

(2002) 11 J&K CK 0010
In the Jammu And Kashmir High Court
Case No : HCP No. 201 of 2002

Mohd. Ashraf Khan

APPELLANT

Vs

State and Others

RESPONDENT

Date of Decision : 05-11-2002

Acts Referred:

Arms Act, 1959 — Section 25, 7
Constitution of India, 1950 — Article 226

Citation : (2010) 4 JKJ 581

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

Bench : Single Bench

Judgement

B.L. Bhat, Judge

1. Mst. Nazia wife of Mohammad Ashraf Khan R/O Nund Resh Colony. Bemina has sought indulgence of this court through the medium of the

petition in hand under Article 226 of the Constitution of India read with Section 103 of the Constitution of J&K State, for quashing the detention

order No. DMS/PSA/78 dated: 21-02-2002 recorded by respondent No. 2, District Magistrate, Srinagar.

2. It is inter-alia maintained in the petition that the detainee namely Mohammad Ashraf Khan S/o. Atik Mohammad Khan R/O Nund Resh Colony,

Bemina, came to be arrested by 72 Battalion BSF at Qalamdanpora, Srinagar during the night intervening 15/ 16th December 2001 and was

booked under FIR No. 204/2001 for the offence u/s 7/25 Indian Arms Act of Police Station M.R. Gunj: that in the said FIR. detainee came to be

released on bail by learned City Munsiff, Judicial Magistrate, Srinagar and this order came to be served upon the detaining authority and despite

that detainee was not released from detention: that the respondent No. 2 came

to pass the detention order, copy of which came to be served upon the detinue: that the detinue was also supplied with the memorandum of grounds of detention which is marked as annexure-B to the writ petition. It is inter-alia also maintained in the petition that the detaining authority has not assigned any compelling reasons for detaining the detinue under the provisions of the Public Safety Act: that there is no proximity between the grounds of detention and object sought to be achieved by detaining the detinue under the preventive law: that the grounds of detention are vague and that there is delay in execution of the detention order and that this delay has not been explained: that the detinue is innocent person and he is not affiliated to any militant group nor any political organisation.

3. On admission of this petition, respondents were put to notice and pursuant to that, respondent No. 2 filed his counter affidavit, wherein he has

inter-alia stated that the detinue was arrested in FIR No. 204 of 2001 u/s 7/25 IAA of P/SM.R. Gunj during the intervening night of 15/16th

December, 2001 when two grenades and five rounds of AK 47 riffle were recovered from him: that the detinue's activities being highly pre-

judicial to the security of the State, therefore, his detention was ordered vide order No. DMS/PSA/78 dated: 21-02-2002 with a view to prevent

him from acting in any manner pre-judicial to the security of the State: that immediately after passing the said order detinue was informed about his

right to make representation to the Government against the said detention order, but the detinue did not avail this right: that the warrant was

executed and the detinue was taken into preventive custody on 06-05-2002: that the contents of the warrant were read over and explained to

him.

4. Heard learned counsel appearing on behalf of the parties.

5. The petitioner, as indicated, has assailed the order of detention impugned in this petition on various grounds, but learned counsel appearing on

behalf of the petitioner has laid down much stress on the ground that the detinue at the time of issuance of the detention order was already in the

custody of the police and no compelling reasons has been disclosed in the detention order that the detinue if released on bail, shall indulge in

serious offences, causing threat to the security of the State and that the detinue came to be arrested during the night intervening 15/16th

December, 2001. He has further submitted that the order of detention came to be executed upon the detainee on 06-05-2002. therefore, there is

delay both in passing the detention order as well as in the execution of this detention order, when the detainee was very much available to the

respondents/detaining authority, therefore, the detention order is liable to be quashed on this ground as well.

6. It is averred in the petition that the detainee namely Mohammad Ashraf Khan was arrested by 72 Bn. BSF at Qalamdanpora during the

intervening night of 15 / 16th December 2001. The detainee was accordingly booked under FIR No. 204/2001 u/s 7/25 IAA of Police Station

M.R. Gunj. The detainee was enlarged on bail in the said FIR by the competent court of jurisdiction, that is say, City Munsiff, judicial Magistrate,

Srinagar. In reply to this para, in the counter affidavit, respondent No. 2 has stated that the detention of the detainee has been ordered only after

the detaining authority assumed satisfaction that the activities of the detainee are prejudicial to the security of the State and his remaining at large

would proved a big threat to the security of the State. The detention of the detainee has also been ordered with complete application of mind.

7. From bare perusal of the reply of respondent No. 2 in reply to para No. 3 of the petition, it is manifest that the reply is evasive and is not

categoric to the effect as to whether detainee was arrested during the night intervening 15/16th December, 2001 in the said FIR in which he was

released on bail by the court of competent jurisdiction. This evasive reply of the respondent No. 2 rather support the averment made in the petition

to the effect that the detainee was detained by the security forces during the night intervening 15/16th December, 2001. Besides, this fact is

admitted by the State respondents in clause (a) of the counter affidavit. It is also admitted that the detention order impugned dated: 21-02-2002

came to be executed upon the detainee on 06-05-2002. This being so, there is delay of one and a half month in passing the detention order and

also a delay of three months in executing the detention order, which came to be passed on 21-02-2002, as already indicated.

8. The grounds of detention formulated by the respondent No. 2 reveal that while formulating grounds of detention, the respondent No. 2 was in

know of the fact that the detainee was arrested during the intervening night of 15/16th December, 2001 by 72 Bn. BSF at Qalamdanpora, Srinagar

and in this connection a case under FIR No. 204/2001 was registered in police station MR. Gunj. However, despite being aware of these facts, he

has failed to explain the delay on his part in passing the detention order on 21-02-2001 i.e. well after one and a half month, which he was under

obligation to explain and disclose in the order of detention. Pradeep Nikanth Paturkar Vs. S. Ramamurthi and others, .

9. As indicated, the detention order came to be issued on 21-02-2002 and the same admittedly came to be executed on the detainee on 06-05-

2002 i.e. well after two and a half months,

10. The question of delay in execution of the detention order came up before Apex Court in a case titled K.P.M. Basheer Vs. State of Karnataka

and another, and the view taken by the Apex Court was reiterated by the court in case Mohammad Farooq v. Union of India, 2002 (2) SCC 360,

wherein the court observed that;

There is catena of judgment on this topic rendered by this court wherein this court emphasised that detaining authority must explain satisfactorily the

inordinate delay in executing the detention order, otherwise the satisfaction gets vitiated.

Since the law is well settled in this behalf I do not propose to refer to other judgments.

11. The respondent has also failed to indicate in the impugned order that what were the compelling reasons justifying the detention against the

detainee who was already in custody. There is nothing to indicate in the impugned order that the detaining authority has recorded his satisfaction to

the effect that after taking into account the nature of the activities of the detainee it was likely that after he is released he would indulge in prejudicial

activities and therefore, it was necessary to detain him in preventive detention. This non-disclosure rather not recording its satisfaction to the said

effect makes the detention order bad in law. (See Surya Prakash Sharma v. State of U.P. AIR 1995 SCW 1841).

Viewed thus, the detention order is bad in law and the satisfaction recorded by detaining authority in passing the detention order is illusory and

recorded without application of mind. The petition is accordingly allowed and the order of detention impugned is hereby quashed. It is ordered that

the detainee be set at liberty forthwith unless he is required in any other pending

proceeding or case. Copy of this order is forwarded to the concerned authorities.