

(2019) 03 J&K CK 0027

In the Jammu And Kashmir High Court

Case No : Habeas Corpus Petition (HCP) No. 51 Of 2018

Khadam Hussain

APPELLANT

Vs

State Of Jammu & Kashmir And Ors

RESPONDENT

Date of Decision : 06-03-2019

Acts Referred:

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

Citation : (2019) 03 J&K CK 0027

Hon'ble Judges : Dhiraj Singh Thakur, J

Bench : Single Bench

Advocate : C.N. Liaqat

Judgement

1. The present Habeas Corpus Petition has been filed, challenging the order of detention dated 12.11.2018 issued by the District Magistrate, Rajouri, who, in purported exercise of his powers vested in him under Section 8 of the Jammu and Kashmir Public Safety Act, 1978 (for short, 'Act of 1978'), has ordered the detention of the petitioner from acting in any manner which is highly prejudicial to the maintenance of public order.

2. The order of detention was challenged by the petitioner on two grounds, firstly that the material relied upon by the respondents while ordering the detention of the petitioner was not supplied to him and secondly, that the petitioner was not informed of his right to make a representation against the order of detention to the detaining authority.

3. Heard learned counsel for the petitioner.

FIRST GROUND

4. The first ground on the basis of which the order of detention was challenged was that the material relied upon by the respondents while ordering the detention of the petitioner was not supplied to him.

5. On a reading of the record produced by the respondents, it does not appear that the material on the basis of which the order of detention had been passed was ever supplied to the petitioner. In the absence of the relevant documents, it could never be expected of the petitioner to make an effective representation against the order of detention either to the Govt. or to the detaining authority itself.

6. In *Thahira Haris v. Government of Karnataka & ors*, AIR 2009 SC 2184, the Apex Court after noticing various judgments on similar issue held that it was imperative for valid continuance of detention that the detinue be supplied all documents, statements and other materials relied upon in the grounds of detention, failing which the right of the detinue of making an effective representation as enshrined under Article 22(5) of the Constitution would be violated.

SECOND GROUND

7. The second ground urged on the basis of which the order of detention was challenged was that the petitioner was not informed of his right to make a representation to the detaining authority.

8. From a perusal of the record, it appears that the petitioner was not informed of his right to make a representation to the detaining authority. In fact, what has been mentioned in the Order No. DMR/INDEX/345 dated 12.11.2018 passed by the District Magistrate, Rajouri that petitioner may make a representation before the Government against the said order, if he so desires." The District Magistrate, Rajouri has not mentioned that the petitioner could make a representation against the order to the detaining authority as well.

9. In *State of Maharashtra & ors. V. Santosh Shankar Acharya*, AIR 2000 SC 2504, the apex court held that non-communication to the detinue 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 detinue under Article 22(5) of the Constitution and such a failure would make the order of detention invalid.

10. The aforementioned judgment was followed by a Division Bench of this court in *Tariq Ahmad Dar vs. State of J&K & ors*, LPAHC No. 43/2017, decided on 09.06.2017 and the detention order set aside.

11. Keeping in view the principles of law aforementioned, the order of detention can clearly be said to be suffering from non-application of mind on the part of the District Magistrate, Rajouri. The order impugned bearing No. DMR/INDEX-21 of 2018 dated 12.11.2018 is legally untenable and is accordingly quashed. The petitioner be released forthwith, if not required in any other case. Needless to say that the official respondents would be at liberty to pass a fresh order after complying with the constitutional and statutory obligations strictly in accordance with law, if need be.

12. The records be returned to the learned counsel for the respondents against proper receipt.