

(1991) 05 J&K CK 0006
In the Jammu And Kashmir High Court
Case No : H.C. Petition No. 400 of 1990

Balkar Singh

APPELLANT

Vs

State of J. and K. and Others

RESPONDENT

Date of Decision : 10-05-1991

Acts Referred:

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

Citation : (1992) CriLJ 3428

Hon'ble Judges : B.A. Khan, J

Bench : Single Bench

Advocate : S.S. Sahney, for the Appellant; S.K. Anand, for the Respondent

Judgement

B.A. Khan, J.—Whether or not an order of detention passed under J & K Public Safety Act is liable to be quashed on account of delay

caused in execution of such order? This is the question that mainly falls for determination in this Habeas Corpus petition.

2. Petitioner, an employee of a Sugar Mill in Gurdaspur, came to be arrested on 20th Feb. 1990 from Jammu Bus Stand. He was taken to the

Interrogation Centre at Jammu and then shifted to police Station Mendhar in connection with FIR No. 22 of 1990. This was followed by order

No. 2/PSA of 1990 dated April 21, 1990 passed by respondent No. 2 detaining him under J & K Public Safety Act for a period of 24 months

with a view to prevent him from acting in a manner prejudicial to the security of the State. The order was served on him on May 4, 1990 and he

was lodged in Central Jail, Jammu.

3. Petitioner challenges his detention on a number of grounds. According to him, grounds of detention are vague and ambiguous and his detention

is not liable to be sustained as the detaining authority has not furnished him the material on the basis of which the grounds of detention were framed

and also that unwarranted delay was caused by the respondent-Detaining authority in executing the order of detention only with a view to further

delay communication of grounds of detention to him disabling him from making any effective representation, a right guaranteed to him under Article

22 of the Constitution. It is contended that delay caused in execution of the order was a deliberate act emanating from mala fide considerations as

is apparent from false statement made by detaining authority that petitioner was arrested pursuant to order of detention on May, 4, 1990 from Bus

Stand Poonch.

4. Objections have been filed on behalf of respondent No. 2 supported by an affidavit sworn in by him. In the objections it is admitted that the

order of detention was passed on April 21, 1990. However, it is stated that the petitioner was arrested pursuant thereto on May 4, 1990 from Bus

Stand, Poonch. No explanation is furnished about delay caused in executing the order and communicating the grounds of detention. Regarding the

petitioner's plea that no copies of relevant material, on the basis of which the grounds of detention were framed were made available to him, it is

stated that grounds of detention along with all Annexures were supplied to him within time.

5. In the course of proceedings, the petitioner produced an order passed by the Presiding Officer, Designated court under TADA (P) Act, Jammu

dated May 5, 1990 rejecting his application for enlargement on bail to show that he was in police custody on May 5, 1990 and had not been

arrested from Poonch Bus Stand on May 4, 1990, as made out by respondent-detaining authority in his affidavit. Upon this, the record of the case

was summoned and on examination it was found that while executing the order of detention one Manzoor Ahmad Manhas, Sub Inspector of Police

had recorded that petitioner was arrested from Bus Stand, Poonch on May 4, 1990. Taking a serious note, this court vide order dated March, 15,

1990 deferred passing of! the judgment in the matter and issued notice to Superintendent of Police, Poonch and S.H.Os of police Stations Poonch

and Mendhar directing them to produce the relevant record in respect of the petitioner's custody in their respective police stations in FIR No. 20

and FIR No. 22 of 1990. In compliance thereto, the concerned Officers submitted their affidavits and it came out that petitioner had been taken

into custody by the Mendhar Police on March 11, 1990 in connection with FIR No. 22 of 1990 and later transferred to Sub-Jail, Poonch on

March 20, 1990. It was also established that he was all along in police custody till he came to be shifted from Sub-Jail, Poonch to Central Jail,

Jammu on May 4, 1990 by Sub Inspector Manzoor Ahmad Manhas. In other words, the petitioner was already in police custody on April 21,

1990 when order of detention came to be passed against him. How and why the order was not served on him along with the grounds of detention

when he was at Sub-Jail Poonch at the relevant time, is something which begs an answer. As already pointed out, no worth-while explanation is

forthcoming in this regard.

All that is haltingly made known is that the order was despatched from S.S.P.'s office on April 24, 1990 and was endorsed to Sub Inspector

Manhas for execution. Why did he sit over it for about two weeks is not known?

6. It needs hardly to be emphasised that in matters where the liberty of the citizens is involved it is necessary for the officers to act with utmost

expedition and in strict compliance with the mandatory provisions of law. Such an action is expected and insisted upon more as a safeguard against

manipulation direction against curbing of; individual liberty.

7. It is also well settled that an obligation is cast on the detaining authority to communicate grounds of detention to the detenu promptly and as soon

as may be. This is required to be done, so that detenu gets an opportunity of making an effective representation against his detention at the earliest

opportunity, a right guaranteed to him under the Constitution and the Act. That is why preventive detention laws including the Public Safety Act

provide for a time limitation for communication of the grounds of detention to the detenu. u/s 13 of the J & K Public Safety Act, grounds of

detention are to be communicated to the detenu within five days and in exceptional circumstances not later than ten days for which reasons are to

be recorded. Given regard to this, any action of the detaining authority directed at delaying the communication of the grounds of detention to the

detenu after passing of the order of detention is bound to meet with disapproval and casts a serious cloud on detention.

8. Situations are conceivable where detaining authority may have cogent reasons for not executing an order with reasonable despatch. It may be

difficult and even impossible in certain cases e.g. where person to be detained is absconding. In such cases no grave prejudice is liable to be

caused. But where a person is already in police custody and an order of detention has been passed against him, delay in executing order of

detention unsupported by any explanation, as a natural corollary, entails consequence of delaying communication of grounds of detention in turn.

Therefore, any such delay is bound to defeat and even subvert the very safeguards contained in Section 13. Therefore, I have no reluctance in

holding that when delay caused in execution of an order of detention leads to delaying of communication of grounds of detention and disable a

detenue from making representation at earliest opportunity, there is infraction of mandatory provisions of Section 13 of the Act, rendering order of

detention liable to be quashed. I derive support for this from Hem Lall Bhandari Vs. State of Sikkim and Others, .

9. In the present case, order of detention was passed on April 21, 1990 when petitioner was already in police custody. It admittedly came to be

executed on May 4, 1990, after a delay of 13 days. There is no explanation for the delay caused. On the contrary, there is an attempt by the

detaining authority and the concerned Police Officers to cover up the lapse by setting up a false case that pursuant to order petitioner was arrested

from Bus Stand, Poonch on May 4, 1990. What could be their design except to prolong petitioner's detention by delaying communication of

grounds in a crude act of manipulation and mala fide consideration.

10. Non-furnishing of copies of material forming basis for grounds of detention adds salt to the injury. Grounds make reference to some statement

having been made by petitioner against one Jagmohan Singh, copy whereof is not provided to him. Prior to order of detention, he is arrested under

FIR No. 22/1990 and copy of FIR is not made available to him. All this is bound to disable him from making representation against his detention,

violating his rights in the process.

11. Non-application of mind by the detaining authority is writ large in the whole matter. No worthwhile awareness is shown in grounds of detention

about the petitioner being already in Jail. Nor is any clue provided about any

compelling circumstances warranting his detention under the J & K Public Safety Act.

12. All told, this appears to be a case of manipulation, mala fide action and non-application of mind, deserving petitioner to be set at liberty.

13. For the reasons given, order of detention No. 2/PSA dated April 21, 1990 passed by respondent No. 2 is quashed and respondents are directed to set the petitioner at liberty forthwith.