

(2008) 11 J&K CK 0030

In the Jammu And Kashmir High Court

Case No : Habeas Corpus Petition (W) No. 28 Of 2008

Mohd.Rafiq

APPELLANT

Vs

State and Ors.

RESPONDENT

Date of Decision : 03-11-2008

Acts Referred:

Jammu and Kashmir Public Safety Act, 1978 — Section 8

Citation : (2009) 1 JKJ 18 : (2010) 1 RCR(Criminal) 670 : (2009) 2 SriLJ 536

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

Bench : Single Bench

Advocate : Sunil Sethi, S.C.Gupta, Advocates appearing for the Parties

Judgement

1. Petitioner has filed this habeas corpus petition through his wife seeking quashing of District Magistrate Samba's order No. 06/PSA of 2008

dated 09.06.2008, saying that his detention in preventive custody is illegal as, while detaining the petitioner, respondents had not complied with the

requirements of Article 22(5) of the Constitution of India, in that, the material relied upon by the detaining authority including the copies of the

FIR's referred in the grounds of detention, had not been supplied to the detenue thereby depriving him of his right to make effective representation

against his detention.

2. District Magistrate Samba has filed his counter affidavit in response to the petition, bare reading whereof demonstrates that he has not taken

care to meet the grounds which the petitioner has raised in his petition. Petitioner's plea that he had not been supplied the material including the

copies of FIR's relied upon by the detaining authority while passing the detention order, as it appears in paragraph No.5 of the petition, has gone

uncontroverted as the cryptic affidavit filed by the District Magistrate does not contain even a whisper about the petitioner's plea.

3. Mr. S. C. Gupta, learned State counsel, was accordingly asked to indicate as to whether the petitioner had been supplied the material which

had been relied upon by the District Magistrate while directing his detention. Learned counsel, after going through the detention records, fairly

conceded that petitioner had been supplied the grounds of detention alone and the copies of the FIR's referred to in the grounds of detention had

not been supplied to him.

4. I have gone through the detention records which were made available by the learned State counsel and find that the learned State Counsel is

right in saying that the petitioner had neither been supplied the police dossier nor the copies of FIR's which had been relied upon by the learned

District Magistrate while directing petitioner's detention under Section 8 of the Jammu and Kashmir Public Safety Act, 1978.

5. Nonsupply of the material, which the District Magistrate had considered while contemplating petitioner's detention under Section 8 of the Jammu

and Kashmir Public Safety Act, to the petitioner would deprive him of his constitutional right to make representation against his detention, in that,

effective representation contemplated by Article 22(5) of the Constitution of India read with Section 13 of the Jammu and Kashmir Public Safety

Act, 1978, may not be contemplated unless all the material which had entered the mind of the detaining authority had been supplied to the detenu

so that he could, while making his representation, deal with the grounds of detention on which he had been detained.

6. In this view of the matter petitioner's detention in preventive custody cannot be justified.

7. Detention order issued by the District Magistrate thus becomes unsustainable.

8. This petition, therefore, succeeds and District Magistrate Samba's order No. 06/PSA of 2008 dated 09.06.2008 is, accordingly, quashed. A

direction shall issue to respondents to release the petitioner forthwith, if not required in any other case.

9. Detention Records be returned to the State Counsel.