
(1988) 06 J&K CK 0006
In the Jammu And Kashmir High Court

Nagarmal

APPELLANT

Vs

The State and Others

RESPONDENT

Date of Decision : 01-06-1988

Acts Referred:

Jammu and Kashmir Public Safety Act, 1978 — Section 8

Citation : (1989) CriLJ 1584

Hon'ble Judges : K.K. Gupta, J

Bench : Single Bench

Judgement

K.K. Gupta, J.—Petitioner has been detained under the orders of District Magistrate, Jammu dt. June 30, 1986 u/s 8 of the J & K Public

Safety Act, 1978 (for short Act hereafter). The grounds on which detention has been ordered have been enumerated in the grounds of detention as

under:

On 20-2-1985 you motivated one Buta s/o Raj Singh r/o Biaspur to work for Pak Field Intelligence Unit. You took him across the border to

Pakistan and introduced him to Pakistan FIU officials at Sialkot. During your this visit you commented yourself before the Park FIU officials to

introduce some serving personnel of Indian Army deployed in R.S. Pura sector who could work for Pak Intelligence for monetary consideration;

2. On 6-5-1985 you crossed over to Pakistan and informed your Pak FIU masters about the visit of some Pak nationals to India who were stated

to be working for the Indian security. You identified their photographs and got them arrested. You received Rs. 100/- as remuneration. You were

also allowed to smuggle goods from Pakistan to own side.

3. On 10-6-1985 You crossed over to Pak along with one Rattan Lal r/o Raipur

Said-an P/S R.S. Pura whom you introduced to Pak Intelligence

officers and their known hard-core agent Mushtaq @ Bhati. On your return you escorted Mushtaq @ Bhati to own side and gave him shelter at

your house to facilitate him in his espionage mission. After completing the mission you escorted said Mushtaq back to Pak.

4. On 3-7-1985 you took Ashok @ Pappy r/o Baiga, one Jaswant Singh coolie working at Bus-stand Jammu and one Mahasha r/o Chhatta

Gujran P/S Kanachak to Pak and introduced these persons to Pak FIU officials who after being satisfied, registered them on Pak Intelligence

sources.

5. On 23-11-1985 you again crossed over to Pak on espionage mission and gave classified information regarding deployment of security forces in

the R.S. Pura sector and adjoining areas. On your return from Pak on 17-12-1985 you were arrested in case FIR No. 1/85 u/s 3-EAO P/S JIC.

2. The petitioner has assailed the abovesaid order on various grounds. Learned Counsel for the petitioner has argued that the District Magistrate

passed the order of detention of the petitioner for a period of twelve months but the Government ordered his continued detention for a period of

24 months without assigning any reasons and on this ground the order of detention requires to be quashed Learned Additional Advocate-General

has, however, contended that the Government is fully authorised under the Act to order continued detention of a detenu for a period of 24 months

and considering the activities of the petitioner prejudicial to the security of the State his continued detention for a period of 24 months was

considered necessary.

3. The District Magistrate has not filed ; any counter in the case. Sh. Kesho Parkash Additional Secretary to Government, Home Department on

behalf of the State has however, filed reply affidavit stating that the Government received copy of the order of the District Magistrate regarding

detention of the petitioner for a period of 12 months . and after considering the same it approved the same. The Government then placed the i

grounds of detention of the petitioner before i the Advisory Board which expressed opinion that the detaining authority had sufficient cause to

direct continued detention of the detenu with a view to prevent him from acting in a manner prejudicial to the security of the State. It has further

been averred by him in his affidavit that on the receipt of the opinion of the Advisory Board the Government after due consideration confirmed the continued detention of the detenu for a period of 24 months.

4. Admittedly the District Magistrate while passing the order u/s 8 of the Act had detained the petitioner for a period of 12 months. The

government while confirming that order has raised the period from 12 months to 24 months. No reason has been given for extending the period.

Even no counter has been filed to explain the circumstances under which the period was extended by the Government. The order further shows

that the petitioner was not given opportunity of hearing before extending his period of detention. A similar matter also came for the consideration of

this Court in Habeas Corpus Petn. No. 9 of 1988, Jagjit Singh v. State and Hon'ble Mr. Justice M.A. Shah on Mar. 5, 1988 (reported in (1988)

1 LR (Cri) 707) quashed the order of detention on the ground that it was passed mechanically, without subjective satisfaction. I also find no

ground to sustain the order passed in the case of the petitioner raising period of his detention from 12 months to 24 months as the same seems to

have been passed mechanically, without application of mind. Said order is, therefore, quashed and the petitioner shall be released forthwith if not

required in any other case.