CHAJU RAM

v.

STATE OF JAMMU & KASHMIR

March 3, 1970

[M. HIDAYATULLAH, C.J., A. N. RAY AND I. D. DUA, JJ.]

Jammu & Kashmir Preventive Detention Act, 1964—Detention under s. 3(2) read with s. 5—Detenu's right to make representation is defeated if grounds not explained to him in language understood by him or if grounds are vague—Detention becomes illegal.

The petitioner was detained under the order of the District Magistrate, Jammu passed under s. 3(2) read with s. 5 of the Jammu & Kashmir Preventive Detention Act, 1964 on March 30, 1969. He filed a petition under Art, 32 challenging his detention. Later he withdrew the original petition and with the leave of the court filed another. In this petition it was urged that the grounds of detention supplied to him were in English which he as an illiterate person did not understand; they were also not explained to him in the language understood by him. It was further urged that the grounds were vague. On behalf of the State the file relating to the detention of the petitioner was produced in court and attention was drawn to the copy of the grounds served on the petitioner at the bottom of which there was a thumb-mark alleged to be that of the petitioner and an endorsement to the effect that the grounds were explained to the detenu in Urdu. The Additional Secretary to the Government filed an affidavit in reply to the first petition and the Under Secretary in reply to the second petition.

HELD : (i) It is absolutely necessary that when dealing with a detenu who cannot read or understand English language or any language at all, that the grounds of detention should be explained to him as early as possible in the language he understands so that he can avail himself of the statutory right of making a representation. To hand over to him a document written in English and to obtain his thumb-impression on it in token of his having received the same does not comply with the requirements of the law which gives a very valuable right to the detenu to make a representation. [877 B]

(ii) The endorsement on the copy of the grounds in the original file were in different inks and therefore the document could not be taken at its face value. In the copy of the grounds filed with the affidavit on behalf of the State in reply to the first petition there was no endorsement to the effect that the contents had been explained to the detenu in Urdu. The affidavit filed by the Under-Secretary in reply to the second petition could not be relied on because it bore erasures and substitution of words at a significant place. [875 H-876 C]

When there was contradiction between the affidavits filed by the petitioner and by the State the Court had to determine which one was acceptable, giving all the benefit of doubt to the detenu. In the present case the affidavit of the detenu had to be preferred and it must be held that the requirement of explaining the grounds to the detenu in his own language was not complied with [875 D; 876 H]

(iii) The grounds charged the petitioner with having conspired with some leaders of Democratic conference, and having incited landless people

A of Rspura Tehsil to forcibly occupy the land comprised in Nandpur Mecha- of RSpura Tehsil to forcibly occupy the land comprised in Nandpur Mecha- to evict them. No details of the leaders of the conference or of the persons incited or the dates on which he conspired or incited the squatters or the time when such conference took place were mentioned. It would be impossible for anybody to make a representation against such grounds which, on the authorities of this Court, must be held to be vague. [877 D-E]

B Accordingly the detention of the petitioner must be declared illegal.

ORIGINAL JURISDICTION : Writ Petition No. 32 of 1970.

Petition under Art. 32 of the Constitution of India for a writ in the nature of *habeas corpus.*

C *H. K. Puri*, for the petitioner.

R. N. Sachthey, for the respondent.

The Judgment of the Court was delivered by

Hidayatullah C.J. The petitioner Chaju Ram was detained under the orders of the District Magistrate, Jammu passed under
D s. 3(2) read with s. 5 of the Jammu & Kashmir Preventive Detention Act, 1964 on March 30, 1969. The order was served on him the same day and on the original order, we find an endorsement by the Station House Officer to the effect that in compliance with the District Magistrate's order, he arrested Chaju at 6.30 P.M. and that the contents of the order were explained to him in
E Urdu by reading over the same to him in token of which his thumb impression was obtained on the face of the order. Beneath this endorsement, there is a thumb impression although it is not stated there whose thumb impression it is. In any event, this was in compliance with the direction given in the order itself that notice of the order should be given to Sh. Chaju by reading over
F the same to him.

As required by s. 8 of the Act, grounds of the order of detention had to be disclosed to Chaju. It is claimed that this was done on April 6, 1969 and that order has been produced before us. The grounds stated as follows :

G "1. That Shri Chhaju s/o Gura is (sic) conspiracy with some other leaders of Democratic Conference incited landless people of RSpura Tehsil to forcibly occupy the land comprised in Nandpur Mechanised Farm, with the full knowledge that such action on their part was likely to lead to disturbances in a sensitive border area.

2. As a result of his activities some area of the Nandpur Farm was occupied by landless people between 18-3-69 to 25-2-69 who also constructed 'Jhuggies' on it. Chhaju told them to persist in their illegal

activities and urged them to resist violently any attempt to evict them. He told them the State Government would agree to allot this land to them only if a situation were created in which two or three persons were killed by Police firing.

3. Squatters were evicted on 26-3-68 some of whom offered resistance. Even after this, Chhaju continued his campaign of asking people of forcibly occupy vacant Government land on a massive scale with the avowed objective of repeating a "Naxalbari" in our State."

We shall come to these grounds later. Chaju did not make a representation against his detention and on August 29, 1969, the Advisory Board held that the District Magistrate was fully justified and that there was sufficient cause for his detention.

Chaju made a petition under Art. 32 of the Constitution for his release by a writ of *habeas corpus* in this Court. *Rule nisi* on this petition was issued on December 2, 1969. The petition was made from jail and contained not much material except to say that he had been illegaly detained for one year and was languishing in jail. In reply to the *rule nisi*, an affidavit was filed by the Additional Secretary to the Government of Jammu & Kashmir Home Department. However, Chaju withdrew that pe ition with permission to file another petition and he has filed a second petition on January 20, 1970. In this petition he has stated in paras 3, 4 and 5 that he was given some papers five days after Baisakhi (which fell on April 13, 1969) and being an illiterate person, he could not read the contents of the papers given. He also alleged that he was not explained the grounds of his detention and therefore he was deprived of his right of making a representation under the statute. He also alleged that the grounds on which his detention had been ordered were vague and were not sufficient for him to make a representation if he cared.

At the hearing we confined the case only to these two points, namely, whether Chaju was served the grounds of detention on April 6, 1969 as claimed in the reply affidavit and whether the contents of the grounds were explained to him in a language understood by him, and secondly whether the grounds were sufficiently precise and detailed for Chaju to make a proper representation as he was entitled to do under the Preventive Detention Act.

In regard to the first question, there is an affidavit sworn to by the Under-Secretary to the Government filed in answer to the second petition made in this Court. It is stated in that affidavit

that the grounds were duly served upon the detenu, and in token of his having understood the same, he affixed his thumb impression thereon. In answer to the allegation that the grounds were served on him five days after Baishakhi, the affidavit does not seek to controvert it but only says that the detention order was duly read over to the detenu and the contents of the order explained to him in he language he understood. Therefore the claim of the Government is that on both the occasions, that is to say, when the detention order was served on him and also when the grounds were handed over to him, the contents of the documents were read over to him and translated to him in the language he understood (Urdu) and therefore there was compliance with the provisions of the law.

Now, if we accept the affidavit of the Government, it is obvious that the affidavit of the detenu must be false. Contrary-wise, if we accept the affidavit of the detenu, we must reject the material placed before us on behalf of the Government. In view of the contradictory nature of these two affidavits, we went into the matter very closely and satisfied ourselves which of the two affidavits is acceptable, giving all the benefit of doubt to the detenu, To begin with, the order of detention had an endorsement on it that the order should be communicated to Chaju by reading over the same to him. This was probably done because we find an endorsement of the Station House Officer that he had read it over to him in Urdu. The thumb impression on this document does not state that it is the thumb impression of Chaju, but as he has not raised a controversy about it, we accept it as his.

In contrast to this order, the grounds of detention did not have an endorsement that the grounds should be explained to Chaju in the language he understood. In the affidavit in answer to the first petition, the grounds were filed but there was no endorsement on the copy of the grounds showing that it had been so read to him in Urdu and that he was explained the contents. Mr. Sachthey, however brought to our notice the original file in which the copy of the grounds which was served upon the detenu has an endorsement in Urdu that they had been read over and fully explained to him in Urdu. There is a thumb impression and against the thumb impression is noted that it is that of Chaju. The date is April 6, 1969.

The question is whether in view of this endorsement we must hold that Chaju was properly explained the grounds of detention in Urdu which he understands. In our judgment, we cannot accept these documents at their face value. To begin with, the three endorsements on the copy, that is to say, (a) that the document was read over to him in Urdu, (b) the thumb impression

and (c) the note that it is the thumb impression of Chaju, are in two different inks if not three. This raised a suspicion, that these might have been written later around the thumb impression taken from Chaju as was done when the order of detention was served on him. It may be recalled that at that time also there was an endorsement in English that it had been read over to him, but nothing had been written around the thumb impression of Chaju whether in Urdu or otherwise to show that the thumb impression was that of Chaju. We looked carefully at the affidavit filed in this Court which is a cyclostyled document. We find in para 6 a correction in a very significant place. This correction has been made by typing certain words in the place between two lines with an oblique showing that it is an omission. The words beneath those added words have been erased although some of them in part still appear. Now it is significant that the words which have been added are as follows:

"understood the same he";

and the para now read as follows :

"Referring to para 7 of the petition, I say that the grounds were duly served upon the detenu and in token of having *understood the same* he affixed his thumb impression thereon." (under lining by us)

The underlined words are the words which have been added in the place between the two lines. It appears that what has been erased must be some other words appropriate to what preceded and what followed. In our opinion the paragraph must have read :

"Referring to para 7 of the petition I say that the grounds were duly served upon the detenu and in token of having *received the same* he affixed his thumb impression thereon."

The underlined words were erased and others substituted. There would be no occasion to erase one set of writing and write another if the words were there.

Of course Mr. Sachthey ingeniously suggests that this may be a case of erroneous typing necessitating the correction; but this correction comes at a significant spot after the detenu has sworn an affidavit that he was not explained the grounds of the detention in the language which he understood, and further the original document which is produced does not seem to bear authenticity because of the changes of ink. In these circumstances and regard being had to the fact that on the previous occasion in the affidavit there was no mention of having read over the grounds to him in the language he understood. we are constrained to hold that we

A should not go by the affidavit of the Under-Secretary, but in preference accept the affidavit of the detenu. The detenu is an illiterate person and it is absolutely necessary that when we are dealing with a detenu who cannot read or understand English language or any language at all that the grounds of detention should be explained to him as early as possible in the language he B understands so that he can avail himself of the statutory right of making a representation. To hand over to him the document written in English and to obtain his thumb impression on it in token of his having received the same does not comply with the requirements of the law which gives a very valuable right to the detenu to make a representation which right is frustrated by C handing over to him the grounds of detention in an alien language. We are therefore compelled to hold in this case that the requirement of explaining the grounds to the detenu in his own language was not complied with.

Even as to the grounds, we have something to say. The grounds charge him with having conspired with some leaders of D Democratic Conference and having incited landless people of RSpura Tehsil to forcibly occupy the land comprised in Nandpur Mechanised Farm and to have persuaded them to resist violently any attempt to evict them. No details of the leaders of the Conference or of the persons incited or the dates on which he conspired or incited the squatters or the time when such conference E took place, are mentioned. It would be impossible for anybody to make a representation against such grounds. These grounds, on the authorities of this Court, too numerous to be cited here, must be held to be vague. Therefore on both the twin grounds, namely, that he was deprived of his right to make a representation and also because the grounds in themselves were very vague, we must hold that there was no compliance with the law as laid down F in the Jammu & Kashmir Preventive Detention Act. The result, therefore, is that the detention must be declared to be unlawful and Chaju must be declared to be entitled to his liberty. He is ordered to be released. The detenu was questioned by us and he expressed a desire that he may not be released in Delhi, because he has no means of going back. He asked to be released in Jammu. We direct therefore that he sha'l be taken back to the place where he was in detention in Jammu and released within the shortest possible time.

G G.C. *Petition allowed.*