

(2018) 09 J&K CK 0009

In the Jammu And Kashmir High Court

Case No : Habeas Corpus Petition No.20 Of 2018

Mohd. Abdullah Gujjar @APPELLANT@Hash State Of Jammu & Kashmir & Anr

Date of Decision : 06-09-2018

Acts Referred:

Jammu and Kashmir Public Safety Act, 1978 — Section 8(2)

Citation : (2018) 09 J&K CK 0009

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 03.05.2018^Â passed by the District Magistrate,

Kishtwar who, in purported exercise of his powers vested in him under Section 8 (2) of the Jammu and Kashmir Public Safety Act, 1978 (for short,

Act of 1978), has ordered the detention of the petitioner with a view to prevent him from activities^Â which are harmful to the security/maintenance of

public order in any manner.^Â

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.Â

5. In *State of Maharashtra &ors. V. Santosh Shankar Acharya*, AIR2000 SC 2504, the apex court held that non-communication to the detenue 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 detenue 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 detenue had never been informed of his right to make a representation against the order of detention before the detaining authority.Â If that be the position, then such a failure would make the order of detention invalid.Â Consequently, the order impugned dated 3.5.2018Â is quashed.Â The respondents are directed to release the petitioner forthwith if not required in any other case.Â 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.