

(2004) 09 J&K CK 0014
In the Jammu And Kashmir High Court
Case No : H.C. Petition No. 141 of 2003

Altaf Hussain Mir

APPELLANT

Vs

State of Jammu & Kashmir and Others

RESPONDENT

Date of Decision : 28-09-2004

Acts Referred:

Jammu and Kashmir Public Safety Act, 1978 — Section 13, 14, 15, 8

Citation : (2005) 1 JKJ 224

Hon'ble Judges : R.C. Gandhi, J

Bench : Single Bench

Advocate : M.A. Qayom, for the Appellant; N.H. Shah, Dy. AG, for the Respondent

Final Decision : Allowed

Judgement

R.C. Gandhi, J.—Petitioner detenu, Altaf Hussain Mir S/o Abdul Rahim Mir through his wife seeks to quash Detention Order No.

DMB/PSA/12 of 2002 dated 17.7.2003, passed by the District Magistrate, Budgam in exercise of the powers u/s 8 of the Jammu and Kashmir

Public Safety Act 1978 (hereinafter referred to as ""the Act"") directing preventive detention of the detenu.

The Detention Order has been challenged on various grounds including that the Detaining Authority has not applied its mind on the full facts of the

case to form an opinion directing preventive detention. Another grounds is that the detenu has filed the representation on 05-08-2004 to the

Home Department of the Government and this representation has not been sent by the Government to the Advisory Board constituted u/s 14 of

the Act or consideration, which amounts to depriving the detenu of his statutory right of consideration of representation by the Advisory Board,

who has to form opinion for continued detention of the detenu.

2. The respondents have filed the reply controverting the other averments but the aforesaid but the aforesaid two grounds have not been rebutted.

3. Heard learned counsel for the parties and perused the record.

4. The detenu was arrested by the respondents on 07-04-2003 in FIR No. 91/2003 registered in Police Station Saddar, Srinagar. He applied for

bail before the Judicial Magistrate Chadoora. He was granted bail by the Magistrate directing that the detenu will execute two sureties. He failed to

execute the sureties and the bail bonds. This bail was granted on 05-06-2003. The Detention Order was passed on 17-07-2003. The Detaining

Authority has to form the subjective satisfaction on the basis of the record of the detention. Release of bail is also a record which was required to

be examined by the Detaining Authority. In the grounds of detention no where this finds mentioned. The petitioner in para No. 3 of the petition has

specifically stated that the judicial Magistrate, Chadoora, released the detenu on bail on 05-06-2003, with two sureties but the detenu fails to

furnish bail bond and was committed to Judicial custody for fifteen days. The respondents have not replied para 3 at all. This shows that the

respondent have no record to rebut this averment. It makes out that the Detaining Authority has not applied its mind and was not aware of this

record. This is fatal to the case of the respondents as the Detaining Authority is under obligation to show his awareness to whole of the record of

the detention. Had thus record been taken notice, what would have been the subjective satisfaction of the Detaining Authority, is ought to be

known.

5. Another plea of Mr. Qayoom is that the detenu has filed the representation against the Detention Order in terms of Section 13 of the Act to the

Government on 05-08-2003. Copy of the representation has been placed with the record of the petition as Annexure D. The endorsement

recorded on the representation by the Home Department is ""received same copy on 05-08-2003"". Petitioner has made mention of this fact in para

No. 5 of the petition stating that the detenu filed the representation against the Detention Order dated 17-07-2003 to the respondents on 05-08-

2003 against proper receipt but till date same has neither been decided nor disposed of in any manner whatsoever.

Respondents in their reply to para No. 5 has submitted that:

Para 5 is denied. Record does not show that any representation has been filed by detenu.

Respondents have not stated in their reply that the representation has not been received by the Home Department. The detenu has a statutory right

u/s 13 of the Act to make representation against the Detention order. u/s 15 of the Act, the Government is under obligation to place the record of

detention and the representation, if any, received within four weeks from the date of the Detention Order before the Advisory Board and the

Advisory Board has to consider the representation and hear the detenu.

6. I have perused the report of the Advisory Board. The representation has not been placed before the Advisory Board, depriving the

Board to consider the representation. The detenu has been deprived of the consideration of the representation which amounts to denial and

statutory right available u/s 13 of the Act. The Detention Order, therefore, in breach of Section 13 and 15 of the Act, cannot be maintained.

7. For the aforesaid reasons, the Habeas Corpus Petition is allowed and the Detention Order No. DMB/PSA/12 of 2002 dated 17-07-2003

passed by the District Magistrate, Budgam is quashed. The respondents are directed to release the detenu Altaf Hussain Mir S/o Abdul Rahim Mir

R/o Chanapora, District Budgam forthwith, if not, required in any other case.