

(2002) 07 J&K CK 0014
In the Jammu And Kashmir High Court
Case No : H.C. No. 53 of 2001

Mumtaz Ahmad Dar

APPELLANT

Vs

State of J. and K. and Another

RESPONDENT

Date of Decision : 30-07-2002

Acts Referred:

Jammu and Kashmir Public Safety Act, 1978 — Section 13

Citation : (2003) CriLJ 1135 : (2010) 4 JKJ 814

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

Bench : Single Bench

Advocate : M.S. Hussain, for the Appellant; G. Mustaffa, Government Advocate, for the Respondent

Final Decision : Allowed

Judgement

R.G. Gandhi, J.—Petitioner seeks to quash detention order No. 59/DMP/2000 dated 13th Dec. 2000 passed by District Magistrate, in

exercise of powers u/s 8 of the Jammu and Kashmir Public Safety Act, 1978.

2. The detenu has challenged the detention order on various grounds, including that the grounds of detention have not been served upon, and

explained to the detenu and he has also not been informed to make a representation to the Government against the detention order which is breach

of the mandatory provisions of the law contained in Section 13 of the Act and non-compliance of such provision itself is enough to quash the

detention order.

3. Respondents have filed the counter affidavit stating therein that the detention order was approved by the Government on 18th Dec. 2000. It was

executed on 27th Dec. 2000. The grounds of detention have been served upon and explained to the detain in the Urdu/English/Kashmir language

which he fully understood. The case of the detenu was referred to the Advisory Board who opined for continued detention. Keeping in view of the report of the Advisory Board, the Government in exercise of powers u/s 17 of the Act has confirmed the detention order of the detenu vide Government Order No. 627 of 2001 dated 14th March, 2001.

4. Heard learned counsel for the parties.

5. Learned counsel for the petitioner has reiterated his submission that the grounds of detention have not been served upon the detenu and detenu not informed to make a representation against the detention order to the Government. It is also submitted that mandate of Section 13 of the Act has been violated by the respondents. Therefore, the detenu's detention cannot be continued and deserves to be quashed.

6. The respondents in grounds (b) and (d) of the counter-affidavit have averred as under :

(b) Vide Order No. 59/DMP/2k dated 13-12-2000, the detenu was ordered to be detained with a view to preventing him from acting in any manner prejudicial to the security of the State. Vide letter dated 13-12-2000 the detenu was informed of his detention under PSA and that of his right to make a representation to the Govt. against his detention, if he so desired, which the detenu did not desire and did not make any representation to the Government.

(d) That the detention order was executed and detenu taken into preventive custody on 27-12-2000 after contents of warrant were read over and explained to him in Urdu/English/Kashmir language which he fully understood as in lieu thereof the detenu has put his thumb impression on the endorsement of executed copy of detention order. Similarly grounds of detention were served to the detenu on 27-12-2002 itself and contents thereof were also read over and explained to him in the language which he understood, which fact is evidence by the receipt given by the detenu which is on the record.

7. It is not disputed that the mandate of law contained in Section 13 of the Act is required to be complied with and breach thereof renders the detention illegal.

8. The respondents on taking the detenu in preventive detention are required to serve grounds of detention within a period of five days and also to

inform him to make representation against the detention order. The respondents in their reply have stated that the grounds of detention have been served and explained to the detenu in Urdu/English/Kashmiri language.

9. So far as the right of the detenu of being informed to make a representation against the detention order to the Government is concerned, the stand of the respondents is that he was informed to make the representation vide letter dated 13-12-2000. The letter is contained in the record made available for perusal of the Court by learned counsel for the respondents. There is no evidence that this letter was served upon the detenu.

Merely writing the letter and keeping it on record does not comply the requirement of law. It needs to be served upon the detenu with the purpose of informing him that he can make a representation against the detention order. This requirement of law has not been complied with and the mandate of Section 13 of the Act to this extent has been breached.

10. Mr. G. Mustaffa, learned Government Advocate, was provided an opportunity vide order dated 5-3-2002 to file an affidavit of the Deputy

Superintendent, Central Jail, as, according to him, the said Officer of the State has informed the detenu of his right of making such representation.

The affidavit was not filed and the matter was listed on 19th March, 2002. Again time was granted, it was again listed on 30th April, 2002. He

sought extension of time for filing the requisite affidavit. In the interests of justice, opportunity was granted. The petition was again listed on 4th

June, 2002 and Mr. Mustaffa sought one week's last opportunity to comply with the Court direction and one week's last and final opportunity was

granted to him for the purpose. It was, however, made clear that irrespective of whether affidavit is filed or not, the matter shall come up for

hearing on the next date. Thereafter, the matter was again listed on 16th and 23rd July, 2002, but the affidavit has not been filed by the

respondents. Therefore, adverse inference is required to be drawn against the respondents that the detenu was not informed of his right to make representation to the Government against his detention.

11. Under such circumstances, the detention order suffers for breach of mandate of Section 13 of the Act as the respondents have failed before

the Court to make out that the detenu has been informed to make representation against the detention order to satisfy the requirement of law.

12. For the aforesaid reasons, the preventive detention cannot be continued. The detention order is, therefore, quashed. The detenu is directed to

be released from the said preventive detention, if not required in any other case.

13. Petition is, accordingly, allowed.