
(2007) 12 J&K CK 0022
In the Jammu And Kashmir High Court
Case No : HC(W) No. 44 Of 2006

Mohd.Saleem Wani

APPELLANT

Vs

State of J&K and Ors.

RESPONDENT

Date of Decision : 31-12-2007

Acts Referred:

Constitution of India, 1950 — Article 22(5)
Public Safety Act, 1978 — Section 8

Citation : (2009) JKJ 64 Supp : (2009) 1 SriLJ 337

Hon'ble Judges : J.P.Singh, J

Bench : Single Bench

Advocate : B.S.Salathia, A.A.Hamal, Advocates appearing for the Parties

Judgement

1. Mohd. Saleem Wani has filed this petition seeking quashing of District Magistrate Jammu's Order No. 15/PSA of 2005 dated 27.12.2005

directing his detention under Section 8 of the Jammu and Kashmir Public Safety Act.

2. Although number of grounds have been urged by the petitioner in his petition, hinting at the unsustainability of the detention order, yet Mr. A.A.

Hamal, learned counsel for the petitioner, has concentrated only on a short submission. He says that the detention order has been rendered invalid

because of its having been executed after about nine months of its issuance by the District Magistrate. Learned counsel relies on K.P.M. Basheer

versus State of Karnataka and anr., reported as (1992) 2 SCC, 295 and SMF Sultan Ab. Kader versus Jt. Secy., To Govt. of India and Ors.,

reported as (1998) 8 SCC 343, to support his submission.

3. Learned State Counsel, Mr. B.S. Salathia, submitted that there being no provision in the Public Safety Act prescribing time for execution of a

detention order, delay in execution of order would not effect its validity. Learned counsel has produced the detention records to justify petitioner's

detention on the grounds appearing in the grounds of detention.

4. I have considered the submissions of learned counsel for the parties and perused the records, which have been made available by the Learned

State Counsel.

5. Section 8 of the Jammu and Kashmir Public Safety Act, 1978, permits curtailment of one's fundamental and natural right to "liberty" only when

the authorities mentioned in Section 8 are satisfied that immediate preventive measures" were necessary to curtail the liberty of a person whose

activities, if not prevented, would be prejudicial to the security of the State and for maintenance of public order, or to prevent such persons from

doing such other activities as are mentioned in Section 8 of the Act.

6. Orders passed under Section 8 are, therefore, required to be implemented without any loss of time, and delayed execution of these orders

without any justifiable explanation for their nonexecution, would render the detention invalid besides being unconstitutional in view of the law laid

down by Hon'ble Supreme Court of India in its various judgments. Reference in this, regard may be made to what has been held in the two

judgments cited by learned counsel for the petitioner.

7. In SMF Sultan Ab. Kader versus Jt. Sec., to Govt. of India and Ors., reported as (1998) 8 SCC, 343, the Hon'ble Supreme Court had held as

follows:

There is also no material to show that the detaining authority had made any serious attempt during this whole period of delay to find out if the

detention order was executed or not. Thus, the delay in execution of the detention order remains unexplained. The unreasonable delay in executing

the order creates a serious doubt regarding the genuineness of the detaining authority as regards the immediate necessity of detaining the petitioner

in order to prevent him from carrying on the prejudicial activity referred to in the grounds of detention. We are of the opinion that the order of

detention was passed by the detaining authority not in lawful exercise of the power vested in him. We, therefore, allow this petition, set aside and

quash the order of detention and direct that the petitioner be set at liberty forthwith unless his presence is required in jail in connection with any

other case.

8. In *A. Mohammed Farook versus Jt. Secy. To G.O.I and Ors.*, reported as (2000) 2 SCC 360, it was held as follows:

There is a catena of judgments on this topic rendered by this Court wherein, this Court emphasized that the detaining authority must explain

satisfactorily the inordinate delay in executing the detention order otherwise the subjective satisfaction gets vitiated. Since the law is well settled in

this behalf we do not propose to refer to other judgments which were brought to our notice.

9. The records produced by learned State Counsel reveal that the petitioner was in police custody in FIR No. 170/05 under Sections 120B,

121A/122 RPC, 7/25 Arms Act registered at Police Station, Bahu Fort, Jammu at the time when the detention order had been issued, yet the

respondents had taken about nine months to execute the detention order. No explanation has been offered by the respondents as to why the

detention order had not been executed for about nine months when the petitioner was all along in police custody and thus available with the

respondents.

10. I do not find any merit in State Counsel's submission that as no time limit has been prescribed in the Public Safety Act, 1978 for the execution

of a detention order, so nonexecution of order even for a longer period and that too without any explanation therefor, would not effect the validity

of the order.

11. Preventive detention orders, by their very nature, are required to be executed without any loss of time and any delay in their execution

particularly when delay was not explained, would render the order unsustainable creating serious doubt regarding the genuineness of detaining

authority's satisfaction regarding the detention of the petitioner so as to prevent him from carrying on activities prejudicial to the security of the

State.

12. In view of the above discussion, I am of the opinion that the petitioner's detention has been rendered unsustainable because of nonexecution of

the detention order for about nine months of its issuance.

13. I would, accordingly, allow this petition and quash Order No. 15/PSA of 2005 dated 27.12.2005 of District Magistrate, Jammu. A direction

shall issue to the respondents to set the petitioner at liberty, if not required in any other case.

14. Detention Records to be returned to the State Counsel.