

(2019) 12 J&K CK 0040
In the Jammu And Kashmir High Court
Case No : WP (Cri) No. 442 Of 2018

Shakeel Ahmad Yatoo

APPELLANT

Vs

State And Ors

RESPONDENT

Date of Decision : 16-12-2019

Acts Referred:

Constitution Of India, 1950 — Article 22(5)
Jammu And Kashmir Public Safety Act, 1978 — Section 13

Citation : (2019) 12 J&K CK 0040

Hon'ble Judges : Ali Mohammad Magrey, J

Bench : Single Bench

Advocate : M.A Makroo, B.A Dar

Final Decision : Disposed Of

Judgement

Ali Mohammad Magrey, J

1. Impugned in this Habeas Corpus petition with a prayer for quashment thereof is the detention order no. DMS/PSA/16 of 2018 dated 06.11.2018, purporting to have been passed by District Magistrate Budgam, whereunder detenu namely Shakeel Ahmad Yatoo s/o Mohammad Rajab Yatoo R/o Hayatpora, Tehsil chaoora District Budgam, is under detention.

2. It is submitted that the detenu is never involved in any illegal activity. The allegations leveled against the detenu in the grounds of detention are vehemently denied to be correct, as the same are baseless. Therefore, the detention order deserves to be quashed.

3. Learned counsel for the petitioner-detenu has chosen to press the only ground for seeking quashment of the detention order though having taken many which has reference to the Detaining Authority not mentioning in the order that the detenu can make a representation to the Detaining Authority which as per the learned counsel constitute an infraction of valuable constitutional right guaranteed under Article 22(5) of the Constitution of India as also of the right

under section 13 of the Jammu and Kashmir Public Safety Act, 1978.

4. In his counter affidavit, respondent no.2 has stated that the detenu's activities being prejudicial to the security of the State, his detention was necessary to prevent him from indulging in such acts, which was also approved by the Government and the State Advisory Board constituted u/s 14 of P.S. Act. During course of his submissions the respondents counsel besides reiterating the contents of counter affidavit has contended that in circumstances of the case the impugned detention is well founded in fact and law. But despite the directions, detention record not produced.

5. Heard learned counsel for the parties, perused the writ record and considered the matter.

6. The contention raised by learned counsel for the petitioner-detenu with reference to the detaining authority having not mentioning in order about petitioner's-detenu's right to make representation a valuable constitutional right guaranteed under Article 22(5) of the Constitution of India as also of the right under section 13 of the Jammu and Kashmir Public Safety Act, 1978, has substance.

7. The Division Bench of this Court while deciding LPA HC no.43/2017 vide judgment dated 09.06.2017, reported in 2017 (II) SLJ titled "Tariq Ahmad Dar v. State of J&K and ors, has held as under:

"....it is abundantly clear that non- communication of the fact that the detenu can made a representation to the Detaining Authority, till the detention order is not approved by the Government, would constitute an infraction of a valuable Constitutional right guaranteed under Article 22(5) of the Constitution of India as also of the right under Section 13 of the Jammu and Kashmir Public Safety Act, 1978. Failure of such non-communication would invalidate the order of detention.

8. Since the Detaining Authority has failed to mention in the detention order about the petitioner's right to make representation constitute an infraction of a valuable constitutional right guaranteed under Article 22(5) of the Constitution of India as also of the right under Section 13 of the Jammu and Kashmir P.S Act, 1978, which renders the detention order as invalid and deserves to be quashed.

9. The petition is accordingly, allowed and detention order no. DMS/PSA/16 of 2018 dated 06.11.2018, purporting to have been passed by District Magistrate Budgam, under which the detenu namely Shakeel Ahmad Yatoo s/o Mohammad Rajab Yatoo R/o Hayatpora, Tehsil Chadoora, District Budgam, is under detention, is quashed, with direction for his release forthwith.

10. The petition stands accordingly disposed of.

11. No order as to costs.