
(1995) 08 J&K CK 0003
In the Jammu And Kashmir High Court
Case No : H.C. No. 1078 of 1994

Mohammad Ramzan Dar

APPELLANT

Vs

The State and Another

RESPONDENT

Date of Decision : 29-08-1995

Acts Referred:

Constitution of India, 1950 — Article 22(5)
Jammu and Kashmir Public Safety Act, 1978 — Section 17, 19(1), 8(2), 8(4)

Citation : (1996) CriLJ 1029

Hon'ble Judges : A.Q. Parray, J

Bench : Single Bench

Advocate : Masooda, for the Appellant; Gh. Mustaffa, Government Advocate, for the Respondent

Final Decision : Allowed

Judgement

A.B. Qadir Parray, J.—By this petition, detention of one Mohammad Ramzan Dar son of Abdul Khaliq Dar R/O Rehan, Sopore is being challenged.

2. Petition stands admitted to hearing on 7-10-1994 and in response to the notices, respondents' appeared and were given number of

opportunities for filing counter, but they miserably failed to file any counter-affidavit. Not only that, they even did not make any records available

for the perusal of the court despite directions issued on 28-7-1995. So the presumptions and conclusions which are to be drawn for non-

production of records and non-filing of counter-affidavit is that the respondent/ State had miserably failed to establish and show that due course of

law has been followed while depriving the detainee of his liberty. Though the detainee is said to be staunch, dedicated and active member of

outlawed organisation of Hizbul Mujahideen, even then records have not been made available before this court not to speak of filing any counter-

affidavit to controvert the averments made in the petition and supported by an affidavit.

3. Mr. Mustaffa, appearing for the respondent/ State submits that it was in fact on 31 -7-1995 that he had asked the concerned agency to make

the records available, by addressing a letter in the name of Additional Chief Secretary, Home Department but till date he did not get any reply and

feed back information. So he is not in a position to produce any records. Be that as it may be, but the fact remains that the respondent/Stale has no

cheeks to face the averments and the allegations made out in the petition. Had they been fair and honest, the averments made by the petitioner

should have been met and rebutted so that this court would have scrutinised the detention order on the judicial side.

4. Respondent/State is no doubt having the powers under the Statute to deprive a person/citizen of his liberty by taking resort to the provisions of

Public Safety Act, whom they deem that he is dangerous to the public order or hazardous to the security of the State. But while doing so, they

have to follow meticulously the Statute. The Statute does envisage certain riders. One of the riders is that after passing of order of detention, they

have to serve the grounds of detention, on the detainee within five days or at the most within ten days for the reasons to be recorded in writing.

Secondly the respondents have to apprise the detainee that he has a right of making a representation against his detention as envisaged under

Article 22(5) of the Constitution.

5. Thirdly the case of the detainee is to be placed before the Statutory Advisory Board within four weeks from the date of execution of the order of

detention. The Statutory Board has to return its finding within eight weeks after receipt of the records and reference. Statutory Advisory Board has

to hear the petitioner in person or through his representation and in case the detainee wants that he be heard in person, it is the bounden duty of the

respondent/ State or the detaining authority to produce him before the Statutory Advisory Board and the said Advisory Board has to return its

finding regarding existence of sufficient grounds for continued detention to the Government within eight weeks and the State in turn has two

options; either to detain a person for a maximum period of two years or to release the person. After receipt of the opinion of the Advisory Board

in case State intends to detain the detainee for a maximum period or otherwise, the State has to pass an order in terms of sub-section (i) of Section

17 of the Public Safety Act.

6. Even after passing of the order, State has the option under sub-section (1) of Section 19 of the Public Safety Act to revoke the order at any

time. So these are certain riders and if the order has been passed by District Magistrate or by Divisional Commissioner at the initial stage under

sub-section (2) of Section 8 of the Public Safety Act, then in that matter, the order is to be approved by the Government under sub-section (4) of

Section 8 of the Act within 12 days, failing which order loses its force. That being so, the averments made in the petition are almost the same which

are being raised in such petitions by the petitioners and all these averments have remained un rebutted, the sum and substance of which is that the

Respondent/State while depriving the detainee alleged to be staunch and dedicated member of out-lawed organization of Hizbul Mujahideen have

remained un rebutted.

7. The Court while examining the whole matter and without being provided the records has not to conclude that the respondent/State has not

followed due course of law while depriving the detenu of his liberty and as such, the order of detention bearing No. 161 of 1994 dated 25-8-1994

cannot stand judicial scrutiny.

8. For the foregoing reasons, this petition is allowed and the order of detention passed against the detainee under No. 161 of 1994 dated 25-8-

1994 is quashed and the respondents are directed that they shall release the detainee forthwith from preventive detention under the aforesaid order,

unless otherwise required in any substantive offence. Petition is disposed of accordingly.