

(1968) 10 J&K CK 0001
In the Jammu And Kashmir High Court

Tajinder Singh, Som Nath

APPELLANT

Vs

District Magistrate, Jammu and Anr.

RESPONDENT

Date of Decision : 22-10-1968

Acts Referred:

Jammu and Kashmir Preventive Detention Act, 1964 — Section 3, 8

Citation : (1968) KashLJ 431

Hon'ble Judges : S.M.F.Ali, C.J and Jaswant Singh, J

Bench : Division Bench

Advocate : Amar Chand, Advocates appearing for the Parties

Judgement

Jaswant Singh, J.

(1) These two petitions (for issue of writs in this nature of Habeas Corpus directing the release of the petitioner) which raise identical questions

have been referred to the Division Bench by one of us as they involve the decision of an important point namely as to what is the effect of failure to

mention in the order conveying the grounds of detention to the detenu or the omission to convey to him otherwise that he has a right to make a

representation against the order of his detention.

(2) For a proper appreciation of the point involved, it is necessary to set out a few facts which are material for the purpose of the decision of these

petitions.

(3) The petitioners, it appear; were arrested and detained under two separate orders, issued by the District Magistrate Jammu, under Section 3 of

the Preventive Detention Act. 1964, hereinafter referred to as the Act. The fact of detention of the petitioners and the grounds and the

circumstances on which the orders of their detention were made were reported

by the District Magistrate, Jammu, to the Government who approved the action of the District Magistrate on 8121968. The grounds of detention were supplied by the detaining authority to the petitioners on 251167 and their cases were as required by Section 10 of the Act referred to the Government on 1211968 to the Advisory Board constituted under Section 9 of the Act The Advisory Board, having reported on 841968, that in its opinion, there was sufficient materials for detention of the petitioners, the Government confirmed the orders of their detention and directed their continuance in detention vide Orders Nos. ISD413J of 1968 and ISD413J of 1968 dated 1541963. The petitioners thereupon filled petitions for issue of.....writs in the nature of Habeas Corpus challenging the detention contending inter alia that their detentions were invalid and unlawful as they were not afforded any opportunity of making a representation against the order of their detention. The petitions were first heard by a Single Judge of the court, who, as stated above, referred them to a Division Bench as in his opinion, the question involved in the petitions was of great importance.

(4) The learned Additional Advocate General, appearing for the respondent has not disputed that the petitioners were not informed that they had a right of making a representation against their orders of detention. He has, however, urged that the detention of the petitioners cannot be held to be invalid merely on the ground that in their communications conveying the grounds of their detention to the petitioners, it has not been mentioned that they had a right to make a representation against the orders of their detention to the Government. According to him, the Constitution and the law merely require that a detainee should be afforded an opportunity of making a presentation which does not mean that he (the detainee) has to be intimated that he has a right to make a representation against the order of the detention.

(5) We have carefully considered the contention of the learned Additional Advocate General but are unable to accede to his submission, which appears to us, to run counter to the fundamental guarantee enshrined in Article 22(5) of the Constitution according to which every detainee has to be afforded an opportunity of making a representation against the order of his detention. The requirements of affording an opportunity to the

detenue of making a representation against the order of his detention, is not only enjoined by the aforesaid provision of the Constitution but also by

section 8 of the Preventive Detention Act which runs as follows :

When a person detained in pursuance of a detention order, the authority making the order shall, as soon as, may be, but no later than five days

from the date of detention, communicate to him the grounds on which the order has been made, and shall afford him the earliest opportunity of

making a representation against the order to the Government.

2/ Nothing in subsection (1) shall require the authority to disclose facts which it considers to be against the public interest to disclose.

(6) The aforesaid provisions of law and the Constitution impose two duties on the authority making the order of detention :

(i) Of furnishing to the detenue the grounds on which the order of his detention has been made and

(ii) Of affording an opportunity to the detenue of making a representation against the order of his detention.

(7) Both these duties are imperative and must be fulfilled. The duty of affording an opportunity to the detenue to make a representation against the

order of his detention cannot be said to be duly performed if he (the detenue) is not informed of his right to make a representation against the order

of detention The safeguard provided by Article 225) of the Constitution and Section 8 of the Preventive Detention Act will be rendered nugatory

and the furnishing of grounds of detention would become meaningless and an idle formality if the detenue is not informed that he can seek redress

by making a representation. How can a detenue be said to have an opportunity of making an effective representation if he does not know that he

has a right to make a representation, The conferment of the right to make a representation necessarily carries with it an obligation on the part of

detaining authority not only to furnish to the detenue the precise and definite grounds i.e. the material on which his detention order is based but also

to inform him that he has a right to make a representation i.e. to urge his objections against the order of his detention and that he may do so, if he

so likes. The requirement to make a mention of such a right in the communication conveying the grounds of detention to the detenue, or

immediately thereafter, is in our opinion, implicit in the very working of section 8

of the Preventive Detention Act set out above. That an omission to make such a mention makes the detention invalid would also be clear from a ruling of the Madhya Bharat High Court reported in AIR 1951

Madhya Bharat, wherein it has been held as follows :

(8) The grounds of detention may be contained in the order itself. But if the order fails to state that the detainee has the right to make a representation against the order of detention, his continued detention becomes illegal.

(9) As the petitioners have been deprived of their liberty in violation of the procedure established by law and in contravention of the Constitution

safeguard provided by Article 22 (5) of the Constitution we cannot but hold the detention of the petitioners as invalid. It has often been

emphasized by the Highest court in the country that preventive detention is a serious invasion of personal liberty and such meagre safeguards as the

Constitution has provided against the improper exercise of the power must be jealously watched and enforced by the court.

(10) In the result these petitions are accepted and the petitioners are directed to be set at liberty forthwith unless wanted in connection with some charge.