

(2002) 02 J&K CK 0016
In the Jammu And Kashmir High Court
Case No : H.C.No. 135/2001

Rasool Hajam

APPELLANT

Vs

State & Ors.

RESPONDENT

Date of Decision : 26-02-2002

Acts Referred:

Public Safety Act, 1978 — Section 11

Citation : (2002) KashLJ 274 : (2002) SriLJ 269

Hon'ble Judges : B.L.Bhat, J

Bench : Single Bench

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

Judgement

1. Through the medium of this petition of Habeas Corpus, Detention order No. DMS/PSA/50 dated 12.07.2000, passed by the District

Magistrate, Srinagar under Section 8 of the Jammu and Kashmir Public Safety Act 1978, detained Gh. Rashool Hajam S/o Gh. Mohammad

Hajam, resident of Wussan Kangan has been challenged on various grounds enumerated in the petition.

2. The respondent District Magistrate has filed counter affidavit wherein he has resisted the petition but has stated in para No. 1 of the said affidavit

that the detention order was passed for a period of 24 months from the date of detention by the govt. under order No. Home PBV/3108/2000

dated 22.10.2000. The grounds of detention were read over and explained in Urdu and Kashmir language on 28.08.2000 which he understands

fully. The detenu has been informed of his right to file the representation to the government. The detenu has acknowledged receipt of grounds of

detention, it is being read over and explained to him in Urdu and Kashmiri languages, which the detenu understands. That the case of the detenu

was placed before the Advisory Board for its opinion. The State Advisory Board opined on 19.10.2000 that the sufficient cause/grounds exists for

his continued detention. That the detention warrant was executed and detenue was taken into prevention detention/custody on 28.08.2000 after

contents of warrant were read over and explained to him in Urdu and Kashmiri languages which the detenu understood. The grounds of detention

were also served to the detenu which is evident from the receipt dated 28.08.2000.

3. Heard the learned counsel for the parties.

4. Through the impugned order of detention is assailed on various grounds but Mr. Shaheen, the learned counsel for the petitioner has laid much

emphasis on the unexplained delay of execution of the impugned detention order on the detenu. He submits that the detention order was issued by

the respondent District Magistrate. Srinagar on 12.07.2000 and the same has been executed by the detaining authority on 28.08.2000. This

inordinate delay in executing the said detention order: has completely vitiated the subjective satisfaction of the detaining authority the respondent

No. 2. Besides, this the detenu before his detention was booked for the commission of an offence under Section 7/25 by Police Kangan in FIR

No. 41/2001, in which he was released on bail by the learned Judicial Magistrate Kangan, as is manifest from the annexure B on the writ file. The

detaining authority without mentioning it that the detenu being already on bail in the said FIR has said in the grounds of detention that"" it is clear that

your activities are highly prejudicial to the security of the State. You may get bail from the court, your remaining at large will be a threat to the

security of the state. Under such compelling circumstances, it has become imperative to detain you under Public Safety Act, 1978 for which a

separate order has been issued."" Therefore, the detaining authority, while recording the subjective satisfaction has not applied his mind to the facts

placed before him.

5. Mr. R. Fidda, GA, the learned counsel for the respondents fairly concede to this argument of the learned counsel for the petitioner that their is

an inordinate delay of 37 days in execution of the impugned detention order upon the detenu. For this the state and other respondents have no

explanation to offer.

6. Consider the submission of the learned counsel for the parties and find from the record that the detention order has been issued on 12.07.2000, as such there is inordinate delay of 37 days in the execution of the detention order upon the respondent. From all this, the state has no explanation nor is it stated in the counter that any step for the execution of the detention was taken or that the detenu had gone in hiding or that there was any impediment in executing the said order. Their Lordships of Apex Court in A Mohammed Farooq vs. Jt. Secy. to G.O.I, and others, reported in (2000) 2 Supreme Court Cases 360, in a writ petition under Article 32 of the Constitution of India filed by the detenu challenging the legality and correctness of detention order have observed in para No. 9 and 10 of the judgement as under :

9. There is a catena of judgements 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.

10. As indicated earlier that only explanation given by the detaining authority as regards the delay of 40 days in executing the detention order is that

despite their efforts the petitioner could not be located at his residence or in his office and therefore the order could not be executed immediately

no report from the executing agency was filed before us to indicate as to what steps were taken by the executing agency to serve the detention

order. In the absence of any satisfactory explanation explaining the delay of 40 days., we are of the opinion that the detention order must stand

vitiated by reason of nonexecution thereof within a reasonable time. From Annexure P2 (the proceedingsheet of the Metropolitan Magistrate's

Court, Madras) it appears that the petitioner (accused) was present in the Court of the Additional Chief Metropolitan Magistrate on 25.02.1999

as well as on 25.03.1999. Despite such opportunities neither the detaining authority nor the executing agency as well as the sponsoring authority

were diligent to serve the detention order on the petition at the enlist in this view of the matter, we are of the opinion that the subjective satisfaction

of the authority in issuing the detention order dated 25.02.1999 is vitiated. It is in these circumstances not possible for us to sustain the detention

order.

7. As indicated that the impugned order of detention has been executed after more than 37 days upon the detenu despite the fact that the detenu

was available at his place and there is nothing in the counter affidavit to show that the Detenu had gone in hiding which resulted in inordinate delay

of 37 days in implementing the detention order upon him. This being so, this inordinate only in executing the detention order, in view of the afore

law laid down by the Apex Court of India vitiates the subjective satisfaction of the detaining authority, which renders the order of detention liable to

be quashed on this ground alone.

8. Viewed thus, the petition is allowed and the impugned order of detention is quashed. The detenu shall be set at liberty forthwith unless he is

detained/arrested or required in any other case. Copy of this order be communicated to the concerned authorities for information and necessary

Action and a copy of the same be also furnished to the learned counsel for the petitioner free of cost.