
(2003) 03 J&K CK 0016
In the Jammu And Kashmir High Court
Case No : H.C.P. No. 259 of 2002

Aijaz Ahmad Wani

APPELLANT

Vs

State of Jammu & Kashmir and Another

RESPONDENT

Date of Decision : 04-03-2003

Acts Referred:

Jammu and Kashmir Public Safety Act, 1978 — Section 8

Citation : (2003) 3 JKJ 452

Hon'ble Judges : Syed Bashir-Ud-Din, J

Bench : Single Bench

Advocate : I. Sofi, for the Appellant; M.M. Khan, A.A.G., for the Respondent

Judgement

Syed Bashir-Ud-Din, J.—In the terms of petition please subject Aijaz Ahmad Wani S/o Wali Mohd Wani R/o Badkote, Handwara, is

lodged in preventive detention in Central Jail Kote Balwal, Jammu pursuant to detention order DMK/PSA/68 of 2002 dated 16.5.2002 passed by

District Magistrate Kupwara, respondent No. 2. The order as also the detention is challenged on number of grounds.

2. The detaining authority is stated not to have observed the mandatory provisions of Article 21 and 22 of the Constitution and other provisions of

Jammu and Kashmir, Public Safety Act while ordering the detention in question. The detainee is stated not to have been produced before the

Advisory Board constituted under Jammu and Kashmir Public Safety Act.

3. The material referred in the grounds has not been supplied to the detainee. He is not even informed of his right to make representation to the

Govt. against the detention order. The grounds of detention are vague and without any basis. The detainee is not well versed with the language of

the grounds of detention and he has not been either explained same or given any copy thereof in Kashmiri language, which he understood. The

detenue has been deprived of making representation against the detention. Obviously the above allegations are grave enough to vitiate the detention

4. In this case respondents had about 28 weeks at their disposal to file counter, but the opportunity has not been availed and the counter is not filed. Even, detention record is not produced before court.

5. In *Star Diamond Co., India Vs. Union of India (UOI) and Others*, His Lordship A. P. Sen J. speaking for the court observed as under:- "... It

is enough for the detenue to say that he is under wrongful detention and the burden lies on the detaining authority to satisfy the court that the

detention is not illegal or wrongful and that the petitioner is not entitled to the relief claimed. This court on more occasions than one has dealt with

the question and it is now well settled that it is incumbent on the State to satisfy the Court that the detention of the petitioner detenue was legal and

in conformity not only with the mandatory provisions of the Act, but also strictly in accord with the constitutional safeguards embodied in Article

22(5)

6. The State Government has not placed anything on record and nothing is forthcoming from record to satisfy the court that the detention of the

petitioner detenue was legal and in conformity with the mandatory provisions of Article 22(5) of the Constitution. It is not shown that Jammu and

Kashmir Public Safety Act has been followed in this case.

7. In absence of counter affidavit the allegations have to be construed as admitted. [See (1968) SC-(W. P. 355/68 dated 18.12.1968)]. In

absence of counter affidavit, the rule is to be discharged and the detenue released. *State of Bihar Vs. Kameshwar Prasad Verma*, .

8. In the above view the impugned detention order No:DMK/PSA/68 of 2002 dated 16.5.2002 is quashed and respondents/ competent authority

having corpus of the detenue Aijaz Ahjmad Wani S/o Wali Mohd Wani R/o Badkote, Handwara, aged 22 years, shall release him from custody

and set him at liberty forthwith provided not required in any case, offence or matter. Copy of this order shall be given to petitioner free of cost.

Communicate this order to concerned authorities.