
(2002) 01 J&K CK 0013
In the Jammu And Kashmir High Court

Rosha	Vs	APPELLANT
State and Ors.		RESPONDENT

Date of Decision : 01-01-2002

Acts Referred:

Public Safety Act, 1978 — Section 13

Citation : (2002) KashLJ 626

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

Bench : Single Bench

Advocate : R.Q.Gadda, Geelani, Advocates appearing for the Parties

Judgement

1. Petitioner by means of this petition seeks to quash the detention order No. 86/2001 Dated 24.07.2001, passed by District Magistrate,

Baramulla, in exercise of powers under Section 8 of J&K Public Safety Act, 1978. (hereinafter The Act) directing preventive detention of the

detenue Mohammad Maqbool Rishi Alias JanNisar S/o Mohmmad Sultan Rishi R/o Buthoo, Bandipora. The Respondents State in exercise of the

powers under Section 17 of the Act has confirmed the detention order for a period of 24 months.

2. The detention order has been challenged on various grounds including that the detenue has not been communicated the grounds of detention and also not informed to make a representation to the Government against the detention order.

3. The respondents have filed counter affidavit stating therein, that the detention order has been proved by the Govt. vide Govt. order No.1499 of

2001 dated 2.8.2001. The detenue was taken into preventive custody on 7.8.2001 in execution of the detention order. The detention order has

been confirmed by the Government in exercise of powers under Section 17 of the Act vide Govt. order No. 1814 of 2001 Dated 1.10.2001. The

grounds of detention have been read over and explained to the detainee in the language which he understood and also informed to make a

representation to the Govt. against the detention order. Besides, the father of the detainee has also been informed to make a representation against

the detention order to the Government.

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

5. Learned counsel for the petitioner has submitted that the respondents Detaining Authority, was under legal obligation in terms of the provisions of

Section 13 of the Act to communicate the grounds of detention to the detainee and inform him to make a representation against the detention order

to the Govt. His further submission is that as this aspect of law has not been satisfied and complied with by the respondents, therefore, continuous

detention of the detainee is illegal and deserves to be set aside. In rebuttal the learned counsel for the respondents has submitted, that the mandate

of Section 13 of the Act has been complied with by the respondents by communicating the grounds of detention to the detainee in the language

which he fully understood.

6. Respondents in reply to the grounds of petition have stated in the counter affidavit, that the grounds of detention were read over and explained

to the detainee in the language which he understood. It is further submitted in reply to ground (K) that "as already submitted that the detainee has

understood the contents of warrant as well as that of the grounds of detention and only then gave receipt thereof which is on the file.

7. Learned counsel for the respondents was directed to make the record of the detainee available including the file of which mention has been made

in the counter affidavit. He has submitted the same which has been perused by the court. Perusal whereof reveals that there is no such evidence on

record to substantiate or to support the plea of the respondents as taken in the counter affidavit that grounds of detention have been read over and

explained to the detainee. The file contains letter dated 23.7.2001, addressed to Shri. Mohammad Maqbool Anwar by the Detaining Authority

informing him to make a representation against the detention order. There is no

proof on record to show that this letter has been communicated

and served so as to create an evidence that the detainee has been informed to make a representation to the Government against the detention order

in compliance to the provisions of Section 13 of the Act. For convenience Section 13 of the Act is reproduced and reads as under :

13. Grounds of order of detention to be disclosed to persons affected by the order(1) when a person is detained in pursuance of a detention

order, the authority making the order shall, as soon as may be, but ordinarily not later than five days and in exceptional circumstances and for

reasons to be recorded in writing, not later than ten days from the date of detention communicate to him the grounds on which the order has been

made, and shall afford him the earliest opportunity of making a representation against the order to the Government.

(2) Nothing in subsection (1) shall require the authority to disclose facts which it considers to be against the public interest to disclose.

The mandate of the aforesaid provision of law requires the Detaining Authority to communicate the grounds of detention to the detainee and inform

him a making a representation to the Govt. against the detention order. The preventive detention can be continued only if the provisions of law

contained in the Act, are complied with. Breach of mandatory provisions of law is enough to interfere with the order of detention. The grounds of

detention are required to be communicated to the detainee with an object. The object behind the communication of the grounds of detention to the

detainee is that the detainee must be in a position to understand and know the circumstances for which preventive detention has been ordered

enabling him to make a representation to the Govt. against the detention order, based on grounds of detention unless grounds of detention are

communicated making him to understand in the language which he understand, the detainee is not in a position to make representation to the

Government.

8. It is obligatory upon the respondents to make out before the Court that the action of respondents does not suffer on account of nonobservance

of provisions of laws required to be observed post detention order. The detention cannot be continued"" unless the other mandatory provisions of

law such as Section 13 of the Act are complied with. Section 13 mandates that

grounds of detention are to be communicated with the object as stated above. Respondents have not complied with the provision of Section 13 of the Act. The preventive detention of the detainee, therefore, in breach of Section 13 of the Act, cannot be permitted to continue. The detention order, therefore, deserves to be quashed and is quashed.

9. Respondents are directed to release the detainee Mohammad Maqbool Rishi Alias JanNisar S/o Mohammad Sultan Rishi R/o: Buthoo, Bandipora District Baramulla, forthwith, if not required in any other case.

10. Petition disposed of.