

(2019) 12 J&K CK 0010

In the Jammu And Kashmir High Court

Case No : Case no. [Writ Petition (Crl) No. 194 Of 2019]

Ashraf Ganie

APPELLANT

Vs

State Of Jammu And Kashmir & Ors

RESPONDENT

Date of Decision : 09-12-2019

Acts Referred:

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

Citation : (2019) 12 J&K CK 0010

Hon'ble Judges : Ali Mohammad Magrey, J

Bench : Single Bench

Advocate : Shaja ul Haq, Asif Maqbool

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. 07/DMB/PSA/2019 dated 23.04.2019 07.07.2018, purporting to have been passed by District Magistrate Baramulla, whereunder detenu namely Ashraf Ganie s/o Gull Ganie R/o Muqam-e-Shaheed Mir Botingoo, District Baramulla, is under detention.

2. Learned counsel for the petitioner 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.

3. In his counter affidavit, respondent no.2 has stated that the detenu's activities being prejudicial to the environment and ecology of the State, his detention was necessary to prevent him from indulging in such acts, as the detenu is involved

in smuggling of huge quantity of timber from District Baramulla. During course of his submissions the respondents counsel besides reiterating the contents of counter affidavit has contended that in circumstances of the case the impugned detention is well founded in fact and law.

4. Heard learned counsel for the parties, perused the writ record as also detention record and considered the matter.

5. The contention raised by learned counsel for the petitioner with reference to the detaining authority having not mentioning in order about petitioner'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.

6. 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.

7. 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.

8. The petition is accordingly, allowed and detention order no. 07/DMB/PSA/2019 dated 23.04.2019, purporting to have been passed by District Magistrate Baramulla, under which the detenu namely Ashraf Ganie s/o Gulla Ganie R/o Muqam-e-Shaheed Mir Botingoo, District Baramulla, is under detention, is quashed with direction for his release forthwith.

9. The petition stands accordingly disposed of. Detention record be returned to learned Deputy Advocate General in open Court.

10. No order as to costs.