

**(2018) 08 J&K CK 0096**

**In the Jammu And Kashmir High Court**

**Case No : Habeas Corpus Petition No.87 Of 2018**

**Aafaq Ahmad Bhat @APPELLANT@Hash State of J&K and anr**

---

**Date of Decision : 30-08-2018**

**Acts Referred:**

Constitution of India, 1950 — Article 22(5)

**Citation : (2018) 08 J&K CK 0096**

**Hon'ble Judges : Rashid Ali Dar, J**

**Bench : Single Bench**

**Final Decision : Allowed**

---

## **Judgement**

1) In terms of detention order No.01-DMK/PSA/2018 dated 10.04.2018, passed by District Magistrate, Kupwara-respondent No.2 herein, Aafaq

Ahmad Bhat (hereinafter referred to as the detainee), has been taken into preventive custody and lodged in Central Jail, Kotbhalwal. By the instant petition, quashing of the said order is sought.

2) The petitioner's case, as set out in the petition, is that the detainee, firstly, without any justification and cause, was implicated in a criminal case,

where after detention order impugned was slapped upon him. The order is bad, illegal and unconstitutional. The respondents are stated to have

ignored to provide material relied upon by the detaining authority while passing the impugned order of detention and thus deprived the detainee of his

guaranteed Constitutional rights. Grounds of detention are stated to be vague and unfounded.

3) The respondents, in their counter affidavit, have disputed the averments made in the petition and insisted that the activities of detainee are highly

prejudicial to the maintenance of public order. It is pleaded that the detention order and grounds of detention were handed over to the detainee and

same were read over and explained to him.Â

4) Learned counsel for the petitioner highlighted number of grounds for quashing impugned order. However, during the course of arguments, the only

ground which prevailed for consideration is that the detainee has been informed to make representation to the government but has not been informed

that he can make a representation before the detaining authority, which is an infringement of a valuable right.

5) Perusal of the records reveal that vide communication dated 10.04.2018, issued by District Magistrate, Kupwara, detainee has been informed to

make a presentation to the Government, so clearly he has not been asked to make a representation before the District Magistrate (Detaining

Authority). The position has already settled i.e. when there is such a breach of right, the order of detention becomes unsustainable.

6) In the judgment rendered by the Honâ??ble Apex Court in â??State of Maharashtra and others v. Santosh Shankar Acharyaâ? (AIR 2000 SC

2504), it has been held that â??detainee will have a right to make a representation to the Detaining Authority so long as the order of detention has not

been approved by the State Government and consequently noncommunication of the fact to the detainee that he has a right to make representation to

the Detaining Authority, would constitute an infraction of the valuable Constitutional right guaranteed to the detainee under Article 22(5) of the

Constitution and such failure would make the order of detention invalid.â??

7) Taking conspectus of the aforesaid discussion, petition is allowed, order No.01-DMK/PSA/2018 dated 10.04.2018, is quashed. The detainee shall

be released from the preventive custody forthwith if not required in connection with any other case.

8) Detention records, as produced, be returned to the learned counsel for the respondents.Â