

(2018) 09 J&K CK 0026

In the Jammu And Kashmir High Court

Case No : Habeas Corpus Petition No. 25 Of 2018

Mohammad Hussain @APPELLANT@Hash State of J&K & anr

Date of Decision : 06-09-2018

Acts Referred:

Constitution of India, 1950 — Article 22(5)

Jammu and Kashmir Public Safety Act, 1978 — Section 8(1)(a)

Citation : (2018) 09 J&K CK 0026

Hon'ble Judges : Dhiraj Singh Thakur, J

Bench : Single Bench

Final Decision : Disposed Off

Judgement

1. The present Habeas Corpus petition has been filed for quashing the order of detention dated 20.06.2018 passed by the District Magistrate, Samba

who, in purported exercise of his powers vested in him under Section 8 (1) (a) of the Jammu and Kashmir Public Safety Act, 1978 (for short, Act of

1978), has ordered the detention of the petitioner in order to prevent him from acting in any manner prejudicial to the maintenance of the public order.

2. The order of detention is primarily challenged on the ground that the material relied upon by the respondents while ordering the detention of the

petitioner was not supplied to the petitioner neither was he informed of his right to make a representation against the order of detention to the detaining

authority.

3. Heard learned counsel for the parties.

4. From a perusal of the record, it transpires that it has nowhere been mentioned in the detention order or in the grounds of detention that the material

on the basis of which the detention order was issued was ever supplied to the petitioner nor is it mentioned that the petitioner can make a

representation to the detaining authority.

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

6. 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.

7. Testing the facts of the present case on the touchstone of the law aforementioned, it can be seen that the detainee had never been informed of his

right to make a representation against the order of detention before the detaining authority. If that be the position, then such a failure would make the

order of detention invalid. Consequently, the order impugned dated 20.6.2018 is quashed. The respondents are directed to release the petitioner

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.

8. Disposed of accordingly.