
(1981) 12 J&K CK 0006
In the Jammu And Kashmir High Court

Rattan Lal	Vs	APPELLANT
State and Others		RESPONDENT

Date of Decision : 07-12-1981

Acts Referred:

Arms Act, 1959 — Section 25

Citation : (1982) CriLJ 1697

Hon'ble Judges : Adarsh Sein Anand, J

Bench : Single Bench

Judgement

A.S. Anand, J.—The petitioner, brother of detenu Vijay Kumar, has filed this petition seeking quashing of the order of detention and release

of the detenu from custody. The detenu, Vijay Kumar, was detained by order of District Magistrate, Jammu, vide his No. 123-A/PSA dated 11-

7-81 as in the opinion of the. District Magistrate, the activities of the said detenu were prejudicial to the security of the State. The grounds of

detention which were served on the detenu read as under:

(1) That in the first week of January, 1980 you were allured and motivated by one Hans Raj s/o Shri Chhajju Ram r/o Arnia (teacher) to foe his

associate in transborder activities. You agreed to get yourself introduced to one Imdad Ali s/o Chirag Din caste Muslim Bhatti r/o Noul p/s

Pasroor District Sialkot (Pak Agent). You were introduced to him at Arnia in the house of said Hans 'Raj in the second week of Jan. 1980.

(2) That in the second week ""of February '80, you along with said Hans Raj and Imdad Ali (who had already come over to own side) crossed the

Indo Pak border via Kotkuba. The said Imdad Ali took both of you straight to Jumat Pak Post and informed Sub Hussain of Pak FIU of your

arrival at the post on telephone. The Sub-Hussain came to the post and took both of you to Sialkot in a Jeep and lodged in FIU Sialkot Office.

Next morning so-called Maj. Khan and Sub-Mirza of Pak FIU came to the office at 1100 hrs, and you were introduced to them by said Imdad

Ali, Your photograph was taken and detailed particulars about your antecedents were noted down and your signatures obtained. You recorded

your signature in Hindi. During the course of briefing you gave them the details of Jammu city and Tawi Bridge Const. You were given the task of

collecting the detailed information regarding the specification of Tawi Bridge (raider const.) and army units at Miran Sahib and its adjoining area.

You were asked to report back next month and paid Rs. 200/- I.C. as remuneration charges. Maj. Khan had a separate talk with Hans Raj. You

Were returned back to own side via Kot Kuba area under the escort of Imdad Ali. Imdad Ali assured both of you that, under, the cover of FIU

small scale smuggling of goods can easily, be done undetected.

(3) That in second week of March. 1980, after collecting the information regarding Tawi bridge and Army units in, and around Miran Sahib you

along with said Hans Raj crossed to Pak via Kot Kuba. Instead of reporting at Pah Post you met said Imdad Ali adjacent to Pak Jamat post and

handed over 5 Kgs, of silver to him. After delivering the silver you both reported at Jamat Post and asked the Ranger on duty to inform Sub.

Hussain of Pak FIU about your arrival, who came and took both of you to Sialkot FIU Hqs. You gave the information regarding span length pillars

and birth specification.. of New Tawi: bridge and also informed them that 162 Brigade HQ is at Meeran Sahib which is having 16 Dogra, 2nd

Garhwal, 4 Mahar BtIs. deployed In the area. You also gave the Brigadier Pillai as I/C 162 Brigade to Pak FIU Master. The name of Lt. Col

Ahly-walia, Lt. Col. Sindu and Lt. Col Bath was also; given to them who were commanding the 16 Dogra 2nd Grahwali farad 4th Mahar BtIs.

respectively. You also gave information regarding shifting of Div. HQs, from BC Road to Satwari area. You were paid Rs. 100 I. C. as

remuneration charges and sent back to side under the squad of Imdad Ali. You were again given the task of obtaining the detail of army units at

Domana for the next trip. While crossing back from Border Imdad Ali gave you 5 Kgs. of opium in exchange of silver.

(4) In the last week of July 1980 you along with Hans Raj again crossed over to Pak via old route met Imdad Ali at B. B. and handed over 3 big crates of Whisky. After handing over the stuff you went to post and informed Sub. Hussan of Pak FIU on telephone who took you both to Sialkot in a jeep and were lodged in the Office. Next day Maj. Khan of FIU met you and you gave the detail of army units stationed at Domana. You informed them that 19 Brigade is stationed at Domana which is having 4 Jat., 4/5 (Sorkha and Assam BtIs. under its Command. You also gave information regarding replacement of Rajput Battalion at Gangial by Rajputana Rifles, You had also taken along with local newspapers, and Indian Magazine like India Today and Sunday which you gave to Pak FIU Master. You were paid Rs. 200/-IC as remuneration charges and returned back via old route under the escort of Imdad Ali their Agent. While crossing you were given 44 dozens Sewing machine needles and 5 Kgs. of opium by Imdad Ali in exchange of whisky.

(5) That in the second week of September, 1980, said Hans Raj came to you and asked to accompany across as Imdad Ali had got a message from FIU HQ that they wanted to know about details of training exercise of 162 brigade held somewhere in May 1980. You promised to give the detail next time. You also asked Hans Raj to ask Imdad Ali to get some pistol/revolver, from Accross.

(6) In the middle of October 1980 said Hans Raj came to you and gave you one pistol and one revolver along with 10 live rounds. You in return gave him one envelope containing information asked for. You informed that 162 Brigade was on regular training exercise locking after a large areas during April, May 1980.

In view of the above your activities have been detrimental to the security of State and Armed Forces. Therefore, with a view to preventing you from the activities which arc prejudicial to the security of the State, you are detained under PSA for a period of 12 months.

2. Mr. P.L. Handoo learned Counsel for the detenu, has, firstly, argued that the activities alleged against the detenu do not come within the ambit and scope of Section 8(3)(a) of the Jammu and Kashmir Public Safety Act, 1978. It is urged that the activities alleged agaainst the detenu could not, by any stretch of imagination, be construed to endanger the Government

established by law in the State.

3. The next submission of Utr. Handoo is based on Section 16 of the Public Safety Act. It is argued that since the detenu had not been

communicated the date when the Advisory Board was to be constituted for consideration of the case of the detenu. he was: not in a position to

make any application to the Advisory Board to grant him personal hearing and, there* fore, that right of hearing which is provided by Section 16 of

the Act. was rendered illusory.

4. The last submission made by Mr. Handoo is that the grounds of detention, as served on the detenu were similar to the one on which a case u/s 3

of the Enemy Agents Ordinance has been registered against the detenu and therefore to detain him under the preventive law, when he could be

dealt with by punitive law was colourable exercise of powers vested in the Distt. Magistrate.

5. So far the first grounds of attack of Mr. Handoo is concerned, the same stands completely answered by a Division Bench of this court in

Kharati Lal v. State 1981 KashLJ 71 : 1982 CriLJ 54 to which judgment I myself was a party, In the said case it was opined that where the

gravamen of accusation against a detenu is that he had been indulging in spying activities for Pakistan Army Intelligence and was passing on vital

information pertaining to Army deployments etc. to that agency, such activities were likely to assist Pakistan in any armed aggression against the

State, and were a threat to the security of the State. Those activities therefore, fell within the ambit and scope of Section 8(3) of the Act. Faced

with this position of law, as laid down by the Division Bench of this Court, Mr. Karidod, it must be recorded, in fairness to the learned Counsel,

did not press the challenge on this ground.

6. Now coming to the second ground of attack, Section 16(1) of the Act reads as follows:

Procedure of Advisory Board:- (1) The Advisory Board shall after considering the material placed before it and, after, calling for such further

information as it may deem necessary from the Government or from the person called for the purpose through Government or from the person

concerned and if in any particular case it considers it essential so to do or, if the person concerned desires to be heard, after hearing him in person,

submit its report to the Government within eight weeks from the date of detention.

7. A plain reading of the section shows that a detenu, if he desires to be heard in person before the Advisory Board, may be given such an

opportunity, by the Advisory Board. The grant of hearing by the Advisory Board is contingent upon any request being made to the said Board by

the detenu. In the instant case, after the grounds of detention were served on the detenu, we have it, from the counter-filed by the detaining

authority, that the detenu was informed that he could make a representation to the Govt. against the detention order, if he so desired. The detenu,

in fact, made a representation, copy whereof is annexure 'R5'. The said representation dated 29th of July, 1981, is, however, singularly silent of

any desire of the detenu to be heard by the Advisory Board. Section 15 of the Act provides that whenever there is a detention order made under

the Act, the Government shall, within four weeks, from the date of detention order, place the same before the Advisory Board, constituted by it u/s

14, together with the grounds on which the order of detention had been made and the representation, if any, made by the person affected by the

order. Section 15 therefore, on its plain reading, makes it clear that representation, which a detenu makes to the Government, is required to be

forwarded to the Advisory Board. Since, the statute itself provides that the matter has to be placed before the Advisory Board within 4 weeks

from the date of order of detention, it must be presumed that the detenu knew that his representation was going to be put up before the Advisory

Board in the specified time, more so when the petitioner had submitted his representation through a lawyer. It was open to the detenu while making

that representation to express his desire to be heard by the Advisory Board. His failure to do so, would lead to an inference that he had no such

desire and the grievance made now is an afterthought, I am unable to agree with Mr. Handoo that rights of hearing guaranteed by Section 16 of the

Act had been rendered illusory by the Government, by not expressly communicating to the detenu the factum of the constitution of the Advisory

Board. Ignorance of law can hardly be a basis of claim or defence. Section 16 does not, confer any right of hearing on a det:enul It only provides

that if a detenu desires to be heard, the Advisory Board may hear him. There was. thus, no violation of Section 16 in the present case,

8. I also do not find any force in the submission of Mr. Handoo that since the detaining authority was in possession of the material on 6th July, itself

in the nature of the report of CID regarding the activities of the detenu, his detention u/s 8 of the Public Safety Act was a colourable exercise of

powers vested in the detaining authority and that the detenu could have been tried under the punitive law. Indeed, a case u/s 3 of the Enemy

Agents Ordinance read with Section 25 of the Indian Arms Act had been registered against the detenu but that was no bar to detain the citizen for

his alleged activities which, in the opinion of the detaining authority, was prejudicial to the security of the State. A perusal of the report submitted by

the prosecution to the Chief Judicial Magistrate shows that the allegations made in the report are in fact included in the grounds on which the

detenu has been ordered to be detained by virtue of the impugned order. The detaining authority in his counter has categorically stated that he was

satisfied that with a view to prevent the detenu from acting in any manner prejudicial to the security of the State, it was necessary to detain him. I

see no flaw in the said order and none has been satisfactorily established by Mr. Handoo. The submission, that preventive detention should be

ordered only in exceptional cases, ignores that it is the subjective satisfaction of the detaining authority which is material, and the court cannot

substitute its opinion for that of the concerned authorities.

9. It is undoubtedly a duty of the court to zealously protect the personal freedom of a citizen against arbitrary or unconstitutional invasion by the

Executive, However, the court will not set at naught any order of the executive authority of narrow technicalities, especially where"" detention has

been ordered for reasons of the security of the state. The court shall have to consider all the facts and circumstances of a given case with a view to

find out whether the order suffers from any illegality or violates the constitutional rights or guarantees of a citizen. It is not desirable for a court to

scrutinize the order microscopically to discover some flaw here or there in its over zealousness to protect personal freedom of a citizen. Interests of

an individual must give way to the interest of the security of the State,

10. Having regard to the nature of the activities alleged against detenu Vijay Kumar, in the grounds of detention. I am of the opinion, that his

detention was validly ordered by the District Magistrate and I find no reason to

interfere with the order of detention. This petition, therefore, fails and is dismissed as such.