
(1984) 06 J&K CK 0001
In the Jammu And Kashmir High Court

Swaran Singh

APPELLANT

Vs

State of J. and K. and Others

RESPONDENT

Date of Decision : 11-06-1984

Acts Referred:

Ranbir Penal Code, 1989 — Section 147, 382, 427

Citation : (1985) CriLJ 1281

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

Bench : Single Bench

Judgement

M.L. Bhat, J.—In pursuance of my Order dated 2-6-1984, I proceed to give the reasons in support thereof.

2. The detenu has challenged his detention under the J. & K. Safety Act ordered by District Magistrate, Jammu, on 29-9-1983 on four grounds

stated to have been supplied to the detenu, which are reproduced hereunder:

1. That on 2-5-1983 at 7 P.M. at Kamini (Nagrota) you along with your associates namely, Parshotam Singh s/o. Gian Singh Rajpur r/o Jagti

went to Miss Santosh's Wine Shop and forcibly removed one Guru beer bottle from the ice box. When Kuldip Raj, salesman demanded its price,

you and your said associates consumed the beer in the compound, broke the counter panes and extended threats of dire consequences to him.

This daring act of you and your associates created a sense of panic and insecurity in the entire locality particularly amongst the shop keepers. In

this connection a case FIR No. 51/83 u/s 382/427, RPC stands registered at P/S. Nagrota.

2. That on 17-7-1983 at 8 P.M. you along with your associates namely, Bharat Singh Bharata and some other unidentified persons went to the

saw mill of Sh. Manohar Lal. You and your said associates beat his brother namely, Madan Lal and inflicted multiple injuries on his person on the pretext as to why he had refused to sharpen Bharat Singh's Khokhari on the blade of the mill on the same day in the afternoon. Timely intervention of Jagdish Mistri, Romesh and others saved him. This act of yours and your said associates created panic and sense of terror in the minds of peace loving citizens of the locality.

In this connection a case FIR No. 78/83 u/s 147/323/448, RPC stands registered at P/S. Nagrota.

3. That on 2-8-83 at 18.30 hrs. at Kamini, you along with your associate, namely, Bharat Singh Bharat s/o. Chet Singh r/o. Jagti armed with sword and Khokharies went to the wine shop of Kuldip Raj and commanded him to pay Rs. 100/- PM as pocket expenses as you wanted to establish your 'Dada Giri' in the area. You also warned the said Kuldip Raj of dire consequences in case he reported the matter to police. This act of yours and your associates created panic in the locality and none dared to depose against you and your associates due to fear to their lives.

4. That on 8-9-1983 at 20.45 hrs. at Nagrota bazar you along with your associate Bharat Singh alias Bharat went to the shop of J. K. Vishwas a fish seller and demanded half kg. of fish. When he insisted upon the payment of its price you and your aforesaid associate took out your Khokharies and threatend him of dire consequences and also asked as to how he dared to ask for its price. This act of yours created terror in the Nagrota bazar and not body came forward to depose against you and your associates due to fear to their lives.

3. Regarding ground No. 1 it is alleged against the detenu that he and his associate created a sense of panic and insecurity in the entire locality particularly among the shopkeepers and in connection with his involvement in the incident said to have taken place on 2-5-1983 a case FIR 81/83 u/s 382/427, RFC stands registered at police station Nagrota. About ground No. 2 it is said that his activities created panic and sense of terror in the minds of peace loving citizens of the locality and for his alleged activity said to have been committed by him on 17-7-83 a case u/s 147/323/448 RFC stands registered against him at police station Nagrota under FIR No. 78/83. About ground No, 3 it is also concluded that

because of his activities which are styled as 'Dada Giri' on 2-8-1983, the detenu created panic in the locality and none dared to depose against him

and his associates. Similarly about ground No. 4 it is concluded that activities of the detenu on 8-9-1983 at 20.45 hrs. created terror in Nagrota

Bazar. On the aforesaid conclusions derived from the facts contained in the grounds, it is concluded by the detaining Authority that the detenu has

created sense of insecurity in the minds of the peace loving citizens of the locality and his remaining at large would be prejudicial to the maintenance

of public order and therefore his detention was necessary.

4. The detention is challenged and the learned Counsel for the petitioner has submitted in the court the copy of the order of Sub-Judge, Judicial

Magistrate, Jammu dated 21-9-83 whereby the detenu was released on bail for the occurrence said to have been committed on 17-7-1983. The

copy of order of bail passed by Chief Judicial Magistrate, Jammu, whereby he. has released the detenu on bail on 24-9-83 in FIR 78/83 has also

been placed on the file. In the counter affidavit, the contents of the petition have been denied.

5. I am afraid that the conclusions derived by the Detaining Authority, such as creating panic and terror cannot be formed as basis for the

petitioner's detention. The Jammu & Kashmir Safety Act empowers the Detaining Authority u/s 8 to detain a person for acting in

a manner prejudicial to the maintenance of public order. Acting in a manner prejudicial to the maintenance of public order has been given meaning

in Section 8(3)(b)(i), (ii), (iii) and it is provided that a person can be detained u/s 8 for having created panic or terror or for having committed

Dada-Giri. The law of detention is harsh because a person is detained without trial. Therefore necessary safeguards are provided. Detaining

Authority is empowered to detain a person for his activities which come within the purview of Section 8 and on no other ground the Detaining

Authority can deprive a citizen of his liberty. The grounds mentioned in the grounds supplied to the detenu must be relevant for the object sought to

be achieved. If the grounds are irrelevant then the detention order is to be set aside. From the perusal of the grounds it would appear that the

Detaining Authority has confused law and-order with public order and has taken irrelevant facts into consideration. If the grounds are irrelevant to

the object of Section 8. of the Public Safety Act, the detention of the detenu is bad. In the instant case, as I have pointed out that the terms used

against the detenu in the grounds of detention are not germane to the object which is sought to be achieved nor are the grounds recognized by the

Act which permits the Detaining Authority to detain the detenu. The grounds are foreign to the meaning given to the words ""acting in any manner

prejudicial to the public order."" Any departure made from the provisions of the Act will definitely be fatal, and the detention order will become

illegal. For the sake of facility it is necessary to reproduce the meaning of the words given by the legislature in the Act about ""acting in any manner

prejudicial to the maintenance of public order.

(i) promoting propagating or attempting to create feeling of enmity or hatred or disharmony on grounds of religion, race, caste, community or

region.

(ii) making preparations for using or attempting to use or using or instigating, inciting provoking or otherwise abetting the use of force where such

preparation using, attempting, instigating, inciting, provoking or abetting disturbs or is likely to disturb public order;

(iii) attempting to commit or committing or instigating, inciting, provoking or otherwise abetting the commission of mischief within the meaning of

Section 425 of the Ranbir Penal Code where the commission of such mischief disturbs or is likely to disturb public order;

(iv) attempting to commit or committing or instigating, inciting, provoking or otherwise abetting the commission of an offence punishable with death

or imprisonment for life or imprisonment for a term extending to seven years or more where the commission of such offence disturbs or is likely to

disturb public order.

6. Thus it will be Seen that the grounds of detention and the conclusions arrived at by the Detaining Authority are outside the ambit of the aforesaid

provisions of Law. The grounds of detention are, therefore, irrelevant and I declare these to be so.

7. The result is that the petitioners (detention is illegal and unconstitutional and he succeeds in his petition. The detention order is accordingly set

aside and he is entitled to be set at liberty.