
(2017) 12 J&K CK 0024
In the Jammu And Kashmir High Court
Case No : 205 of 2017

Mudasir Fayaz Mir

APPELLANT

Vs

State of J&K and others

RESPONDENT

Date of Decision : 06-12-2017

Acts Referred:

[Constitution of India](#), [Article 21](#), [Article 22\(5\)](#) - Amendment of the Schedule - Protection against arrest and detention in certain cases

Citation : (2017) 12 J&K CK 0024

Hon'ble Judges : Mohammad Yaqoob Mir

Bench : SINGLE BENCH

Advocate : M. A. Qayoom, M.A. Beigh

Final Decision : Allowed

Judgement

1. Challenge in this petition is to the order No-DMB/PSA/16 of 2017 dated 25.05.2017, passed by District Magistrate, Budgam-respondent

No.2 herein, whereby Mudasir Fayaz Mir (hereinafter referred to as the detainee), has been taken in preventive detention and lodged in Central

Jail, Kathua, Jammu. By now detainee is in preventive custody for more than six months.

2. Learned counsel for the petitioner while seeking quashment of impugned order raised various grounds, the star ground is that the detaining

authority-respondent No.2, did not inform the detainee that, independent of his right to file representation against his detention to the Government,

he has also a right to submit representation to the detaining authority, thus violated constitutional and statutory rights of the detainee guaranteed

under Article 22(5) of the Constitution of India.

3. In the judgment rendered by the Hon'ble Apex Court in ""State of Maharashtra and others v. Santosh Shankar Acharya"" (AIR 2000 SC 2504),

it has been held that ""detenue will have a right to make a representation to the Detaining Authority so long as the order of detention has not been

approved by the State Government and consequently non-communication of the fact to the detenue that he has a right to make representation to

the Detaining Authority, would constitute an infraction of the valuable Constitutional right guaranteed to the detenue under Article 22(5) of the

Constitution and such failure would make the order of detention invalid.

4. Preventive laws have the effect of depriving a person of his liberty which is precious, however, deprivation thereof at times becomes

indispensable. For justifying such deprivation, the safeguards as are provided by law are also required to be respected. A person who dares to

threaten maintenance of public order has to be dealt with iron hand but the Constitutional safeguards as are available are also to be followed. The

Article 21 of the constitution of India has protected the life and personal liberty of people by providing that no person shall be deprived of his life

or personal liberty except according to the procedure established by law. The word established is used in Article 21 in order to denote and ensure

that the procedure prescribed by law must be defined with certainty in order that those who are deprived of their fundamental right to life or liberty

must know the precise extent of such deprivation. If a person is to be deprived of his life or liberty, the authority concerned is under a constitutional

mandate to follow the procedure established by law, the procedure prescribed for depriving a person of his life or liberty has to be reasonable, fair

and just. The protection contained in the article does not extend to only citizens but to all persons. The law providing for preventive detention has

to be strictly construed keeping in view the delicate balance between social security and citizen freedom. Thus if the preventive detention has not

been ordered in strict conformity with law authorizing detention, the detenue is entitled to be released.

5. Viewed thus, the petition is allowed and order No.DMB/PSA/16 of 2017 dated 25.05.2017, is quashed. Detenue is directed to be released

from the preventive custody forthwith provided he is not required in connection with any other case(s).

6. Detention records as produced be returned to the learned counsel for the respondents.