
(2003) 03 J&K CK 0022
In the Jammu And Kashmir High Court
Case No : HCP No. 312 of 2001

Abdul Rashid Dar	Vs	APPELLANT
State and Another		RESPONDENT

Date of Decision : 20-03-2003

Acts Referred:

Jammu and Kashmir Safety Act, 1978 — Section 8

Citation : (2003) 3 JKJ 298

Hon'ble Judges : Y.P. Nargotra, J

Bench : Single Bench

Advocate : N.A. Ronga, for the Appellant;

Final Decision : Dismissed

Judgement

Y.P. Nargotra, J.—A detention order passed u/s 8 of Public Safety Act, 1978 dated 10.9.2001 for detaining the detenu is the subject

matter of challenge in this petition. The detention ordered is for 24 months.

2. In the petition various grounds of challenge have been urged, however in argument only one ground has been urged that is that the detenu was

already in custody and had not applied for bail as such there was no prospect of immediate release of the detenues yet the detention order was

passed which is therefore, illegal and vitiates detention of the detenu.

3. What are the circumstances under which a detention order can be passed against a person in custody? This question was considered by the

Apex Court in the following authorities:

In N. Meera Rani Vs. Government of Tamil Nadu and Another, it was held:

22. We may summarise and reiterate the settled principle. Subsisting custody of the detenu by itself does not invalidate an order of his preventive

detention and the decision must depend on the facts of the particular case; preventive detention being necessary to prevent the detenu from acting

in any manner prejudicial to the security of the State or to the maintenance of public order, etc, ordinarily it is not needed when the detenue is

already in custody; the detaining authority must show its awareness to the fact of subsisting custody of the detenu and take that factor into account

while making the order; but, even so, if the detaining authority is reasonably satisfied on cogent material that there is likelihood of his release and in

view of his antecedent activities which are proximate in point of time he must be detained in order to prevent him from indulging in such prejudicial

activities, the detention order can be validly made even in anticipation to operate on his release. This appears to us to be the correct legal position.

In Dharmendra Suganchand Chelawat and another Vs. Union of India and others, the Apex Court has held:

An order for detention can be validly passed against a person in custody and for that purpose it is necessary that the grounds of detention must

show that (I) the detaining authority was aware of the fact that the detenu is already in detention; and (ii) there were compelling reasons justifying

such detention despite the fact that the detenu is already in detention. The expression ""compelling reasons"" in the context of making an order for

detention of a person already in custody implies that there must be cognate material before the detaining authority on the basis of which it may be

satisfied that (a) the detenu is likely to be released from custody in the near future and (b) taking into account the nature of the antecedent activities

of the detenu, it is likely that after his release from custody he would indulge in prejudicial activities and it is necessary to detain him in order to

prevent him from engaging in such activities.

5. So the question arises how and on what consideration the authority has to satisfy itself that there is likelihood of the release of the detenue in

near future. Is the filing of bail application by the detenue is necessary to infer the possibility of such release? In my opinion the nature of the offence

for which the detenue is in the custody will be one of determinative factors. On the basis of the nature of the offence with which the detenue stands

charged the detaining authority can take a decision and draw satisfaction as to whether there is any chance of release of the detenue.

6. In the present case the grounds of detention clearly reveal the fact of the detenue being in custody on the basis of the charge u/s 7/25 Indian

Arms Act. Therefore it appears that detaining authority was alive to the situation and from the nature of the offence in connection with which the

detenue was in custody the detaining authority appears to be justified in inferring that there was likelihood of the release of the detenue in near

future.

7. For the reasons stated above no merit is found in the petition as such the same is dismissed.