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**(1988) 01 J&K CK 0002**  
**In the Jammu And Kashmir High Court**

Altaf Ahmad Matoo

APPELLANT

Vs

State and Others

RESPONDENT

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**Date of Decision :** 27-01-1988

**Acts Referred:**

Constitution of India, 1950 — Article 22

**Citation :** (1989) CriLJ 1270

**Hon'ble Judges :** R.M. Rizvi, J

**Bench :** Single Bench

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## Judgement

R.M. Rizvi, J.—This is a writ of habeas corpus challenging the detention order No. PSA/DMS/35/87 dt. 7-7-1987 passed by the District

Magistrate, Srinagar detaining Altaf Ahmad s/o Ghulam Nabi Mattoo r/o Zainder Mohalla, Srinagar, u/s 8 of the Public Safety Act, (hereinafter

referred to as ""Act"" on various grounds as mentioned in the petition.

2. On admission of this petition to hearing notices were issued to the respondents to file their reply affidavits and to show cause against the prayer

made in the petition. Despite repeated opportunities given to them, no counter-affidavit was filed by them with the result that all the factual

allegations made in the petition remained un rebutted.

3. I have heard the learned Counsel for the petitioner as also the learned Additional Advocate General and have gone through the file thoroughly.

4. Firstly, it is alleged in the petition that except the grounds of detention no other material which was provided to the detaining authority by the

police for his subjective satisfaction was furnished to him so as to enable him to make an effective representation against the order of his detention.

This allegation of non-supply of material to the petitioner has been made by the

petitioner on an affidavit which has not been rebutted by the respondents in any manner whatsoever, As already mentioned above, the respondents did not choose to file any counter-affidavit in the case. In the petition, it has been stated that only grounds of detention were supplied to the detenu and that even the copies of FIRs as mentioned therein have not been furnished to him. In the forwarding letter addressed to the detenu, eleven leaves consisting of grounds of detention order and the copies of FIRs have been shown to have been sent to him. The petitioner has admitted that only grounds of detention consisting of three leaves were supplied to the detenu. He has categorically denied that the detenu was supplied any other material including the copies of FIRs. As the petitioner has stated so on affidavit which has not been controverted by the respondents by an counter-affidavit or in any other manner, the Court has to believe that only grounds of detention were furnished to the detenu. Moreover, the detaining authority has not indicated it anywhere in the grounds of detention as to what material was provided to him by the police for his subjective satisfaction about the alleged activities of the detenu which were prejudicial to the maintenance of public order. He could not be an eye witness to the alleged activities of the detenu, and if so, he has not mentioned it anywhere. Then what was the material before him which had satisfied him about the alleged prejudicial activities of the detenu is not shown anywhere either in the letter addressed by him to the detenu or the grounds of detention furnished to him. How has he passed the detention order in absence of any such material is not understood. Non-supply of such material to the detenu has a very serious legal implication which goes to the root of the detention order and knocks out its very bottom. Under Article 22(5) of the Constitution . it is a fundamental right of a detenu to make a representation against the order of his detention. Such a representation could be made by a detenu effectively only if he knew as to what material was before the detaining authority which had satisfied him about the activities in which he was allegedly, indulging and which were prejudicial to the maintenance of the public order. If he does not know anything about such material, how can he make an effective representation against the order of his detention? In this view of the matter, the detenu has been deprived of a fundamental right guaranteed to him under Article

22(5) of the Constitution, and it makes the very order of detention unconstitutional. In the circumstances of the case as mentioned above, there is no alternative before the court but to hold such order as unconstitutional, and violative of the fundamental right of the detenu. This defect in the detention order is of such a nature that there is no need to go into the merits of any other ground of detention, notwithstanding Section 10-A of the Act. Once the very fundamental right of a detenu as guaranteed to him under the Constitution is taken away, the question of looking into the grounds of his detention, is uncalled for. The mandate of considering the merits of each of the grounds of detention as provided u/s 10-A of the Act is required only when the detention order itself is constitutional one. If the very order is unconstitutional, where is the necessity of going into the grounds of such order.

5. Moreover, the learned Counsel for the petitioner submitted that the allegations made against the detenu in the grounds of detention all pertain to pre and post incidents of elections to the J & K Legislative Assembly on 22nd of March, 1987, and are politically motivated. According to him, there was no material before the District Magistrate on the basis of which he could form the opinion that the detenu would act in future in a manner prejudicial to the maintenance of public order. In this regard, he has referred me to Fazal Ghosi and Others Vs. State of U.P. and Others, , wherein it has been held that where there is no material to show that the detenu would repeat the misconduct or do anything else which would be prejudicial to the maintenance of public order, such order of detention is liable to be set aside.

6. It may be pointed out here that the Public Safety Act provided for preventive detention and such detention is intended where it is apprehended that the person may act prejudicially to one or more of the considerations specified in the statute. There is no doubt that preventive detention is intended as a preventive measure and not as a curtailment of liberty by way of punishment for an offence already committed. In the present case, there is no material on the file except bald and wild allegations which could show that the detenu would act in future to the prejudice of the maintenance of public order. Even, if it is accepted that he indulged in same activities during the Election period which incited some people of

lawlessness, there is no material to warrant the inference that he would repeat the misconduct or do anything else which would be prejudicial to the

maintenance of public order. The District Magistrate no doubt has stated that the detention of the detenu was effected because he was satisfied

that it was necessary to prevent him from acting prejudicially to the maintenance of public order, but there is no reference to any material in support

of that satisfaction. The satisfaction of the District Magistrate is admittedly, subjective in nature but even subjective satisfaction must be based upon

some pertinent material. Here I am concerned not only with the sufficiency of that material but with the existence of any relevant material at all.

7. In these circumstances, the detention order impugned must be quashed. I, therefore, allow the petition and direct that the detenu be set at liberty

forthwith. The Superintendent, Sub Jail, Hiranagar, be informed accordingly.