
(2001) 08 J&K CK 0006
In the Jammu And Kashmir High Court
Case No : H.C. No. 324 Of 2000

Zaina Bano

APPELLANT

Vs

State of J & K

RESPONDENT

Date of Decision : 14-08-2001

Acts Referred:

Public Safety Act, 1978 — Section 11

Citation : (2002) KashLJ 346

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

Bench : Single Bench

Advocate : Arshad Andrabi, A.M.Watali, Advocates appearing for the Parties

Judgement

1. In this writ petition subject Gh. Mohammad Dar's preventive detention ordered by Respondent No. 3 District Magistrate Pulwama on

27012000 under its Order No: 08/DMP of 2000 is under challenge.

2. Petitioner's counsel assails the order of detention and consequent detention on number of grounds, but confined his argument to two grounds.

First, that the detinue has not been awarded an opportunity to make representation and second, that there has been inordinate delay in executing the order of detention by about nine months, to vitiate detention itself.

3. Mr A.M. Watali, GA, in reply submits that the detinue has been afforded opportunity to make representation after he was served the order of

detention and grounds with material. However, on the question of delayed execution, Mr Watali concedes that there is delay of about nine months

in execution of the order.

4. No explanation/reasons, good or bad have been given in the counter or are born out from record regarding this delayed execution. The

contention that the detenue was not served with the order of detention and grounds and material is not born out from record. In counter, receipt of the grounds and execution of the warrant and detention record, all go to show that the requirements of law thereto have been complied with and the detenue is not shown to have been illiterate. The detenue has been also informed of his right to make representation against the detention order, as is evident by receipt attested by the Dy. Superintendent District Jail, Kathua, the place of lodgment of the detenue. Therefore, this contention of Mr Andrabi is overruled.

5. The next contention of Mr Andrabi that the detention order has been executed belatedly and there is confusion on the side of detaining authority

as to the actual date of execution of the order, requires due attention. It is admitted even in the counter, that the subject Gh. Mohammad Dar, was

initially arrested by police in FIR 40 of 99 of Police Station Pampore on 9599. However, he was admitted to bail on 1751999 (AnnexureB).'

From 17599 petitioner was enjoying his freedom .and 'liberty although. Detention order came to be passed on 2712000. However, in para (C)

under heading 'factual position1 in counter, it is stated by the detaining authority that ""detenue taken into preventive custody on 23699"". However,

from detention record, it is found and shown that the detenue was taken into preventive custody on 2692000. This by itself speaks about the

nonapplication of the mind of the detaining authority and the casual manner in which counter is filed without verifying the factual aspects from the record.

6. Now if the date on which the subject is actually taken into preventive custody is treated as 2692000, then for long 8 months there is absolutely

no explanation why the order of detention could not be executed. No reasons, good or bad are given in the counter to explain this delay. Even on

record nothing comes to show why the order was executed so bilatedly. There does not appear any proximate live link between the grounds of

detention and purpose of detention. After all eight months having intervened between the application of mind by the detaining authority and

execution of the detention order in question and that too in the state of affairs, as above, it cannot be said that the link is alive/subsisting.

7. In K.P. M. Basheer Vs. State of Karnatka, and Anr. (AIR 1992 SC 1353) it is

observed:

Under these circumstances, we are of the view that the order of detention cannot be sustained since the 'live and proximate link' between the

grounds and purpose of detention is snapped on account of the undue and unreasonable delay in securing the appellant detenue and detaining

him...".

8. For the aforesaid reasons, the detention is found vitiated and the order is quashed. Respondents detaining authority officer having physical

corpus of Gh. Mohammad Dar S/o Habibullah Dar R/o Samboora Pulwama are/is directed to release him and set him at liberty forthwith,

provided he is not required in any other case/offence/matter. Copy of this order be given to petitioner free of cost. Communicate this order to

concerned.