
(1998) 04 J&K CK 0018
In the Jammu And Kashmir High Court
Case No : M.C. Petition No. 358 of 1997

Latif Ahmad Wani

APPELLANT

Vs

State of J. and K. and Another

RESPONDENT

Date of Decision : 21-04-1998

Acts Referred:

Constitution of India, 1950 — Article 21
Jammu and Kashmir Public Safety Act, 1978 — Section 14, 15, 16, 8
Ranbir Penal Code, 1989 — Section 120B, 3

Citation : (1998) CriLJ 4287

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

Bench : Single Bench

Advocate : M. Azim, for the Appellant; G. Mustaffa, G.A., for the Respondent

Judgement

Syed Bashir-ud-Din, J.—The petitioner through counsel challenges his detention ordered by District Magistrate, Srinagar on 25-6-1996 and

lodgment of petitioner pursuant to the warrant DMS/PSA/ 214/96 in District Jail Kathua for a period of 24 months (Annexure-A). The detention

and the order is challenged on the following grounds:-

That the detaining authority has not applied its mind and has failed to draw subjective satisfaction before passing of the order of detention, u/s 8 of

the J. & K. Public Safety Act. There has been inordinate delay in passing the detention order and execution thereof even though petitioner was

arrested initially on 24-3-1996 and continued under arrest thereafter to date. The grounds of detention are vague and non-existent. The order of

detention has not been supplied to him. The copies of FIR or the dossier forming the basis of detention have not been as well supplied to the

petitioner. The petitioner has been prevented from making an effective

representation. The provisions of Public Safety Act have not been followed insofar as the case has not been referred to the Advisory Board, within the prescribed time period and order of detention has not been confirmed within the stipulated time.

2. Respondent No. 2 has filed counter. The passing of detention order on 25-6-1996 detaining the petitioner for twenty-four months is admitted.

The order is stated to have been approved by the Government on 2-7-96 and the petitioner is stated to have been taken in preventive custody on

5-11-1996. The order of detention and the grounds of detention are stated to have been served on the detenu. It is also admitted that at the time

of detention, the petitioner was already in custody with the State under preventive laws. On the strong apprehension that the petitioner may be

released on bail in which case the security of the State may be put to jeopardy, the detention of the petitioner was ordered in the interest of security

of the State. The detenu was referred to the Advisory Board on 31 -12-96. The opinion of the Board was obtained on 30-1-1997.

3. Heard counsel for the parties and considered the matter.

4. The petitioner was arrested on 24-3-1996 in FIR No. 1/96 u/s 3, EAO, 30SA, 120-BRPC, Registered at P/S CIK-Srinagar. He continued in

custody in this case. The order of detention was passed on 25-6-1996, yet the order of detention was executed on 5-11-96. It is indicate that

notwithstanding the petitioner being in custody of the State was detained under the J. & K. Public Safety Act after a lapse of ever IVi months from

the date of his initial arrest and over five months after passing of the order of detention. There is no explanation whatsoever, as to why the order of

detention was not implemented and petitioner shown in preventive detention seen after the order of detention. The inordinate delay has not been

explained. It is only to indicate that there is considerable doubt on the genuineness of the requisite subjective satisfaction of detaining authority from

the stand point of 'proximate and live link' between the grounds of detention and purpose of detention. This is moreso when there is nothing on

record to indicate that the petitioner ever applied for bail in the regular FIR or that there was any order or move to admit him to bail in the case,

(FIR under which he continued to be in custody).

5. Even, the grounds of detention reveal that the petitioner is stated to have

joined Aljihad militant organisation and exfiltrated to POK and infiltrated to the Valley in the year November, 1992. Obviously, four years have lapsed since 1992 before the order of detention was passed which again conjointly in combination with said facts and circumstances goes to show that the subjective satisfaction is lacking in this case. The allegation in the petition that the petitioner was not served with FIR and the dossier, material referred to in the grounds, thereby preventing him from making effective representation, is not refuted in the counter.

6. From the grounds of detention, it transpires that FIR No. 1/96 Registered at Police Station CIK Srinagar as also some information memo has been the basis for taking action against the petitioner inputting him. underpreventive restraint vide impugned order. By not providing this material to the petitioner, the contention of the petitioner that he has been prevented from making effective representation, cannot be said to be surplusage.

7. The case also appears to be vitiated for (the reason that in terms of Section 15 of the Public Safety Act, Petitioner's case was required to be placed before the Advisory Board constituted u/s 14 of the Act within four weeks from the date of detention under the order, but the case of the petitioner has been placed before the Board beyond the said four week period. Whereas, the petitioner has been taken in preventive custody

under the orders on 5-11-1996 and the case is referred to the Advisory Board on 31-12-1996. Obviously, on its own showing vide averments in the counter, the express provision of Section 15 of the Act has been violated. Similarly, the Advisory Board had to submit its report on

consideration of the matter, to the Government within eight weeks from the date of detention. Here the Advisory Board had given its opinion on

30-1-1997, notwithstanding, detention of the petitioner commencing on 5-11-1996 under the detention order dated 25-6-1996. Again the express provision of Section 16 of the Public Safety Act has been violated.

8. The procedure prescribed by law of detention (Public Safety Act) is not observed in this case in so far as reference of the matter to Advisory Board and the report of the Advisory Board to the Government has not been within the prescribed statutory time period. The detention is in violation of statutory provisions of Public Safety Act and obviously in violation of the constitutional guarantee under Article 21.

9. For the aforesaid reasons, the order of detention No. DMS/PSA/214/96 dated 25-6-1996 is invalid and illegal. With the result the preventive order of detention is quashed and set aside. The detenue shall be set at liberty and freed from custody, forthwith, unless required in any other substantive offence. Petition is disposed of accordingly.
10. Copy of order shall be handed over to the petitioner free of costs.