

W.P. No.15948/2015

1.10.2015

Shri Sankalp Kochar, counsel for the petitioners.

Shri Amit Seth, Govt. Advocate for the respondents/State.

Heard counsel for the parties on admission.

As short question is involved, petition is taken up for final disposal forthwith by consent. Counsel for the State waives notice for final disposal. By consent, taken up for final hearing.

This writ petition under Article 226 of the Constitution of India is filed by the next friends of the five detenus (Akram S/o Abdul Samad, Shahid S/o Sattar, Aslam S/o Abdul Saleem, Lalu @ Irshad S/o Maksood, Izran S/o Mukhtar). The detention orders were passed on 25.7.2015 and on the same day the detenus were taken into custody. On the same day they were served with the grounds of detention.

The sole point on which this petition must succeed, is that, the detaining Authority has failed to inform the detenus that they have a right of making representation before the Central Government under Section 14 of the National Security Act, 1980. The detenus were merely informed that they can make representation to the State Government. Neither the detention order nor the grounds of detention served on

the detenus disclose the fact that the detenu can also make representation to the Central Government and invoke remedy for revocation of the detention order, in terms of Section 14 of the National Security Act, 1980.

It is indisputable that the said fact has not been mentioned either in the detention order or the grounds of detention served on the detenus, unlike the disclosure made about the right to make representation to the State Government. This issue is no more res integra. The Division Bench of this Court has considered the same in the case of **Maikal @ Shahid Vs. State of M.P. and others**¹. After adverting to the provisions of Section 14, in Paragraph No.6, the Court observed thus:-

“The plain reading of aforequoted provision makes it clear that the detention order can be revoked by the State Government as well as by the Central Government. Therefore, the detenu must be apprised of his right to submit representation before the State Government as well as Central Government.”

Again after referring to Section 8 of the Act in Paragraph No.7, the Court observed thus:-

“Thus section 8 of the Act further strengthen the position that detenu be apprised of his right to make

¹ 2014 (3) JLJ 387

representation before the State Government as well as before the Central Government.”

This exposition is founded on the dictum of the Supreme Court in the case of **Kamleshkumar Ishwardas Patel Vs. Union of India & others**² which predicates that the detenu has been guaranteed right to make representation against the order of detention not only to the Advisory Board, but also to the Detaining Authority. Applying the same principle, to the right to make representation to the Central Government under Section 14 of the Act, the petitioners are justified in contending that there is infraction of the right of the detenu to be kept informed about the availability of such a right; and resultantly denial of opportunity to the detenu to make such representation for invoking the remedy of revocation of the detention order passed against him.

Understood thus, the continued detention of the concerned detenu will have to be held as illegal and untenable. On this count alone this petition succeeds.

Accordingly, the petition is **allowed**. The impugned detention orders are quashed and set aside with direction to the Detaining Authority, to release

² (1995) 4 SCC 51

them forthwith, if not required in any other criminal cases. No order as to costs.

(A. M. Khanwilkar)
Chief Justice

(Sanjay Yadav)
Judge

Anchal