on bail. On the contrary, we are amazed that the averments made in the counter-affidavit which are self-defeating and clinching the issue against the respondent at p. 171 Para 3 of the paper book which reads as under:
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> "3. I state that the submission of the learned Senior Counsel for the petitioner that the detaining authority was satisfied that there was some likelihood of the petitioner being released on bail and thereafter the detention order was passed to prevent such contingency is completely unfounded. In fact the detention order was passed on 29-1-2013 and from the detention order it no way reflects that with a view to pre-empt the petitioner from getting the bail in the pending 8 criminal cases that the detention order 2013 was passed. In fact after noticing the fact that the petitioner was arrested by the police in various unlawful activities and crimes like extortion, dacoity, kidnapping, murder and robbery with deadly weapons for ransom, for disruption of public order, etc. and being satisfied that if the petitioner is allowed to remain at large he would act in a manner prejudicial to the security of the State and shall be a constant threat to peace that the detention order was passed under Section 3(1) of the Meghalaya Preventive Detention Act, 1995."

15. We, thus, have no option but to hold that the detention order suffers from material illegality, thereby vitiating the same. This appeal is accordingly allowed, setting aside the impugned judgment of the High Court and quashing the detention order."

In a recent decision of the Apex Court rendered in the case of Union of India and Another v. Dimple Happy Dhakad (supra), which has been relied upon by the learned AGA, the detention under question was under the COFEPOSA Act and the detenu was already in jail in connection with an offence punishable under Section 135 of the Customs Act, 1962. The maximum sentence provided for that offence is seven years. In the context of that case, without disturbing the law already settled by the apex court, noticed above, the court observed in paragraph 35 of its judgment that though in the detention orders, the detaining authority has not specifically recorded that the "detenu is likely to be released", it cannot be said that the detaining authority has not applied its mind. The Apex court in that case found that the detaining authority had recorded the antecedents of the detenues and its satisfaction that detenues Happy Dhakad and Niyasar Aliyar have high propensity to commit

such offences in future. The Apex Court observed in paragraph 36 of the judgment that the satisfaction of the detaining authority that the detenu is already in custody and he is likely to be released on bail and on being released, he is likely to indulge in the same prejudicial activities is the subjective satisfaction of the detaining authority and, when based on materials, is not to be interfered with. In that background the Apex Court set aside the order of the High Court, which had quashed the detention order on the ground that the detaining authority had not expressly recorded a finding that there was real possibility of the detenues being released on bail.

A conspectus of the decisions of the apex court noticed above would show that the law is that even in the case of a person in custody a detention order can validly be passed (1) if the authority passing the order is aware of the fact that he is actually in custody; (2) if he has reason to believe on the basis of reliable material placed before him (a) that there is a real possibility of his being released on bail, and (b) that on being so released he would in all probability indulge in prejudicial activity and (3) if it is felt essential to detain him to prevent him from so doing. If the authority passes an order after recording his satisfaction in this behalf, such an order cannot be struck down on the ground that the proper course for the authority was to oppose the bail and if bail is granted notwithstanding such opposition, to question it before a higher court. The reason to believe that there is likelihood or real possibility of the person being released on bail must be based on cogent material and not mere ipse dixit of the authority. Such satisfaction can be drawn on the basis of reports of the sponsoring authority, the nature of the offence(s) in connection with which the detenu is in jail as also the facts and circumstances of that case including grant of bail to co-accused or general practice of courts in such matters. But once challenge is laid with regard to existence of such satisfaction, then the detaining authority in its return / affidavit must disclose existence of such satisfaction and the materials on the basis of which it has been drawn. However, if in the return it is demonstrated that satisfaction was drawn and there existed material to draw such satisfaction, the same cannot ordinarily be interfered with on the ground of insufficiency of material.

In the instant case, on a careful perusal of the detention order as well as the grounds of detention, we find that no satisfaction has been recorded by the detaining authority as regards real possibility or likelihood of the petitioner (detenu) being released on bail in that murder case in which he was incarcerated in district jail Aligarh pursuant to order of remand passed by a Court of Magistrate.

In paragraphs 22 to 27 of the writ petition the thrust of the submissions made on behalf of the detenu has been that there existed no objective material to enable drawing of satisfaction with regard to imminent possibility of the detenu being released on bail in the immediate future. In paragraphs 11 and 14 of the counter affidavit, the detaining authority has stated that he has considered possibility of petitioner being released on bail from concerned court. But he has not stated that he was satisfied that there is real possibility or likelihood of the detenu being released on bail. Further, he has not disclosed any cogent material on the basis of which such satisfaction, if any, was drawn.

In our view, giving consideration to the possibility of the detenu being released on bail is not enough. What is required is satisfaction with regard to the real possibility or likelihood of the detenu being released on bail. Consideration of an aspect and satisfaction with regard to that aspect are two

different things. The first is process, the second is culmination of that process. One may give consideration to a possibility but may not be satisfied with regard to its coming into existence. Therefore mere consideration of the possibility of bail is not enough. What is required is satisfaction about the real possibility of the detenu being released on bail. We find that this satisfaction is wanting in the order as well as the grounds of detention. Even in the return of the detaining authority existence of such satisfaction is not disclosed with reference to cogent material.

We are therefore of the considered view that one of the necessary aspects on which the detaining authority had to apply his mind and be satisfied before passing the detention order against the petitioner, who was already in jail in connection with a murder case, is lacking. Consequently, keeping in mind the law laid down by the Apex Court right from the Constitution Bench decision in Rameshwar Shaw's case (supra) up to Kamarunissa's case (supra), which has been consistently followed, we are of the view that the detention order stands vitiated for non application of mind on a relevant aspect.

Accordingly, the petition is allowed. The detention order dated 14th January, 2019, passed by the District Magistrate, Aligarh is hereby quashed. The petitioner shall be set at liberty forthwith unless wanted in any other case.

Order Date :- 1.8.2019.

Rks.