
(2002) 01 J&K CK 0012
In the Jammu And Kashmir High Court

Nazir Ahmad Baba

APPELLANT

Vs

State of J&K and Ors.

RESPONDENT

Date of Decision : 01-01-2002

Acts Referred:

Public Safety Act, 1978 — Section 13

Citation : (2002) KashLJ 630

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

Bench : Single Bench

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

Judgement

1. Petitioner seeks to quash the detention order No. 87 of 2001 dated 23.7.2001, passed by District Magistrate Baramulla, directing preventive

detention of the detenu Nazir Ahmad Baba S/o Mohammad Akbar Baba R/o Ahama Sharief Bandipora Kashmir, in exercise of powers under

Section 8 of J&K Public Safety Act 1978 (hereinafter called the Act.) Government/ Respondents in exercise of powers u/s 17 of the Act, has

confirmed detention of the detenu for the period of 24 months.

2. The detention order has been challenged on various grounds including that the detention order has been executed after a period of 67 days,

which has not been explained.

3. Respondents have filed counter affidavit stating therein that the detention order was executed on 01.10.2001. Grounds of detention have been

explained to the detenu in the language he understood. The detenu has also been informed to make a representation to the Govt. against the

detention order. Detention order was approved by the Govt. on 02.08.2001. The case of the detenu was referred to the Advisory Board on

12.10.2001 and the Advisory Board has opined continuous detention of the detainee vide its report dated 24.11.2001. The detention of the

detainee has been confirmed for a period of 24 months vide Govt. order No Home/PBV/2126of2001 Dated 25.11.2001.

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

5. Learned counsel for the petitioner reiterating the grounds taken in the memorandum of the petition, has submitted that the detention order was

executed on 01.10.2001, after a period of 67 days, which has not been explained by the respondents while the detainee was taken into custody by

the respondents in FIR No. 110/2001 under section 7/25 Indian Arms Act. This fact finds support from the grounds of detention, wherein a

mention has also been made by the detaining authority that at the time of issuance of detention order, the detainee was in custody of the

respondents.

6. Learned counsel for the respondents, in rebuttal has submitted that the procedural requirements provided under the provisions of the Act have

been complied with by the respondents and the detention order does not suffer on any account including the nonexplanation of the delay caused in

execution of the detention order, on the part of the respondents. The point in controversy need not to be dilated upon, as it has been set at rest by

the Division Bench in LPA No. 17/99 titled Ghulam Rasool Shah Vs. State and others decided on 10.8.99. The plea of the appellant before the

Division Bench was that the respondents have not explained the delay of 48 days in execution of the detention order while the detainee was already

in their custody. The point in controversy herein is similar and covered by the Division Bench judgement. The Division Bench while dealing with this

plea of the appellant has observed as under:

In the present case the detainee was available with the executing agency, being lodged in judicial custody in connection with a criminal case. No

explanation has been tendered for the delayed execution of the order of detention. Therefore, there is a reasonable ground to think that the delay in

execution of the detention warrant was occasioned by the respondents deliberately to gain time and to ensure that the detainee is kept in custody

for a longer period of time. This object, as in the case at hand, can be achieved by respondents by a simple way. The detainee is first kept in

custody in connection with criminal case for along a period as can be. While the execution of the warrant of detention is kept pending. As and

when the executing agency apprehends that the accused detainee is likely to be bailed out, or considerable long period has elapsed since the date

of issue of the detention order, they execute the detention warrants at their whim and will. Thus their object of prolonging the custody/detention of

a citizen is achieved. This is simply malafide on the part of the concerned authorities. Situations are conceivable, as rightly observed by brother

Khan J. in the judgement(supra) where detaining authority may have reasons for not executing an order with reasonable despatch. It may be

difficult and even impossible in certain cases, e.g. where the person to be detained is absconding or concealing himself. In such cases delayed

execution may be justified. But where a detainee is available with the respondents, any delay, morose unexplained, in execution of the detention

warrant tantamounts to manipulations on the part of the detaining authority as well as the executing agencies. Where there is unexplained, or even

unsatisfactory, delay between the date of order of detention and the date of its execution such a delay would throw a serious and considerable

doubt on the genuineness of the subjective satisfaction of the detaining authority, leading to a legitimate inference that the detaining authority was not

really and genuinely satisfied about the necessity of detaining the detainee with a view to preventing him from acting in a prejudicial manner. That

being so, the detention of the detainee in the instant case is rendered illegal...

7. The delay of 67 days has not been explained by the respondents which was required to be explained either in the counter affidavit or by

production of record justifying the delayed execution. It is the duty of the respondents to defend their action when challenged in the court of law.

The respondents could have justified the delayed execution by production of relevant record, which has not been done. Therefore, this court has

no alternative but to allow the petition, as this point of controversy has already been settled by the Petter Patent Bench. Accordingly, the petition is

allowed. Detention order No. 87 of 2001 dated 23.7.2001 is quashed. Respondents shall release the detainee Nazir Ahmad Baba S/o Mohammad

Akbar Baba R/o Ahama Sharief Bandipora Kashmir, from preventive detention if not required in any other case.

8. Petition is disposed of.