

Ammanullah Khan Vs. State

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Court : Jammu and Kashmir

Decided On : Jan-09-2002

Reported in : 2002CriLJ3279,2003(1)JKJ527

Judge : Syed Bashir-Ud-Din, J.

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

Appeal No. : HCP. No. 38/2001

Appellant : Ammanullah Khan

Respondent : State

Advocate for Def. : Gh. Mustaffa, GA

Advocate for Pet/Ap. : Mir Shafaqat, Adv.

Judgement :

1. The subject Ammanullah Khan is detained by District magistrate, Srinagar under his order No. DMS/PSA/210 dated 31-03-2000 under Section 8 of the J&K; Public Safety Act, 1978 with a view to prevent him from acting in any manner prejudicial to the security of the state. This order subsequently approved by the govt. is under challenge in this petition. Though number of grounds are urged in support of the contention that the order and the consequent detention in question

is vitiated but the counsel restrict his submissions to and processional following grounds to question the detention:-

i) First, that the detainee is illiterate and not able to understand English language. The grounds supplied to detainee in English language are not intelligible to him. The order of detention, as also the material referred in grounds has not been supplied to him. In that manner the order as detainee. Thereby the detainee is prejudiced and disabled to make representation to Govt. against the order of detention;

ii) second that the detainee was already in detention on the material date in a regular case. He has not moved even bail application. There was no coming reason for the detaining authority to take the subject in preventive detention from punitive custody and

iii) Third that the grounds of detention are vague, definite and run in Ominious terms. The detaining authority seems not to have applied its mind to this case.

2. In answer Ld. Govt. Advocate submitted that the detainee has been handed over both detention order as well as grounds. He has been made to understand same in urdu/Kashmiri language. After understand the same he has executed receipt and given acknowledgment therefor. There were compelling reasons to detain the subject under preventive detention, notwithstanding being hold up in FIR No. 14/ 2000 Under Section 7/25. IAA registered at p/ s Kangan Ganderbal. Merely because he had not moved bail application in this regular criminal case, it cannot be said that the contention in question is vitiated. However, the Ld. Govt. Advocate submits that as to contention that the grounds are vague, and indefinite, grounds (An-nexure p-1) speak for themselves. The subject has been detained for the reasons as given in the grounds with a view to prevent him from indulging in activities prejudicial to the security of the state. The detention file as also the main record of the case reveals that subject Ammanullah Khan after being taken in preventive custody pursuant to the warrant in question dated 10-04-2000 was handed over to Kotbalwal jail, Jammu the place of his lodgement on 10-04-2000 itself. The endorsement on the back of copy of the order of detention and the receipt dated 10-04-2000 on record to show that the subject has received the

grounds of detention as also the order of detention. The contents thereof have been explained to him in the language which he fully understood. He has been also informed of his right to make a representation to the Govt. against detention. In such circumstances contention that detinue is prejudiced on this count appears not well founded. In like circumstances, a Division Bench of this court in LPA (HC 57/2001) in *Rustum Wani v. State of J&K*; on 20-08-2001 held :-

'.....In our view, since admittedly, the detinue is an illiterate person, instead of supplying copy of the grounds of detention if it is explained properly and fully in the language understood by him, would be the sufficient compliance of the mandate of Article 22(5) of the constitution....'

3. Admittedly subject Ammanullah Khan was in punitive custody in FIR No. 15/2000 Under Section 1.A. act registered at P/s Kangan Ganderbal when he was taken in preventive custody pursuant to the order of detention in question of District Magistrate, Srinagar on 10-04-2000. Merely because no bail application has been moved on behalf of the detinue would not ipso-facto lead to the conclusion that there was no compelling reason to detain him under the provisions of P.S. Act. In fact, the detaining authority has specifically mentioned in the order of detention that the subject may get bail from court and in that eventually his remaining at large a threat to the security of the State. In the back ground of activities attributable to the detinue, it is for compelling circumstances that it has become imperative for the state to detain him under Public Safety Act.

4. In *Ahad Nassar v. State of Tamil Nadu* reported in 1999(8) SCC 473, the Apex Court while dealing with such a matter has observed :

'.....merely because no bail application was then pending is no premises to hold that there was no likelihood of his being released on bail. The words 'likely to be released' cannot mean chance of being bailed out, in case there be pending bail application or in case if it is moved in future is decided. The word 'likely' shows it can be either way....'

5. This view is followed by the Division Bench in *Rustum Wani v. State of J&K*; (supra).

6. In the premises this contention cannot be up held and is overruled .

7. In order to appreciate the last contention it will be appropriate to refer to the grounds of detention which are reproduced as under:-

'you are a section commander affiliated with banned militant organised Hizbal Mujahideen having its headquarters at Pakistan occupied Kashmir.

8. In the year 1996 you joined the militancy and crossed the border for obtaining arms /ammn. and remained active with militant outfit A1-Barq for two months, lateron you surrendered before army authorities and remained busy with your own work at home. In the year 1998 under the govt. policy regarding rehabilitation of surrenderedmilitants you were engaged as SPO in Police Department and were posted at Police station Kangan. In the month of September, 1999 you left your job and re-joined the militancy with H.M. outfit and remained close associate of one dreaded militant namely Abdul Hamid Gada @ Bambar Khan (Division Commnader) and you were assigned to work as section Commander of the area for said outfit.

9. you were arrested on 07-03-2000 by SOG Ganderbal and one Chinese handgrenade was recovered from you.

10. In this connection case FIR No. 15/2000 Police Station Kangan.

11. It is clear that your activities are highly prejudicial to the security of the State. You may get bail from the court. Your remaining at large will be a threat to the security of the State. Under such compelling circumstances, it has become imperative to detain you under public Safety Act, 1978 for which a separate order has been issued.'

12. Perusal of the grounds would show that the incident of 1996 in the grounds is quite remote in time and the subject having surrendered in 1998 was also rehabilitated and engaged as SPO in Police Department. In the month of Sep. 1999, subject is reported to have opt the job and rejoined the militancy. No overt or covert act(s) is given in the grounds after, Sep. 1999 except that the subject was arrested on 07-03-2000 and FIR No. 15/2000 Under Section 7/25 I. A. Act was

registered against him at P/S Kangan. The single incident of recovery of Chinese handgrenade resulting in registration of FIR and arrest of detainee figured in the grounds. This lone act falling within the realm of Law and order cannot serve as term- firma for the detention in the question. No other act(s) of Omission or Commission is mentioned to removal that the detainee has or is engaged in activities prejudicial to the security of the state. The grounds as such are quite creptic and vague. The grounds lack in details with regard to prejudicial activities of the subject. Mere saying that the subject is to indulge in activities 'highly' prejudicial to the security of the state would not suffice. In this view, given the context and the background of surrender of the detainee, his becoming in - active and rehabilitating him as SPO in Police Department and in absence of activities to show that the subject was recycled in terrorist activities, the creptic ominous ground un - accompanied by particulars and details, would show that the detention is vitiated for non - application of the mind and for failure of detaining authority to bring on to bear his fair subjective satisfaction and judgement over the fact - situation of the case. The circumstances have not entered subjective satisfaction of the detaining authority in totality. The detention on this count is bad and unsustainable. 13. In result, what has been stated above the respondent/ detaining authority having physical corpus of the subject Ammanullah Khan S/o Zaffar Khan R/o Prengkangan are/ is directed to set him free and at liberty forthwith, provided the detainee is not required in any case, offence or matters copy of this order shall be given to petitioner free of cost. Communicate the order to concerned.

Record produced by Mr. Gh14.. Mustaffa GA is returned to him in open court. Disposed of.