

Nagar Mal Alias Kaka Vs. State and ors.

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Court : Jammu and Kashmir

Decided On : Sep-04-1992

Reported in : 1994CriLJ1140

Judge : R.P. Sethi, J.

Acts : Jammu and Kashmir Public Safety Act, 1978 - Sections 8(4), 15 and 16; ;
[Constitution of India](#) - Article 22(4), 22(5) and 22(7)

Appeal No. : Habeas Corpus Petn. No. 973 of 1991

Appellant : Nagar Mal Alias Kaka

Respondent : State and ors.

Advocate for Def. : P.C. Sharma, Govt. Adv.

Advocate for Pet/Ap. : D.S. Saini, Adv.

Disposition : Petition allowed

Judgement :

ORDER

R.P. Sethi, J.

1. Heard learned Counsel for the parties and perused the record.

2. The petitioner who is alleged to have liasion with Mohinder Singh alias Pappi, Punjab terrorists/arms smugglers, was directed to be detained under the Public Safety Act vide the order passed by respondent No. 2 dated 23-9-1991 and is stated to have been taken into preventive custody on the same day i.e. 23-9-1991. The grounds of detention are stated to have been supplied to him on 27-9-1991. The order of detention of the petitioner has been challenged mainly on the grounds that as his detention has not been approved by the Advisory Board in terms of Section 15 of the J & K Public Safety Act (hereafter, the Act) read with Article 22(5) of the [Constitution of India](#), he is entitled to be set at liberty. It has further been argued that the order of detention of the petitioner was also not approved by the Government within the statutory period.

3. The record of the respondents reveals that the order of detention of the petitioner was approved by the Government vide Govt. Order No. 879-A of 1991 dated 4th Oct., 1991, admittedly within the statutory period as prescribed under Sub-section (4) of Section 8 of the Act. It is also revealed from the record that the Advisory Board constituted under the Act submitted its report to the Government for confirming the order of detention on 25-5-1992, admittedly, after the period prescribed by Section 16 of the Act. It may not be out of place to mention here that the detention case of the petitioner appears to have been referred to the Advisory Board by Addl. Secretary to Govt. Home Department vide his No. 907/91 dated 7-11-1991. The Board after perusing the record opined:

We have gone through the record of the case but we have not been able to hear the detenu in person today as he has been stated by the Officer representing the Govt. to have refused to be heard by the Board. We have accepted the aforesaid statement of the Govt. Officer. On the view taken by us on a combined reading of Sections 15 and 16 of the Act and Article 22(4) of the [Constitution of India](#) coupled with the fact that the State Govt. employees had gone on strike en mass from 6-1-1992 to 19-2-1992 rendering it virtually impossible for the Govt. to hand over the record of the case to the Board during the intervening period, no error of law or procedure that could invalidate his detention otherwise than on its merits has been noted by us. The record of the case clearly indicated that the detenu has liasion with Mohinder Singh alias Pappi, a notorious criminal and a Punjab terrorist who

indulges in smuggling of arms and other acts of espionage to help the Pakistan and Sikh terrorists of Punjab. Such a person, there can hardly be any doubt, is not a mere threat to the security of the State, but also a threat to the entire country who cannot be allowed to remain at large.

In our opinion, therefore, sufficient grounds exist for his continued detention, which we accordingly place before the Govt.

The record produced also shows that Chairman of the Board has not signed the report.

4. The Board took the view that on a combined reading of Sections 15 and 16 of the Act and Article 22(4) of the Constitution coupled with the fact that the State Govt. employees had gone on strike en mass from 6-1-1992 to 19-2-1992, the case could not be considered by the Board. It was further observed that such a delay did not amount to any error of law or procedure under the Act or the Constitution. Article 22(4) of the Constitution provides that no order of detention shall be valid after a period of three months unless the Advisory Board constituted under the preventive detention law, reports before the expiration of the said period that there existed sufficient cause for continuation of the detention. It is further provided that the period of detention may be extended by the Parliament under Clause (7) of Article 22 of the Constitution as made applicable to the State of J & K. The State Legislature in its discretion have decided to prescribe the maximum period of 8 weeks within which the Advisory Board is required to submit its report. A combined reading of Article 22(4) and (7) and Section 16 of the Act makes it clear that no detention shall be authorised in the State of Jammu and Kashmir beyond 8 weeks unless the Advisory Board gives its opinion to the effect that there were sufficient causes for continuation of such detention. I am not in agreement with the view taken by the Advisory Board that the detention could be continued even without the submission of the report by the Board within the prescribed period under Section 16 of the Act. Assuming for the sake of argument that the period of detention could be justified to the extent of three months even without the opinion of the Advisory Board, it is found on facts, that the Advisory Board failed to submit its report even within the period prescribed by the Constitution. The

petitioner is stated to have been detained on 23-9-1991 as is evident from the counter-affidavit filed on behalf of the District Magistrate and his case referred to the Advisory Board on 7-11-1991, admittedly, before the strike of the employees allegedly commenced on 6-1-1992. The respondents, in no case, could have continued the detention of the petitioner after 23-12-1991. It does not appear as to on what basis the Advisory Board held that the petitioner was taken into preventive custody on 11-10-1991 particularly when the petitioner was supplied the grounds of detention on 27-9-1991 and lodged in the Central Jail, Srinagar, on the same day. The record unambiguously establishes that the petitioner was handed over by the authorities of JIC Kot Bhalwal and taken over by the Asstt. Superintendent of Central Jail, Srinagar, on 27-9-1991. Again, assuming that the petitioner was taken into preventive custody on 11-10-1991, he could not be directed to be kept in preventive custody after 11-12-1991, under Section 16 of the Act, a date admittedly before the commencement of the en mass strike of the Govt. employees. The Advisory Board has, therefore, failed in the discharge of its duties presumably without the assistance of Mr. Justice I.K. Kotwal, Chairman of the Board, who is shown to have not signed the report authorising further detention of the petitioner. Had the Board availed of the services of Justice Kotwal, there could not be any possibility of arriving at the conclusions which are contrary to the facts and against the provisions of law. It is, therefore, held that as the Board failed to submit its report within the statutory period, the detention of the petitioner which is admittedly for a period of more than three months and not authorised to be continued by the Advisory Board within the statutory period or the period prescribed by Clause (4) of Article 22 of the [Constitution of India](#), he is entitled to be set at liberty forthwith.

5. Under the circumstances this petition is allowed by quashing the order impugned with a direction that the petitioner shall be set at liberty forthwith, if not required in any other case.