

(2022) 05 J&K CK 0031

In the Jammu And Kashmir High Court

Case No : Writ Petition (Criminal) No. 199 Of 2021

Abdul Majid Khan

APPELLANT

Vs

UT Of J&K And Others

RESPONDENT

Date of Decision : 12-05-2022

Acts Referred:

Constitution Of India, 1950 — Article 22(5)
Jammu And Kashmir Safety Act, 1978 — Section 8

Citation : (2022) 05 J&K CK 0031

Hon'ble Judges : Dhiraj Singh Thakur, J

Bench : Single Bench

Advocate : Aatir Javed Kawoosa, Satinder Singh

Final Decision : Disposed Of

Judgement

Dhiraj Singh Thakur, J

1. The present Habeas Corpus petition has been filed challenging the order of detention dated 18.10.2021 passed by the District Magistrate, Budgam, who in purported exercise of the powers vested in it under Section 8 of the Jammu and Kashmir Safety Act, 1978 (For short, Act of 1978) has ordered the detention of the petitioner with a view to prevent him from acting in any manner prejudicial to the security of the State.

2. The order of detention was challenged mainly on the ground that the procedural safeguards, which were required to be followed in terms of the Act of 1978 and the various pronouncements of the Apex Court had not been followed in their letter and spirit at the time of passing of the order impugned.

3. It was vehemently urged that the right to make a representation, which was a constitutional right was sought to be defeated by the detaining authority by not communicating to the petitioner that apart from the petitioner's right to make a representation to the Govt., he could also make a representation to the detaining authority against the order of detention.

4. Reliance was placed upon a judgment of this Court in Abdul Rashid Vs. State of J&K and also as also the Apex Court judgment in State of Maharashtra & ors vs. Santosh Shankar Acharya, AIR 2000 SC 2504.
5. Heard learned counsel for the parties.
6. In State of Maharashtra & ors. V. Santosh Shankar Acharya, AIR 2000 SC 2504, the apex court held that non-communication to the detainee of his right to make a representation to the detaining authority against the order of detention would constitute an infraction of the constitutional right guaranteed to the detainee under Article 22(5) of the Constitution and such a failure would make the order of detention invalid.
7. The aforementioned judgment was followed by this Bench in Abdul Rashid vs. State of J&K & ors, (2018) 2 JKJ 254.
8. Testing the facts of the present case on the touchstone of the law aforementioned, it can be seen that neither in the order of detention nor in the ground of detention was the petitioner informed that apart from his right to make a representation to the Government, he had also a right to make a representation to the detaining authority against the order of detention. If that be so, then such a failure would make the order of detention unsustainable in law. Consequently, the order impugned is quashed. The respondents are directed to release the petitioner forthwith if not required in any other case.
9. Detention record be returned back to the counsel appearing for the respondents against property receipt.
10. Disposed of accordingly.