

**(2019) 12 J&K CK 0042**  
**In the Jammu And Kashmir High Court**  
**Case No : WP (Cri) No. 518 Of 2018**

Ajaz Hussain Rizvi

APPELLANT

Vs

State Of Jammu And Kashmir & Ors

RESPONDENT

**Date of Decision :** 16-12-2019

**Acts Referred:**

Constitution Of India, 1950 — Article 22(5)  
Jammu And Kashmir Public Safety Act, 1978 — Section 13

**Citation :** (2019) 12 J&K CK 0042

**Hon'ble Judges :** Ali Mohammad Magrey, J

**Bench :** Single Bench

**Advocate :** Syed Riyaz Khawar, B.A Dar

**Final Decision :** Disposed Of

## Judgement

Ali Mohammad Magrey, J

1. Impugned in this Habeas Corpus petition with a prayer for quashment thereof is the detention order no. DMS/PSA/112/2019 dated 29.08.2019, purporting to have been passed by District Magistrate Srinagar, whereunder detenu namely Aijaz Hussain Rizvi @ Ayaz Molvi s/o Syed Abdul Baqi Rizvi R/o Nabdipora Hawal, Srinagar, District Srinagar, is under detention.

2. It is submitted that the detenu is never involved in any Anti National activity even no FIR has been registered against him ever since. The detenu was offered to act as informer of police which he refused to do that is why the police implicated him in false and frivolous case of stone pelting, which forms basis for passing the detention order against the detenu. Since nothing is incriminating found against the detenu on the record file which suggests the passing of the impugned detention order. Therefore, the detention order deserves to be quashed.

3. Learned counsel for the petitioner-detenu has chosen to press the only ground for seeking quashment of the detention order though having taken many which

has reference to the Detaining Authority not mentioning in the order that the detenu can make a representation to the Detaining Authority which as per the learned counsel constitute an infraction of valuable constitutional right guaranteed under Article 22(5) of the Constitution of India as also of the right under section 13 of the Jammu and Kashmir Public Safety Act, 1978.

4. Despite opportunity counter affidavit has been filed, therefore, right to file the same was closed vide order dated 3.12.2019. However, it is submitted by learned counsel for the respondents that in the circumstances of the case the impugned detention order is well founded in fact and law. Photo copy of detention record has been produced.

5. Heard learned counsel for the parties, perused the writ record and considered the matter.

6. The contention raised by learned counsel for the petitioner-detenu with reference to the detaining authority having not mentioning in order about petitioner's-detenu's right to make representation a valuable constitutional right guaranteed under Article 22(5) of the Constitution of India as also of the right under section 13 of the Jammu and Kashmir Public Safety Act, 1978, has substance.

7. The Division Bench of this Court while deciding LPA HC no.43/2017 vide judgment dated 09.06.2017, reported in 2017 (II) SLJ titled "Tariq Ahmad Dar v. State of J&K and ors, has held as under:

"....it is abundantly clear that non- communication of the fact that the detenu can made a representation to the Detaining Authority, till the detention order is not approved by the Government, would constitute an infraction of a valuable Constitutional right guaranteed under Article 22(5) of the Constitution of India as also of the right under Section 13 of the Jammu and Kashmir Public Safety Act, 1978. Failure of such non-communication would invalidate the order of detention.

8. Since the Detaining Authority has failed to mention in the detention order about the petitioner's right to make representation constitute an infraction of a valuable constitutional right guaranteed under Article 22(5) of the Constitution of India as also of the right under Section 13 of the Jammu and Kashmir P.S Act, 1978, which renders the detention order as invalid and deserves to be quashed.

9. The petition is accordingly, allowed and detention order no. DMS/PSA/112/2019 dated 29.08.2019, purporting to have been passed by District Magistrate Srinagar, under which the detenu namely Ajaz Hussain Rizvi @ Ajaz Molvi s/o Syed Abdul Baqi Rizvi R/o Nabdipora Hawal Srinagar District Srinagar, is under detention, is quashed along with any subsequent order passed thereto, with direction for his release forthwith.

10. The petition stands accordingly disposed of. Photo copy of detention record be returned to learned Senior Additional Advocate General in open Court.

11. No order as to costs.