

(2004) 11 J&K CK 0003

In the Jammu And Kashmir High Court

Case No : Habeas Corpus Petition No. 232 Of 2004

Mohd.Hussain Wani

APPELLANT

Vs

State of J&K & Ors.

RESPONDENT

Date of Decision : 30-11-2004

Acts Referred:

Jammu and Kashmir Public Safety Act, 1978 — Section 13

Citation : (2010) 4 JKJ 434

Hon'ble Judges : R.C.Gandhi, J

Bench : Single Bench

Advocate : M.A.Wani, M.S.Hussain, Advocates appearing for the Parties

Judgement

R.C. Gandhi, J.—Detenue, Mohammad Hussain Wani son of Late Wali Mohammad Wani R/o Village Hushenpora, Shopian Pulwama

through his brother seeks to quash his detention order No. 93/DMP/PS A/2003 dated 01.10.2003 passed by respondent No.2 in exercise of his

power under section 8 of the T&K Public Safety Act, 1978 (hereinafter to be referred to as ""the Act"") directing preventive detention of the

detenue.

2. The detention order has been challenged on various grounds including that the respondents have not informed the detenue to make

representation to the Government against the detention order as mandated by section 13 of the Act.

3. Respondent in their reply affidavit have stated that the impugned detention order has been approved within the statutory period under section

8(4) of the Act and the detention order was executed on October 6,2003. Detection order does not suffer from any illegality.

4. Heard learned counsel for the parties and perused the record.

5. Learned counsel for the petitioner has submitted that the detenue has not been informed to make representation to the Government against the

detention order, therefore, the detention order is not sustainable in breach of Section 13 of the Act. In para 4 of the reply affidavit it is submitted

that the detenue was informed to make representation if he so chooses, against the detention order but he failed to do so. Learned counsel for the

petitioner has submitted that this assertion of the respondents that the detenue has been informed to make a representation is misleading and has no

bearing from the record of detention.

6. Mr. Wani, learned counsel for the respondents has made available the record to appreciate the plea of the learned counsel for the petitioner.

Perusal of the record reveals that the grounds of detention have been explained to the detenue in Kashmiri and Urdu languages on 17.10.2003 on

the date when the detention order was executed. There is no mention of informing the detenue to make representation to the Government against

the detention order. The assertion made in the reply affidavit referred to above has no bearing in the record of the respondents. Section 13 of the

Act is mandatory provision of law and has to be complied with by the respondents. After the communication of the grounds of detention, the

detenue is to be informed to make a representation against the detention order to the Government. Petitioner has annexed with the petition copy of

the letter dated: 01.10.2003 written by the District Magistrate, Pulwama signed on 6.10.2003 whereby the detenue has been informed to make

representation. The grounds of detention have to be communicated to the detenue in terms of Section 13 of the Act within five days and in

exceptional circumstances not later than ten days from the date of detention and simultaneously the detenue is to be informed to make

representation against the detention order. Grounds of detention have been communicated to the detenue on 17.10.2003 whereas the letter has

been written on 1.10.2003 informing the detenue to make a representation. The detenue was not taken in the custody pursuant to the execution of

the detention order on 1.10.2003. More significant aspect is that the detention order itself was signed by the detaining authority on 6.10.2003 and

detenue could not have been informed to make representation against his

detention which was not in existence on the said date i.e. 1.10.2003.

Therefore, the order suffers from noncompliance of Sec. 13 of the Act of informing the detainee to make representation to the Government against his detention.

7. For the forgoing reasons, this petition is allowed and the detention order No. 93/DMP PSA/03 dated: 01.10.2003 directing preventive

detention of the detainee namely Mohammad Hussain Wani son of Late Wali Mohammad Wani resident of Village Hushenopora Shopian,

Pulwama is set aside with direction to the respondents to release the detainee from preventive detention forthwith, if not required in any other offence.