

(1984) 08 J&K CK 0004

In the Jammu And Kashmir High Court

Case No : Habeas Corpus Petition No. 378 of 1984

Ved Parkash

APPELLANT

Vs

State of Jammu & Kashmir and Another.

RESPONDENT

Date of Decision : 14-08-1984

Acts Referred:

Public Safety Act, 1978 — Section 8

Citation : (1985) JKLR 122 : (1984) KashLJ 280

Hon'ble Judges : M.A.Shah, J

Bench : Single Bench

Advocate : S.S.Lehar, S.D.Sharma, Advocates appearing for the Parties

Judgement

1. This Habeas Corpus petition filed under section 103 of the constitution of Jammu and Kashmir read with Article 226 of the constitution of India

against the detention of the petitioner by order No. 39/1/PSAF 1984 dated March 8. 1984 passed by District Magistrate Jammu respondent No.

2 herein u/s 8 and section 13 of the J&K Public Safety Act, 1978.

2. Heard learned counsel for the parties. Learned counsel for the petitioner contends that the grounds furnished to the petitioner alongwith the

order of detention are not called by the provisions of section 8 or section 13 of the J&K Public Safety Act (hereinafter referred to as take Act) His

contentions are mainly summarised as follows

(i) that the grounds applied to the petitioner do act come under the ambit of section 8 of the public Safety Act.

(ii) that the grounds applied to the petitioner only disclose an offence under section 5/2 of Enemies' Agent Act Ordinance. So, the impugned order

cannot sustain in the eyes of law.

(iii) that the allegations levelled against the petitioner are baseless and false and he cannot be put in the Central Jail under any provision of law. The public safety act is not applicable on him.

On the basis of which petitioner claims that the detention order be quashed in addition to the above grounds at the time of arguments. Learned

counsel for the petitioner further submitted that the material on the basis of which the district Magistrate passed the order of detention was not

supplied to him and that the grounds on which the order is passed are at the most the questions of law and order and not the grounds, which forms

part of the grounds, which may be termed' as prejudicial to the security of the State', He further submits that the same if all disclosed an offence

under section 5/2 of Enemies' agent Act Ordinance of the State of Jammu and Kashmir.

3. In support of his contention as against the nonsupply of material, learned counsel for the petitioner relies on an authority of the supreme court

reported in AIR 1982 S. C. 1500 (Ibrahim Ahmed Bhatti V. State of Gujarat and others) and 1983 KLJ 361 (Mohd Fazal Vs. State of J&K &

others) of this High/court, in which the above referred Supreme court decision is followed and also AIR 1983 S. C. 317 (Kailash Pandey Vs. State

of U. P. and others)

4. In reply to the petition filed by the petitioner the respondents 1 and 2 controverted the allegations of the petitioner by filing counter affidavits of

four officials namely, (1) B S. Jaswall. District Magistrate, Jammu, the detaining authority in this case. (2) Mr. S. Saran Singh, Sub Inspector, CID

(CD, Hirangar) (3) Rajinder Singh, Additional Secretary to Government, Home Department, Srinagar, (4) Ghulam Rasool Mir, Deputy

Superintendent, Central Jail, Jammu.

5. Learned Chief Government Advocate appearing for the respondents relying on the above said affidavits in answer to the contentions raised by

the petitioner strenuously argued that the detention of the petitioner is quite within the four corners of law and the provisions of the act are properly

applied against the petitioner. All relevant material on the basis of which the District Magistrate/pleaded his subjective satisfaction was supplied to

the petitioner, which is duly supported by the above said affidavits. He was given full opportunity to make effective representation and the

petitioner failed to submit any representation to the State Government against his detention. The petitioner was given personal hearing by the

Advisory Board duly constituted under the Act and on the advice of the Board the Government after due consideration confirmed the detention

order for the detention of the petitioner for a period of 12 months from the date of his detention. In pursuance of the detention order passed on

March 8, 1984 the petitioner was taken under detention on March 28, 1984 the grounds and the order of detention was communicated to the

petitioner by Superintendent Central Jail, Jammu immediately on March 29, 1984

6. Learned Chief Government Advocate relies on the unreported decisions of this court. Habeas Corpus (writ petition) No. 77 of 1974 (Balbir

Singh Vs. State) decided on September 28, 1979 and Habeas Corpus (writ Petition No. 77 of 1974 (Balbir Singh) Vs. State decided on Sept. 28,

1979 and Habeas Corpus (Writ Petition) No. 78 of 1979 (Jaswant Lal Vs, State) it well as Habeas Corpus (writ petition) No. 79 of 1979

(Madan Lal Vs. State) decided on August 30, 1979 based on the similar points relating to the activities of the petitioner, which are prejudicial to

the security of the state.

7 On going through the record and hearing at length, the learned counsel for the parties, I find that so far as the contention of the petitioner relating

to the nonsupply of material stands fully controverted by specific affidavits of the officials mentioned above. Moreover, no such specific ground is

also alleged in the petition that the petitioner is not supplied with the material on the basis of which the District Magistrate formed his subjective

satisfaction and once the authorities cited by learned counsel for the petitioner mentioned above are not applicable in the facts and circumstances of

the present case and therefore, there is no substance in the contention raised by the petitioner about the nonsupply of material.

8. Coming to the three points raised in the petition, i) that the grounds applied to the petitioner do not come under the ambit of section 8 of the

Public Safety Act, the main contention of the petitioner with respect to this ground is that sub section (3) of section 8, the words as explained for

the purpose of subsection (1) (a) 'acting in any manner prejudicial to the security of the State mean preparation for using or attempting to use, or

using or instigating, inciting, provoking or otherwise abetting the use of force, to

overthrow overawe the government established by in the State is

not applicable face of the grounds supplied to the petitioner and thus the order is bad. On examining the grounds supplied to the petitioner which

are reproduced below:

That during the year 1982 you started indulging in transborder activities and this got in contact with pak smugglers namely Ch. Ismail and Nazir

Neg Zeroo who persuaded you to get introduced with Pak Intelligence authorities as well.

That during the month of May 1982 you were introduced to one Subedar Umar Din of Pak FIU in Shakargarh and you were given the task to find

out the details of the border road under construction in village Thathi Gurdaspur, You were paid Rs. 100/ in IC as remuneration charges.

3. That in the month of June 1982 after making the reeky of Gurdaspur and nothing down the position of culverts on the borders you met Subedar

Umar Din across Pak. You have the details of these culverts to Subedar Umar Din for which you were paid Rs. 100/ in IC as remuneration

charges and further asked to introduce some Indian National to them.

That during the month of December 1982 you contacted one Surinder Kumar and Parshotam Lal and Peisuaded them to get introduce with Pak

F.I U.

That during the month of Feb 1983 after motivating and altering Surinder Kumar and Parshotam Lal you took both of them across the border on

19. 2. 1983 and introduced them to Subedar Umar Din of Pak FIU.

6. That during the month of June 1983 you alongwith your associate crossed over to Pakistan and handed over some written documents containing

information regarding Army installations to Pak FIU. You were paid Rs. 200/ in 1C as remuneration charges. You were again asked to set up a

tailoring shop at Kalu Chak or Kali Bari to keep Watch over the movements of Army Units and Army persons and also act as tallent spotter for

them.

7. That during the month of Aug. 1983 you have shelter to Nazir Bed and Ch. Ismail r/o Pak working for Pak FIU in your house for 3/4 days.

You also escoted them to Samba and Kaluchak areas

9. I am of the opinion that the above said grounds are so alarming that they

were sufficient for the subjective satisfaction of the District Magistrate to apprehend that the activities of the petitioner are prejudicial to the security of the State and this is not the practice of the court to make any interference in the subjective satisfaction of the District Magistrate and substitute its own in its place. This I find that the activities of the petitioner are covered by the definition referred to above.

10 About Ground No. (ii) suffice it to say that merely because the activities of the petitioner could have been tried as an offence u/s 5/2 of Enemies

Agent Act Ordinance Can hardly be said to be a ground to prevent the District Magistrate from taking a preventive action against the petitioner

under the Act. The District Magistrate was conscious of this fact and it was very much in the mind of the District Magistrate that an offence under

Enemies Agent Act Ordinance is also made out find support from the affidavit filed by the District Magistrate, which he has mentioned in para No.

5, clause (ii) of his affidavit. Despite that in order to prevent an untoward incident and to prevent the activities of the petitioner, the detaining

authority was quite within his power to detain the petitioner under the J&K Public Safety Act and therefore, on that basis alone the detention of the

petitioner cannot be challenged.

11. The third ground stated in the petition is corollary of the above said two grounds and it needs no further discussion. The argument, therefore, of

the petitioner has no substance and I don't find any ground to interfere in the subjective satisfaction of the District Magistrate.

12. In view of the above discussion relying on the unreported authorities of this court and the facts and circumstances of the present case, I find

that the detention of the petitioner is legal and this it does not require any interference and the present Habeas Corpus petition has no merits. The

petition is, therefore; dismissed and accordingly disposed of.