

(2009) 07 J&K CK 0031
In the Jammu And Kashmir High Court
Case No : HC (W) No. 39 Of 2009

Bilal Kashru

APPELLANT

Vs

State of J&K & Ors.

RESPONDENT

Date of Decision : 27-07-2009

Acts Referred:

Constitution of India, 1950 — Article 22(5)
Jammu and Kashmir Public Safety Act, 1978 — Section 13, 8

Citation : (2009) 3 JKJ 555

Hon'ble Judges : J.P.Singh, J

Bench : Single Bench

Advocate : M.A.Wani, S.M.Ayoub, Advocates appearing for the Parties

Judgement

1. Petitioner's learned counsel makes a short submission to support Bilal Kashru's challenge to the District Magistrate Shopian's Order No. 637

DMS/PSA/09 dated 4.2.2009 whereby he has been ordered to be detained under section 8 (a1) of the Jammu and Kashmir Public Safety Act

1978, urging that the material relied upon by the Detaining Authority was not supplied to the detainee to provide him requisite opportunity to make

effective representation to the Government against his detention on the grounds, which, according to him, are vague and uncertain.

2. Conceding that the material relied upon by the Detaining Authority was not supplied to the detainee, respondents' learned counsel Mr. Wani

urged that no prejudice has been caused to the detainee whose detention was justified in view of his activities detailed in the grounds of detention.

3. I have considered the submissions of learned counsel for the parties, perused the grounds of detention and the detention records made available

by the learned State counsel.

4. Perusal of the grounds of detention indicates that although reference to the date of registration of the FIRs and the damage caused to the forest

wealth is indicated therein yet the date of commission of the offence or the place where the damage is stated to have been caused to the forest

wealth, are missing therefrom.

5. The allegations appearing in the grounds of detention attributing damage of the Forest wealth to the detainee are vague, indefinite and uncertain.

6. Looking to the nature of the allegations appearing in the grounds of detention, and the omission of the respondents to supply the copies of the

FIRs mentioned in the grounds of detention and the Dossier supplied by the Divisional Forest Officer, Forest Division Shopian, to the Detaining

Authority, on the basis whereof, the petitioner's detention is stated to have been ordered, I am of the view that the detainee has been prejudiced in

making an effective representation to the Government against his detention, for, representation by the detainee, contemplated by Section 13 of the

Jammu and Kashmir Public Safety Act may not be conceived unless the detainee was supplied the material which had been considered by the

Detaining Authority for passing the detention order. Learned State counsel's plea that nonsupply of the material relied upon by the Detaining

Authority to the detainee had not prejudiced him in making representation to the Government, is found to be without any merit, hence rejected.

7. For all what has been said above, the petitioner's detention becomes unsustainable.

8. This petition is, accordingly, allowed, quashing District Magistrate Shopian's Order No. 63/DMS/PSA/09 dated 4.2.2009. Respondents are

directed to release the detainee forthwith from the preventive custody.

9. Detention records be returned to the learned State counsel.