
(2003) 05 J&K CK 0011
In the Jammu And Kashmir High Court
Case No : HCW No. 74 of 2003

Balbir Singh

APPELLANT

Vs

State and Others

RESPONDENT

Date of Decision : 14-05-2003

Acts Referred:

Constitution of India, 1950 — Article 22
Jammu and Kashmir Public Safety Act, 1978 — Section 13

Citation : (2003) 3 JKJ 463

Hon'ble Judges : B. L. Bhat, J

Bench : Single Bench

Advocate : S.K. Shukla, for the Appellant; K.S. Johal, AAG, for the Respondent

Final Decision : Allowed

Judgement

B.L. Bhat, J.—Though the medium of this Habeas Corpus Petition under Article 226 of the Constitution of India read with Section 103 of

the constitution of the Jammu and Kashmir, petitioner Balbir Singh through his brother Amarjit Singh has sought indulgence of this court for

quashing the Detention Order No. 10 PSA dated 7.11.2002 issued by the District Magistrate, Jammu whereby the petitioner came to be detained

u/s 8 of the J&K Public Safety Act, 1978 for a period of one year.

2. The Detention order is inter alia assailed on the grounds that the detinue was never served with the order of detention nor the order impugned

has been approved by the Government within the stipulated period; that the order of detention has not been confirmed by the government in terms

of Section 13 of the Jammu and Kashmir Public Safety Act; That the grounds of detention served upon the detinue are in the language, which the

detinue does not understand; that the grounds of detention have not been

explained to the detenue, that the order of detention which has been issued on 7.11.2002, when on this date the detenue was already in the custody of the police; that the Detaining Authority has not disclosed any material which prompted the Detaining Authority to pass the order of detention, despite the fact that the detenue was already in custody and the ground of detention are replica of dossier supplied by the police and the Detaining Authority, Respondent 2.

3. On presentation of the petition, it came to be admitted on 6.2.2003 and the Registry was directed to list this case on 5.3.2003. On this date Mr.

S.C. Gupta, AAG caused appearance on behalf of the respondents and was directed to file counter affidavit of the respondents and direction

came to be issued to the Registry to list the case on 24.3.2003. On 24.3.2003, the case came to be adjourned with the direction to list the case on

26.3.2003. On this date, at the request of Mr. B.S. Salathia, AAG, two weeks time for filing reply affidavit was granted. On 1.5.2003, file came

to be listed with the report that the counter affidavit has not been filed, as a result of which the petition came to be taken up for final hearing.

4. Heard Mr. S.K. Shukla, learned counsel for the petitioner and Mr. K.S. Johal, AAG representing the State-respondents and also pursued the

detention record of the case produced by the learned AAG on asking of the court.

5. As indicated that respondents have failed to file counter affidavit, despite various opportunities granted in this behalf. Therefore, the averments of

the writ petition, which are supported with the affidavit of the brother of the detenue, are required to be treated as established, in view of the

settled law and under the Law of pleadings, if averment remains un rebutted, in that case it is to be treated as established.

6. Though the Detention order is assailed on various grounds but during the course of arguments, learned counsel for the petitioner has stressed the

ground that both at the time of passing of the impugned detention order and also at the time of its execution, the petitioner was in the custody of the

police and was never served with any order of detention and not speak of serving with the grounds on which the impugned detention order was

made. Considered this argument of the learned counsel of the petitioner Section 13 of the Jammu and Kashmir Public Safety Act, 1978

(Hereinafter referred to as Act) mandates that if any person is detained in

pursuance of the detention order, the authority making order shall as soon as may be ordinarily not later than five days and in exceptional circumstances and for the reasons to be recorded in writing, not later than ten days from the date of order of detention communicate to him grounds on which the order has been made, and shall afford him the earliest opportunity of making a representation against the order to the Government. Having regard to this law, let me examine the order of detention produced by the learned AAG. On this record there is photostat copy of the impugned detention order which stands endorsed in the name of Inspector Police namely Mohd. Rafiq, SHO police station Bakshi Nagar, Jammu, at the back of this copy there is photostat copy of the report which reveals that in compliance of the District Magistrate, Jammu Order No. 10 PSA of 2002 dated 7.11.2002, the detainee namely Balbir Singh @ Titu S/o S. Mehar Singh R/o House No. 87, Krishana Nagar, Canal Road, Jammu has been taken into custody from the police station, Bakshi Nagar, Jammu on 8.11.2002, It further reveals that the contents of the warrant and the grounds of detention have been read over to the detainee in English/ Hindi language, which he understood fully. The signature of the detainee has been obtained at Mark-A below. The detainee is further sent to the Superintendent, Central Jail Kotbhalwal, Jammu today on 8.11.2002 alongwith the detention warrant and ground of detention. This report of the Executive Officer now where reveals that the grounds of detention were served upon the detainee to enable him to make representation against the order of detention to the Government. True it is that on the detention record, there is photostat copy of the receipt which reveals that the grounds of detention have been furnished to the detainee by the Dy. Superintendent of Police, Central Jail, Kotbhalwal, Jammu, which has been received by the detainee and in this behalf he has executed this receipt. To prove this receipt, there is neither any endorsement nor any report of the said officer of the Central Jail, Kotbhalwal, Jammu, who is alleged to have served the grounds of detention upon the detainee nor there is any affidavit of this officer, has been filed in support of this document by the respondents. It is observed that reading over the grounds of detention to the detainee cannot be equated with serving of the grounds of detention as contemplated u/s 13 of the Act. From this discussion, it can safely be

said that the detenue have been never served with the grounds of detention on which the impugned detention order has been made to enable him to make representation against the said order to the Government. This being so, the procedure as well as constitutional safeguard available to the detenue both u/s 13 of the Act and under clause-V of Article 22 of the Constitution of India, has been violated by the respondents, as a result of which, impugned detention order, is not sustainable.

7. All considered. The detention order is liable to be quashed.

Therefore, the petition is allowed and the Detention Order No. 10-PSA of 2002 dated 7.11.2002 is hereby quashed with the direction to the respondents to set Balbir Singh @ Titu S/o Mehar Singh R/o H.No. 87 Krishana Nagar, Canal Road, Jammu at liberty forthwith unless he is required in any other case. Copy of this order be forwarded to the Superintendent, Central Jail, Kotbhalwal, Jammu, where the detenue is lodged for immediate compliance. Record of detention order be returned to the learned Additional Advocate General.