

(1991) 05 J&K CK 0005
In the Jammu And Kashmir High Court
Case No : Habeas Corpus Petition No. 907/90

Mohd. Yasin Ahanger

APPELLANT

Vs

State and Others

RESPONDENT

Date of Decision : 23-05-1991

Acts Referred:

Constitution of Jammu and Kashmir, 1956 — Section 43, 45, 45(2)
Jammu and Kashmir Government Business Rules — Rule 11, 12, 30, 54, 7
Jammu and Kashmir Public Safety Act, 1978 — Section 10A, 13(1), 13(2), 26, 8

Citation : (1993) CriLJ 727

Hon'ble Judges : R.P. Sethi, J

Bench : Single Bench

Advocate : M.A. Goni, for the Appellant; R. Kaul, Government Advocate, for the Respondent

Final Decision : Dismissed

Judgement

R.P. Sethi, J.—Accusing him to be an active, dedicated and staunch member of ISL, a sister organisation of the banned organisation

People's League having its headquarters in Pak-occupied Kashmir, the petitioner was directed to be detained vide the order of detention dated

11-9-1990 signed by the Addl. Home Secretary to Government. The grounds of detention as served upon the petitioner are :

To motivate Kashmiri Muslim youths, to send them across the border for obtaining training in use and handling of sophisticated arms, ammunition

and explosives, to propagate through highly objectionable material and to indulge in looting and rioting by killing high dignatories, including police

personnel, paramilitary forces, eminent judges and lawyers and various political leaders in the valley with the intention to spread terror and create

chaotic conditions in the valley so as to liberate the State of J. and K. from the

Union of India.

That you have all along succeeded in accomplishing the designed plan of conspiracy and developed contacts with Shakeel Ahmed Bakhshi S/o Gh.

Mohd. R/o Batamaloo, Srinagar who motivated and instigated you to join the banned organisation I.S.L. to which you readily accepted and joined

the organisation in February 1989. That you also developed contacts with Ab., Waheed, Zahoor Ahmed, Tanveer Ahmed and others while you were being taught religious education.

That after becoming a member of I.S.L. you became an active subversive activist when you pasted posters on the walls in public places on electric

poles as per directions of said Shakeel Ahmed Bakshi the Chief of the I.S.L. That you also used to carry press notes for publication in the

newspapers and used to contact the editor of daily Aftab for handing over the press publication from Shakeel Ahmed Bakshi. That you also

developed close contacts with other active activists of I.S.L. and indulged in subversive activities.

That you stand arrested in case FIR No. 3/90 u/s 3/4 T & DA(P) Act, 3-OSA, 3-EAO, 120-B, RPC, P/S CIK, for commission of subversive

activities such as joining the banned organisation and motivating Kashmiri Muslim youths to cross the border for obtaining arms training, through

posters etc. Your activities are highly prejudicial to the security of the State. No doubt you are presently lodged in judicial lock-up Srinagar, but

there is every apprehension that you may be enlarged on bail....

2. The order of detention has been challenged mainly on the ground that the authority issuing the order had no jurisdiction to pass such an order

under the J. and K. Public Safety Act. The grounds of detention were vague and that the petitioner who is a citizen of India has wrongly been

dubbed as cessionist and anti-national.

3. In the counter-affidavit filed on behalf of the respondents it is submitted that the petitioner was detained vide the order impugned and lodged in

District Jail, Udhampur, after satisfaction of the detaining authority. The grounds of detention are alleged to have been served upon the petitioner in

the language he understood and that the order of detention was passed by an authority competent to pass the same. It is, however, submitted that

in the interests of security of the State the specific grounds of detention of facts

constituting these grounds were withheld in terms of Section 13(2) of the Act.

4. I have heard learned counsel for the parties and perused the record.

5. From the record produced by the learned Government Advocate it appears that the order of detention impugned in the writ petition was signed

by the Addl. Secretary to Govt. Home Department and issued by orders of the Governor. It is not disputed that u/s 8 of the Act the order of

detention can be issued either by the Governor or by the Divisional Commissioner or by the District Magistrate. All executive powers of the State

vest in the Governor and are to be exercised by him either directly or through officers subordinate to him in accordance with the Constitution of

Jammu and Kashmir as is the mandate of Section 26, thereof.

6. Section 43 of the State Constitution provides that the Governor shall make rules for the more convenient transaction of the business of the

Government of the State and for allocation among ministers of the said business. Section 45 of the State Constitution requires that all executive

actions of the Government are required to be expressed to be taken in the name of the Governor of the Government of Jammu and Kashmir. Such

orders made and executed in the name of the Government are required to be authenticated in such a manner as may be specified in the rules to be

made by the Governor and the validity of an order or instrument which is so authenticated, shall not be called in question on the ground that it is not

an order or instrument made or executed by the Governor or, as the case may be, by the Government of Jammu and Kashmir. A presumption of

validity, is therefore, attached to the orders made by it or authenticated in the name of the Government of Jammu and Kashmir. Such a

presumption may, however, be rebuttable but in that event the onus lies upon such a person who asserts the same to be contrary to the provisions

of the State Constitution.

7. It has been brought to my notice that the Governor of the State has framed the J. and K. Government Business Rules in exercise of the powers

conferred upon him u/s 43 and Sub-section (2) of Section 45 of the State Constitution. Rule 7 of the aforesaid rules provides that the Cabinet shall

be collectively responsible for all executive orders issued in the name of the Governor or of the Government of Jammu and Kashmir in accordance

with the rules, whether such orders are authorised by an individual minister on a matter pertaining to his portfolio or as a result of the meeting of the

Cabinet or otherwise. Rule 11 provides that all orders or instruments made or executed by or on behalf of the Government shall express to be

made or executed in the name of the Governor or the Government of Jammu and Kashmir and under Rule 12 every such order is required to be

signed by the Chief Secretary, Addl. Joint Secretary or an Under Secretary to the Government or such other officer as may be specifically

empowered by the Government in that behalf and such signatures shall be deemed to be a proper authentication of such orders or instrument

Under Rule 54, aforesaid rules can be supplemented by instructions to be issued by the Chief Minister, under Schedule III, Rule 30 of the

aforesaid Rules, any other matter which the Chief Minister may from time to time, by general or special order specified be submitted to him through

the Chief Secretary.

8. In view of this constitutional position there is no substance in the argument of Mr. Goni. It is held that the order of detention was issued by the

competent authority.

9. A perusal of the grounds of detention would disclose that those are neither vague nor ambiguous. If any one of the grounds is vague or

ambiguous the detention cannot be quashed in view of the provisions of Section 10A of the Act.

10. It has further been argued by Mr. Goni that the copy the FIR mentioned in the grounds of detention was not supplied to the petitioner

rendering the order of detention illegal. Sub-section (2) of Section 13 of the Act provides that nothing in Sub-section (1) of the said section shall

require the authority to disclose facts which are considered to be against public interest. The respondent detaining authority has categorically

submitted that the facts in the form of the FIR were not disclosed to the petitioner in exercise of the powers conferred upon it u/s 13(2) of the Act.

Otherwise also the FIR mentioned in the grounds of detention has neither been relied nor is the only circumstance against the petitioner requiring

interference by this Court.

11. There is no merit in this petition which requires dismissal.

12. While dismissing this petition it is observed that the Government may

consider the representation of the father of the petitioner as submitted to the Governor of the State on the basis of which the petitioner is alleged to have been released on parole.