

**HIGH COURT OF JAMMU AND KASHMIR
AT JAMMU**

HC (W) No. 3/2012
Cr.M.A No. 2/2012

Date of decision:04.06.2012

Shafiq alias Shaku v. State of J&K and ors.

Coram:

Mr. Justice J.P.Singh.

Appearing counsel:

For Petitioner(s) : Mr. Raghu Mehta, Advocate.

For Respondent(s) : Mr. Gagan Basotra, AAG.

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|-----|--------------------------------------------------|---|--------|
| i) | Whether approved for reporting
in Press/Media | : | Yes/No |
| ii) | Whether to be reported
in Digest/Journal | : | Yes/No |
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Shafiq alias Shaku seeks quashing of District Magistrate, Udhampur's Order No. PSA-2011/DMU/JC/05 dated 19.12.2011 whereby he was ordered to be detained under Section 8 of the Jammu and Kashmir Public Safety Act, 1978.

Appearing for the detenue, his learned counsel questions the Detention, *inter alia*, on the ground that having been deprived of his right to represent against his detention to the Government because of Detaining Authority's omission to supply him the material that was relied upon by it in contemplating the Detention, the Detention of Shafiq was unjustified and unconstitutional.

Considered the submissions of learned counsel for the parties advanced at the Bar and perused the Detention Records

produced by the learned Additional Advocate General appearing for the State.

Perusal of the Detention Records reveals that the detainee was supplied the warrant of detention (1 leaf) and the Grounds of Detention (2 leaves). The material relied upon by the Detaining Authority, as it is so indicated in the Grounds of Detention is, 6 Nos. of FIRs registered at Police Station Udhampur in the years 2006, 2007, 2008 & 2011, besides some records and material. Neither the copies of the FIRs nor the record/material relied upon by the Detaining Authority was supplied to the detainee as it so appears from the receipt executed by the detainee indicating the material that was supplied to him pursuant to his Detention. In the grounds of detention too, barring detail of FIR registered on March 31st, 2006, there is no mention of the allegations appearing in rest of the 5 First Information Reports.

The omission of the Detaining Authority to the supply copies of the FIRs, the Police Dossier and other material, relied upon by the District Magistrate, to the detainee has deprived him of his right guaranteed under Article 22(5) of the Constitution of India to represent against his detention to the State Government. This is so because a detainee may not be able to represent against the detention seeking its withdrawal unless he would know as to what had weighed with the Detaining Authority in directing his detention, and such information, the detainee, would gather only if, all the material

that was considered and weighed with the Detaining Authority, had been supplied to him.

The deprivation of the petitioner's right to personal liberty, without affording him opportunity to make effective representation against the detention to the State Government, therefore, renders his detention illegal being in violation of the provisions of Article 22 (5) of the Constitution of India and Section 13 of the Jammu and Kashmir Public Safety Act, 1978.

This Petition, therefore, succeeds and is, accordingly allowed quashing District Magistrate, Udhampur's Order No. PSA-2011/DMU/JC/05 dated 19.12.2011.

A direction shall accordingly issue to the respondents to set forthwith the petitioner to liberty, provided he was not involved in any other case.

Detention Records be returned to the learned State counsel.

(J.P.Singh)
Judge

Jammu:
04.06.2012
Pawan Chopra