
(1998) 07 J&K CK 0025
In the Jammu And Kashmir High Court
Case No : A. M. Mir HC 668 Of 1997

Muhammad Mansoor Wani	Vs	APPELLANT
State of Jammu and Kashmir through District Magistrate		RESPONDENT

Date of Decision : 14-07-1998

Acts Referred:

Public Safety Act, 1978 — Section 13

Citation : (1999) KashLJ 758

Hon'ble Judges : A.M.Mir, J

Bench : Single Bench

Advocate : G.N.Hagroo, G.Mustaffa, Advocates appearing for the Parties

Judgement

This petition calls in question detention order no. F72/DM/PSA/DET/97/52026 dated 23.6.1997. This order has been passed in terms of Sec.8 of

the J&K Public Safety Act, 1978, (hereinafter called the Act), by the District Magistrate Anantnag. Under this order, one Mansoor Ahmed S/o.

Muhammad Akram Wani R/o. Khannabal, Naibasti, Anantnag, (hereafter referred to as the detente), has been detained for a period of twelve months.

Obviously the period of detention, if counted from the date of detention i.e. 23.6.1997, has expired. However, the counter filed in this case shows

that the order of detention was executed on 20.11.1997,"" on which date grounds of detention, along with other material, were supplied. I leave

aside all other grounds taken by the detente, and only confine myself to the fact as to whether or not delayed execution of the order can be taken

to be sufficient compliance of the Act and particularly of sec. 13 of the Act.

It is pertinent to place on record that the detente has been under custody of the

State prior to the passing of the impugned order. He had initially been apprehended on 9.11.1996. The impugned order of detention was passed on 23.6.1997 and it is claimed to have been executed on 20.11.1997, a period of about five months has intervened between the two fateful dates. It is also admitted by the State that grounds of detention were communicated to the detente on 20.11.1997, when the order is claimed to have been executed. The Court would like to dial ate upon the impact of such a delayed 'execution' under sec. 13 of the Act. For this purpose the original text of sec. 13 is reproduced as under:

13Grounds of order of detention to be disclosed to persons affected by the order:
When a person is detained in pursuance of a detention order, the authority making the order shall, as soon as may be but ordinarily not later than five days and in exceptional circum stances and for reasons to be recorded in writing, not later than ten days from the date of detention, communicate to him the grounds on which the order has been made and shall afford him the earliest opportunity of making representation against the order to the Government.

Nothing in subsection (1) shall require the authority to disclose facts which it considers to be against the public interest to disclose.

4. Section 13 does not make room for any terms as ""execution."" In fact section 9 of the Act only speaks of 'execution' of the detention order.

Section 9 also does not say as to when the order, in case of a prior custody, shall be executed. It only provides that a detention order may be executed at any place in the same manner as provided for the execution of warrant of arrest under the Code of Criminal Procedure. Thus on a grammatical interpretation of sec.9 only two ingredients are made out:

- i) That the State will have the liberty of executing the detention order at any place;
- ii) That the execution will be undertaken in the same manner provided for execution of warrant of arrest under Code of Criminal Procedure.

Even the Code of Criminal Procedure does not define the word 'execution'. Chapter VI of the Code lays down the manner in which warrant of arrests are executed. What this chapter, especially section 81 envisages, is that effecting of arrest of the person means execution of the warrant of arrest.

The Act does not say as to when shall an order of detention, relating to a person already under custody, be executed. However, a bird's eye view

of section 13 makes it clear that the grounds of detention shall be communicated to the detente as soon as possible, but usually within 'five days'.

This is the general rule laid down by sec. 13. This general rule admits of an exception. Under this exception grounds can be communicated within

ten days but for exercising this option the detaining authority has to record reasons in writing for such delay. It is important to note that section 13

makes it clear that the date from which this period of 5/10 days will run is the date from which a detente is detained in pursuance of a detention

order. This principle holds good in a case where a person is to be arrested after the detention order is passed. What about a person who was

already in State custody in a substantive offence and during such custody a detention order was passed. Which is the exact date from which the

period for communication of grounds in terms of sec.13 of the Act will run?

This is the question which often arises and arises here also. The argument of Mr. Mustafa, appearing for the State, is that it must run from the date

of order of detention was Executed i.e. from 20.11.1997.

If the State version is accepted then it will always be for the State to 'execute' a detention order as and when they like and then supply the grounds

of detention. In other words the interpretation of sec. 13 will have to be tailored in such a manner so as to suit the options of the State. The

phraseology used in sec. 13 sounds a note of caution to the detaining authority that the detente should be at the first and foremost occasion

informed of the grounds of his detention. The word "'as soon as may be'" deserves to be noted with caution. These words suggest that the detaining

authority should be particular to communicate the grounds of detention to the detente even before five days. However, the ceiling of five days as a

general rule is to limit the discretion of the detaining authority with respect to the time frame. The legislature in best of their wisdom did think of the

exigencies where the detaining authority for so many reasons could not communicate the grounds to the detente within the time frame of five days.

It is how by way of exception a maximum time limit of ten days has been prescribed and that also with a rider, by way of a precondition, that for

communicating the grounds of detention after five days and within ten days, the

detaining authority must record reasons in writing. It is also within this time frame that an opportunity to make a representation against the order of detention is required to be provided.

The argument of Mr. Mustafa based on the stand taken by the Government in the counter affidavit that the period for communication of grounds

should be reckoned from the date of so-called execution of the order is untenable, because if this stand is accepted then sec.13 of the Act will have

to be given a go-by. Then it means that the grounds of detention can be communicated at any time when the State wants. This can never be the

intention of section 13. A vexed question, as to wherefrom shall the preventive detention of a person, already in State custody, be counted,

remains to be answered. The statute is silent on this point. However, it is very easy to understand as to what is required to be done for executing a

detention order in respect of a person who is already under State custody. Perhaps entry in papers is only required to be made. At best place of

lodgment may have to be changed. How much time is required for undertaking this exercise in these modern times when electronic Medias are in

service all around and when alternate venues of lodgment are available in both the capital cities?

Here I would like to make a reference to the origin of sec. 13. This provision of law is only a reflection of clause (5) of Art.22 of the Indian

constitution. This provision of the constitution does not recognize a preventive detention beyond three months in absence of a reference to an

Advisory Board and in absence of consideration of a representation, if the detente chooses to make one. This is how this court and also the apex

court has time and again held that in case of infraction of the guarantee enshrined in section 13(supra) the detention order gets vitiated. This

proposition of law was laid down in Ibrahim Ahmed vs State of Gujarat and others, reported in AIR 1982 SC1500. The purpose of providing all

the information relating to grounds of detention and the attendant material is not a sheer formality. It is just to enable the detente to make an

effective representation before the Advisory Board. Deienue's right to make a representation is also a step in aid towards the same object. This

view was laid down by their lordships of the Supreme Court in, Bhupinder Singh vs. Union of India, reported in (1987) 2 SCO page 234.

Thus I come to the conclusion that the grounds of detention, in a case, where the detente was already in custody, have to be communicated in the

same manner in which section 13 of the Act envisages. The plea of belated execution is fraught with a danger of subverting section 13. The

execution, whatsoever it means to the Government, should be completed at the earliest after passing the detention order. Courts will have to be

guided by the law as laid down in sec. 13 and not by what State in the counter pleads qua the execution of the order.

12. On that analogy I find the detention order impugned cannot be said to have been executed after almost five months. Its execution should keep

pace with the date on which detention order was passed. Thus following two issues come to surface in this case which knocks out the detention

order:

i) that the grounds of detention were not communicated within the time frame laid down in sec. 13 of the Act; ii) that the execution of the order on

20.11.1997 cannot be accepted as an excuse for compliance of sec.13.

Thus I find the order of detention in this particular case should be construed to have been executed on the date on which same was passed. On

that analogy the period of detention has already expired. The order has outlived its life. However, to keep the record straight, I quash this order

and direct that the detente, Muhammad Mansoor Wani, should be released from custody, if not required in any other case.

A stage, Mr. Hagroo, appearing for the dÃ©tente has drawn my attention towards a discrepancy in the name of the detente in the order of

detention and grounds of detention. Impugned order of detention shows the name of the detente as Mansoor Ahmed Wani, whereas in the grounds

of detention he is described as Mohd. Mansoor Wani. Although this discrepancy by itself would have otherwise invoked comment on the plea of

nonapplication of mind, yet feeling that observation will be otiose, I refrain from making the same. However, parentage is one, residence is one and

by whatsoever name the detente is called, Mohd. Mansoor Wani or Mansoor Ahmed Wani, this should hardly make any difference. For this

discrepancy the detente should not suffer anymore.