

(1966) 05 J&K CK 0001
In the Jammu And Kashmir High Court

Kunwar Bhim Singh

APPELLANT

Vs

State of Jammu and Kashmir and Another

RESPONDENT

Date of Decision : 12-05-1966

Acts Referred:

Criminal Procedure Code, 1898 (CrPC) — Section 491

Citation : (1968) CriLJ 1080

Hon'ble Judges : J.N. Bhat, J

Bench : Single Bench

Judgement

J.N. Bhat, J.—This is a petition u/s 491, Criminal P.C. praying for the release of the petitioner Bhim Singh who was detained by order of the

District Magistrate, Jammu, dated 1st February 1966. It is stated on behalf of the petitioner that he is a lawyer and was elected as the working

President of the Students Organization. The order of his detention has been passed for collateral and extraneous consideration not envisaged by

Rule 30(1)(b) of the Defence of India Rules. The order is mala fide. The detenu had been criticizing the policies (which, according to him, are

antinational) of the Sadiq Ministry, In the summer of 1965 the petitioner along with some other colleagues of his was arrested u/s 28/32 of the

State Security Rules and was prosecuted in a Court of law. The Students' Congress decided to submit a memorandum to the Prime Minister of

India detailing the acts of omission of the State Ministry which were pro-Communist and anti-India. The deputation was led by the petitioner. A

press conference was held to make public the contents of the memorandum to the Prime Minister. These activities which were intended to

safeguard against the antisocial and anti-national activities of the present Government when brought to light, irritated the present Ministry and led to

the detention of the petitioner on 31.1.1966. The petitioner pointed out certain inaccuracies regarding the text-books prescribed in the State and

organized a peaceful demonstration. The petitioner started some proceedings of contempt of Court against the Chief Minister and the other

Ministers of the State. The present order of detention of the petitioner was, therefore, invalid, mala fide and a means to stop the petitioner from

carrying on his peaceful propaganda in the political life of the State. The petitioner, therefore, prays that he be set at liberty.

2. The petitioner put in a supplementary affidavit wherein he, in addition to the grounds already mentioned, has made the following assertions. The

petitioner in the capacity of the President and the Chief Organizer of the Students' Congress, has always stood for the complete integration of the

State with the rest of the country and has opposed the communal and anti-national and secessionist elements in the society. The Chief Minister Mr.

Sadiq wanted to wreak vengeance on him for his being publicly exposed for his Communist activities. Mr. Sadiq was disowned by the Students'

Congress as its patron because he had failed to fulfil his promise of abrogating Art, 370 of the Indian Constitution. The present Government had

cancelled the petitioner's loan which had been sanctioned in his favour for M.A. L.L.B. studies in Aligarh. The Government had planned to arrest

him as soon as he came back to Jammu. About his being arrested in the interest of the defence of India and public safety and maintenance of public

order, the petitioner categorically denied these allegations. The petitioner has referred to a number of newspapers which contain abstracts of his

activities as a political worker and according to the petitioner he has never indulged in any anti-national, anti-social or violent activity. So on and so

forth.

3. The District Magistrate in reply to this affidavit has professed his ignorance about most of the allegations made by the petitioner, but the burden

of his affidavit is that the petitioner had been indulging in anti-national and antisocial activities which were prejudicial to the defence of India, public

security and maintenance of public order. He has denied that the detention of the petitioner was for ulterior or collateral purposes. The petitioner

had been organizing violent demonstrations against the State Government, The demonstrations made by the petitioner on 31.1.1966 were intended

to incite the general public and students and resort to acts of violence. So on and so forth.

4. I have heard the learned Counsel for the petitioner, the learned Assistant to the Advocate-General and later on have had the assistance of the

advocate-General himself. The detenu himself made some narration of facts. The argument of the learned Counsel for the petitioner was that the

information of the arrest of the petitioner was not conveyed to the proper quarters as was required by law. But the order itself shows that a copy

had been sent to the Chief Secretary. His further argument was that there was no date under the endorsement of the Superintendent of Police, Mr.

G.R. Wani. Therefore, we should presume that this endorsement was got later. But we have the affidavit of Mr. Tek Chand Katoch, City

Inspector, Jammu, that he arrested the detenu on 18th February 1966 at 6.30 p.m. in compliance with the detention order No. 2583-90/JDM/66

dated 1.2.1966. The order was forwarded to him by Shri G.R. Wani, Superintendent of Police, Jammu, The petitioner could not be arrested

earlier because he could not be traced all these days. So there is no force in the legal argument adduced by his learned Counsel. The detenu

himself laid much stress on the fact that his activities were never anti-social or prejudicial to the defence of India, public safety or public order.

According to him he had exposed the Sadiq Ministry and the present Chief Minister for his pro-Communist and anti-Indian policies and therefore

his arrest was made mala fide. The District Magistrate has sworn an affidavit that he ordered the arrest of the petitioner on information received by

him and not under instructions from anybody. Mr. Sadiq, therefore, does not come anywhere into the picture. There is no cogent proof on the file

to show the mala fides of Mr. Sadiq or even Mr. Sadiq laying influenced the District Magistrate in ordering the detention of the petitioner.

5. In such petitions the powers of the Court are very limited. The Court has no power to release a detenu who has been put under detention under

the Defence of India Rules, unless mala fides is proved or there is some patent legal defect in the orders of warrant of arrest. The Courts are

powerless to know from the detaining authority the grounds of his being satisfied more so when the detention is made to prevent prejudice to

defence of India, public safety or public order. The subjective satisfaction of the detaining authority is the criterion. This has been repeatedly laid

down by the Supreme Court and by the various High Courts. Only two authorities need be mentioned here. They are: *Sadhu Singh v. Delhi*

Administration and Durgadas v. Union of India. The first of these cases is reported in *Sadhu Singh Vs. Delhi Administration*, . The latter case is not

yet reported but was decided by the Supreme Court on November 12, 1965 (since reported in *Durgadas Shirali Vs. union of india (UOI)* and

Others.,). In the former authority the Supreme Court has said:

Making of an order of detention under Rule 30(1)(b) proceeds upon the subjective-satisfaction of the prescribed authority in the light of

circumstances placed before him, or coming to his knowledge that it is necessary to detain the person concerned with a view to preventing him

from acting in any manner prejudicial to the defence of India and civil defence, the public safety, the maintenance of public order, etc. The

satisfaction of the authority and confirmation of the order of detention under Rule 30A(6) are not subject to judicial review, for the order of

detention is pre-eminently an executive act. Once the subjective satisfaction of the detaining authority which is a condition of the making of the

order is shown to exist, the Courts-cannot enquire into the sufficiency of materials, on which the order is made or the propriety or expediency of

the order. What is determinative of the validity is the satisfaction of the prescribed authority. The Courts, however, are not precluded from

investigating into the compliance with the procedural safeguards imposed by the statute, or into the existence of the prescribed conditions precedent

to the exercise of power, or into a plea that the order was made mala fide or for a collateral purpose. It is not, however, judicial review of the

order. Satisfaction of the authority under Rule 30(1) proceeding upon facts and circumstances which justifies him in making an order of detention

and the satisfaction upon review of those very facts and circumstances in the light of circumstances, which came into existence since the order of

detention, being the result of an executive determination, are not subject to judicial review.

In the latter authority *Ramaswamy, J.*, has said:

In para 3 of the affidavit the District Magistrate has stated that he has satisfied from the reports that the petitioner was carrying on anti-national and

pro-Chinese propaganda as a member of the Leftist Wing of the Communist

Party. In para 5, the District Magistrate has stated that he passed the order of detention after satisfying himself on the reports that the petitioner was the Secretary of the Leftist Wing, of the Communist Party of India, Bilawara Branch and that he was likely to act in a manner prejudicial to the Defence of India and Civil Defence, India's relations with foreign powers, public safety and the maintenance of public order. In view of the affidavit of the District Magistrate it is not possible for us to accept the argument of Mr. Garg that the District Magistrate did not apply his mind to the specific activities of the petitioner and that he made the order of detention solely on the ground that the Leftist Wing of the Communist Party was carrying on anti-national and pro-Chinese propaganda.

6. In this case also the District Magistrate has said more than once that from the activities of the petitioner he was satisfied that they were prejudicial to the defence of India, public safety and maintenance of public order. As already remarked, I cannot compel the District Magistrate to disclose the grounds on which he was ordered the detention of the petitioner, The District Magistrate has in his supplementary affidavit stated that it is not in the public interest to disclose the grounds of the petitioner's detention. To make such a statement is within his jurisdiction and I cannot compel him to disclose the grounds. Therefore, in my opinion I cannot order the release of the petitioner.

7. But before parting with this case, I would like to make some remarks. In the first place most of the activities mentioned by the petitioner in his petition do not appear to be prejudicial to the defence of India, public safety or public order. There may be more activities of the petitioner, not disclosed, which may be prejudicial to the defence of India or anti-social. But the petitioner is a young man and has entered the profession of law. I am sure the authorities will keep in mind that in a democracy everybody has a right to express his views on political matters. If the views of a particular person are not in accord with the policies of a Government, that is no ground for detaining the person holding contrary views on political matters. In this case, I hope, the reviewing authority will take into consideration the entire facts and all the activities of the petitioner and then confirm or not the order of his detentionâ"because to detain political opponents will not result in the evolution of democracy but would rather

thwart it. About the affidavits filed by the District Magistrate, I cannot refrain from remarking that they are far from satisfactory. He professes complete ignorance of some of the outstanding events that are alleged to have taken place within his jurisdiction. Either he is suppressing certain facts or he has scant knowledge of what is happening within his jurisdiction. As a District Magistrate he is expected to know all the important events happening within his jurisdiction, and the activities of a person whose being at large is considered to be dangerous to the defence of India or public order should be very well known to the District Magistrate. We hope that the learned District Magistrate or any other authority who has the power to detain people and whose orders of detention cannot ordinarily be questioned by Courts will exercise their authority with due care and caution because the liberty of a subject is the most precious achievement of a democracy and depriving a person of his free movements should sparingly be resorted to.

8. With these observations this petition u/s 491, Criminal P.C. is dismissed.