

(2020) 06 J&K CK 0033

In the Jammu And Kashmir High Court

Case No : Writ Petition (C) No. 261 Of 2019, Criminal No. 770 Of 2019

Syed Iftikhar Indrabi

APPELLANT

Vs

State Of J&K And Others

RESPONDENT

Date of Decision : 26-06-2020

Acts Referred:

Jammu & Kashmir Public Safety Act, 1978 — Section 8, 8(1)(a)(i)
Constitution Of India, 1950 — Article 22(5)

Citation : (2020) 06 J&K CK 0033

Hon'ble Judges : Dhiraj Singh Thakur, J

Bench : Single Bench

Advocate : I. Sofi, Sajad Ashraf

Final Decision : Allowed

Judgement

Dhiraj Singh Thakur, J

1) The present Habeas Corpus Petition has been filed for quashing the order of detention dated 7th of August, 2019, issued by the District Magistrate, Kupwara, who, in purported exercise of power vested in him under Section 8 of the Jammu & Kashmir Public Safety Act, 1978, has ordered the detention of the petitioner with a view to prevent him from acting in any manner prejudicial to the public peace and order

2) The detention order has been issued on the basis of the material made available by the Police Agency in the form of dossier and ?other incriminating material?. The material part of the order of detention is reproduced herein-below:

"Whereas, perusal of dossier and ?other incriminating material? reveals that the subject has been involved in activities which are detrimental to maintenance of peace and public order.....

Now, therefore, in exercise of powers conferred under section 8(1)(a)(i) read with clause (ii) of sub-section (2) of section 8 of the Jammu & Kashmir Public

Safety act, 1978, it is hereby ordered that Syed Iftikhar Indrabi S/o Syed Atikullah R/o Laribal Tehsil Zachaldara District Kupwara be taken into preventive custody with a view to prevent him from acting in manner prejudicial to the maintenance of public peace and order and lodged in Central Jail, Srinagar."

3) Response has been filed to the petition. The record has also been furnished.

4) A number of grounds were raised to challenge the order impugned during the course of arguments. The main emphasis, however, was placed on the ground that while the order of detention reflects the satisfaction of the District Magistrate to have been derived from police dossier, there was no mention of what was the 'other incriminating material' which was relied upon by the detaining authority to draw satisfaction that the petitioner had to be detained under the provisions of the Public Safety act. It was urged that if at all there was any 'other incriminating material', the same should have also been provided to the petitioner with a view to enable him to make an effective representation. Reliance was placed on the judgment of the Apex Court in "Thahira Haris Vs. Government of Karnataka & Ors, AIR 2009 Supreme Court 2184. In the reported case, the Apex Court after noticing various judgments on similar issue, held that it was imperative for valid continuance of detention that the detenu be supplied all the documents, statements and other materials relied upon in the grounds of the detention, failing which the right of the detenu of making a representative as enshrined in Article 22(5) of the Constitution would be violated.

5) The Apex Court in Thahira Haris case also relied upon the judgment in Icchu Devi Choraria (Smt.) v. Union of India and others (1980) 4 SCC 531, wherein it was held that if there are any documents, statements or 'other material' relied upon in the ground of detention, they must also be communicated to the detenu, because being incorporated, in the grounds of detention, they form part of the grounds and the grounds furnished to the detenu cannot be said to be completed without them

6) In the present case, from the records it can be seen that no part of 'other material' relied upon by the detaining authority was ever furnished to the petitioner, which, thus can be said, to have constrained the petitioner from making an effective representation.

7) Be that as it may, the present petition is allowed. The order impugned dated 7th of August, 2019 is quashed. The petitioner be released forthwith, if not required in any other case.

8) Records be returned to the learned counsel for the respondents against proper receipt.