

(1998) 11 J&K CK 0018
In the Jammu And Kashmir High Court
Case No : H.C. No. 119 of 1998

Umerdin	Vs	APPELLANT
State of J. and K. and Another		RESPONDENT

Date of Decision : 10-11-1998

Acts Referred:

Jammu and Kashmir Public Safety Act, 1978 — Section 8

Citation : (1999) CriLJ 1247

Hon'ble Judges : Bashir-Ud-Din, J

Bench : Single Bench

Advocate : Mir Shafaqat Hussain, for the Appellant; R. Bazaz, Government Advocate, for the Respondent

Judgement

Syed Bashir-Ud-Din, J.—Petitioner, a foreigner was arrested by security forces after he was found in the State'. He has been arrested in

FIR No. 7/95 u/s 3-EAO, 3-SA, 120BRPC, 2/3 E& IMCO registered at P/S CIK Srinagar. He was detained for a period Of 24 months by

District Magistrate Srinagar-respondent No. 2 under Order No. DMS/ PSA/335/96 dated: 1-11-96.

2. Petitioner challenged his detention under the provisions of J. and K. Public Safety Act through his counsel Mr. Mir Shafaqat Hussain, Advocate.

In main detention order is challenged on the grounds that the detaining authority did not apply its mind to the facts of the case. The detenu was not

apprised of his right to make a representation against detention order. Detention order was not approved/confirmed by the Government. The

grounds of detention are vague and the detenu was not served with the grounds in the language which he understands Respondents have filed

counter. One Dr. A. G. Sofi, Undersecretary to Government on the basis of access

to the record, has filed counter. The grounds of challenge have been countered one by one. Detenue is averred to be an active member of Harkatul Ansar outfit having its headquarters at Pakistan Occupied Kashmir. Arrest of detenue in above FIR No. 7/95 registered at P/S CIK Srinagar on 31 -8-96 is acknowledged. The detention of the petitioner under orders of respondent No. 2 on 1 -11-96 is also admitted. In terms of provisions of Public Safety Act, the case of the detenue is averred to have been put before the Advisory Board. The Advisory Board after conducting its proceedings, forwarded its report and opinion to the Government in terms justifying the detention of the petitioner. The Government on receipt of the report with record, confirmed the detention of the petitioner. Even the detenue represented his case before the Advisory Board during the course of the proceedings of the Board. The detenue was apprised of his right of making representation against the detention. The detenue appeared before the Board personally and the Board heard him in the matter. The detenu was provided with grounds of detention and same were read over and explained to him in the language which he understood. The detaining authority applied its mind to the facts of the petitioner's detention and upon subjective satisfaction passed detention order on the specific and cogent grounds. Copy of the grounds of detention communicated to the detenu fully informs the petitioner of the facts and circumstances warranting his preventive detention under the provisions of Public Safety Act. The petitioner has been acting as courier for bringing ammunition explosives from across the border in valley and the instances have been given in the grounds which would specifically reveal that the activities of the petitioner ""were highly prejudicial to the security of the State and Union of India"".

3. In view of the above assertions in the counter affidavit, the detention u/s 8 of Public Safety Act of the petitioner cannot be said to be vitiated on any ground taken up by the petitioner in this petition. The factual and legal grounds taken to challenge the order of detention in the face of rebuttal and counter assertion in the reply affidavit by the respondents does not leave any legal ground to vitiate the detention. The detention appears in order. No rights of the petitioner/detenue as in this case have been infringed or violated. This being so the detention is ruled in order.

4. However, the counsel for petitioner submits that the detenue as per admitted case of the respondents has been taken in custody on 31-8-1996

(though in a regular case) and continued so in custody of respondents till 1-11-1996, where the order of detention of 24 months was clamped on

him. He continues in custody of the respondent thereafter to date. The order of detention having been passed on 1-11-1996, the detenue shall be

deemed in preventive custody from date of order namely 1-11-96 itself and not from any subsequent date which the respondents may at their

pleasure show in its records as the date of execution of the order. The order of detention itself shows petitioner in custody on this date and the

order along with grounds was ordered to be served on him through SSP Srinagar. Therefore, by showing in records that the order was executed

subsequently may be on 12-12-96 does not mean that the detenue was not detained in custody from 1-11-96 itself. Mr. R. Bazaz, GA, concedes

that the detenue was and has been with the respondents since 1-11-96, after his arrest in regular case in August 1996, but his contention is that the

custody of the petitioner earlier to the order of detention was in a regular case and detention under the provisions of Public Safety Act has to be

reckoned from the date subsequent to 1-11-96, the date of order of detention. The SSP Srinagar got the service of order of detention and

grounds effected on the petitioner on 12-12-1996, therefore, his detention under Public Safety Act shall be deemed only on 12-12-96.

5. There appears considerable weight and force in the submissions of counsel for petitioner that the execution of the order should be deemed to be

date of detention order namely 1-11-96 in the light of circumstances explained above. Even the Government Advocate concedes that in the

peculiar fact situation and circumstances of the case, showing of 12-12-96 the date of execution of the detention order is illogical and does not

appeal to reason and appears a ploy to stretch further period of detention of the detenu by over 1½ month. Once ordered detention under Public

Safety Act, of petitioner has begun on 1-11-96, then same shall be deemed to have expired by efflux of time. 24 months detention period has

ended.

6. Now even if the period of detention of petitioner is counted from 1-11-96 and the total period of detention of 24 months has expired/ lapsed on

1-11-96, still the petitioner a foreigner cannot be released.. Legally a direction cannot be given to the detaining authority for release of the detenu from custody. The petitioner not a citizen of the country is not entitled to remain in the territory of India. Notwithstanding that the order of detention has lapsed by efflux of time or is revoked in a Habeas Corpus Petition, the petitioner has to be kept in custody though for the purpose of being dealt with under law which includes making arrangement for its expulsion. In the result the petition is disposed of in terms as above. Copy of the order may be given to petitioner free of cost and another copy may be conveyed to respondent No. 1 for follow up action.