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Court : Jammu and Kashmir

Decided On : May-21-1981

Reported in : 1982CriLJ1082

Judge : A.S. Anand, J.

Appellant : Ganpat

Respondent : State and ors.

Judgement :

ORDER

A.S. Anand, J.

1. The petitioner was detained Under Section 8 of the Jammu & Kashmir Public Safety Act of 1978 by Order No. 15/80 DMR dated 27-1-1981. The grounds of detention were communicated to the petitioner and read as under :

1 Whereas in 1950 you took part in Praja Parishad Movement and were arrested and remained in jail for about 9 months. Thereafter you remained working for Col. Gupta of Army Intelligence where you came in contact with one Tara Chand r/o Sair (Now-shera) and started smuggling.

Whereas, said Tara Chand who was a Pak agent, after his release from detention on parole revived his activities persuaded you to visit Danna (POK) to meet his old

acquaintance to which you agreed and crossed over to POK illegally. While on your way, you came across one Major and Sub. Fazal Allahi Malik (PAK) where you were introduced by Tara Chand to them who enlisted you as their source, on payment, Said Major briefed you regarding collection of Army intelligence Uke location, names and Tac. Mark of: Army Units and bridges etc., you prepared a report of required information and passed on to your Pak masters through Tara Chand. You remained supplying such information for a year. One Munshi alias Nath r/o. Dannak (POK) who was your relative met you in 1968 and asked you to meet one Nazir S/o Mahamda of Danna (POK).

Whereas, in 1969 Munshi and Nazir of POK came to your house and asked you to supply Army Intelligence. You along with Tara Chand crossed over to POK and went to the house of Munshi where you were introduced to sub-Afar of Pak Geog. Section who asked you to collect and pass on Army Intelligence which you collected and passed on to your Pak Masters, through Tara Chand;

Whereas during December 1973 you cultivated one Kala Ram S/o Munshi r/o Bhowani to work for Pak FIU, who was taken across by Nazir and introduced to sub Malik Khan of FTU. Said Kala remained working for FIU under your guidance and supplying Army Intelligence. You persuaded your son-in-law serving in the Indian Army to work for Pak FIU and introduced him to a Major of Pak FIU who after having secret talks with him. enlisted him as Pak agent, who remained working under your guidance, who remained working as Pak Agent till 1975.

Whereas in Nov/Dec. 76 S/Sh. Jagdish Raj and Isher Dass r/o Kadali admitted Pak agents brought a letter from Nazir on the basis of which you asked them to work jointly. In July/August 1977 you came in contact with . one Ajay Kumar of BSF and introduced him to Mr. Nazir of Pak and persuaded him to work for Pak. In Sept/Oct. 1977 on receipt of message from Nazir you visited across and became head of the spy-ring comprising Isher Dass, Tara Chand, Jagdish and Nazir of POK and remained supplying Indian Army Intelligence to your Pak Masters.

Whereas, you indulged in anti-national activities and worked as Pak agent supplying information of Army Intelligence to your Pak Masters.

Whereas, you have been found acting in a manner prejudicial to the security of the State and the country as you were paying clandestine visits to Pok for meeting Pak security Officers with purpose of passing on to them information of vital importance from this side;

Whereas in order to prevent ;you in acting in any manner prejudicial to the security of State, you have been detained under PSA 1978 for one year.

Now, therefore, the grounds are accordingly communicated to you Under Section 13(1) of J. & K. PSA 1978 and you may, if you so Uke make a repre sentation against the aforementioned order to the Government.

2. The petitioner has questioned his detention and has alleged that he had earlier been detained vide order dated 17-12-1980 passed by the District Magistrate but that detention order was revoked by the Government and thereafter he was detained under the impugned Order. That the grounds of detention which were served on the petitioner earlier and the grounds of detention which were served on the petitioner on his detention vide Order 27-1-1981, except for some minor changes, were exactly the same and that since his earlier detention had been revoked by the Government, he could not be detained on the same grounds again. It has further been alleged by the petitioner that the grounds of detention were neither translated, nor explained to him by the detaining authority, in the language which he understands and as such his detention stood vitiated. Another grievance made by the petitioner is that in any event the grounds of detention lacked particulars, were vague and various incidents referred to in the grounds of detention were not relevant to his detention Under Section 8 of Jammu and Kashmir Public Safety Act 1978.

3. In reply Mr. S. D. Sharma. the learned Addl. Advocate General has argued that since the earlier detention of the petitioner suffered from a technical defect inasmuch as the order of detention had not been sent to the Government within the specified lime, the same had to be revoked and that the said revocation of the earlier order of detention cannot in any way render his subsequent detention illegal. Relying upon the affidavit filed by the Superintendent of Jail, in reply to the petition, Mr. Sharma has urged that the grounds of detention were properly

translated and explained to the detenu in the language understood by him. It was also submitted by the learned Addl. Advocate General that reference to various incidents in the grounds of detention, was in the nature of an introductory part and the grounds of detention were neither vague nor indefinite. Urged the learned Counsel, that the activities of the petitioner being of a very serious nature. no further particulars could be given to him in the facts and circumstances of the case. Regarding the non-communication of evidence, it is submitted by Mr. Sharma that there was no such evidence which was required to be supplied to the detenu and that in .any event, the petitioner had not pointed out any such evidence of which he required to make an effective representation.

4. Coming to the 1st grievance of the petitioner: There is no dispute that the petitioner was earlier detained vide Order No. 14/80/DMR dated 17-12-80 and that the said detention order was revoked by the Government subsequently. According to the reply affidavit of Mr. A. K Want, District Magistrate, Agoura, the said order of detention was revoked by the Govt. vide Order No. ISD-12-1981 dated 24-1-81 because of a technical flaw that the detention order had not been received by the Secretary to Government, Home Department, within the statutory period of 12 days from the date of detention. The revocation of the earlier order of detention on account of the technical flaw cannot render the subsequent order of detention defective is clearly provided by Section 19 of the J & K Public Safety Act 1978 which reads as under:

Reroration of detention orders.- (X) Without prejudice to the provisions of Section 21 of the General Clauses Act. Samvat, 1977, a detention order may at any time be revoked or modified by the Government, not with slanting that the order has been made by any officer mentioned in Sub-section (2) of Section 8.

(2) There shall be no bar to making of. a fresh order of detention against a person on the same facts as an earlier order of detention made against such person in any case where -

(i) the earlier order of detention or its continuance is not legal on account of any technical defect; or

(ii) the earlier order of detention has been revoked by reason of any apprehension, or for avoiding any challenge that such order or its continuance is not legal on account of any technical defect: Provided that in computing the maximum period for which a person against whom such fresh order of detention has been issued may be detained, the period during which such person was ' under detention under the earlier order of detention shall be excluded.

5. A bare reading of Sub-section (2) shows that if the order of detention has been revoked due to some technical flaw, it is permissible for the detaining authority to issue fresh orders of detention on the same grounds. Thus, the first ground of challenge to the order of detention is misconceived.

6. So far as the second grievance of the petitioner is concerned,,the same is also untenable. In the reply affidavit of Shri Chanchal Singh, Dy. Superintendent Jail it has been deposed to as follows:

That after the petitioner was detained in the Central Jail Jammu, the communication No. 1761-63 dated 27-1-1981 was received from the District Magistrate Rajouri disclosing the grounds of detention to the petitioner and informing him that he was entitled to make a representation to the Government against his detention if he so desired. The deponent read over to the petitioner on 28-1-1981 the aforesaid communication and grounds of his detention and explained the same to him in Urdu language which he understood well. A copy of the grounds of detention was also handed over to the petitioner against his signatures. The deponent informed the petitioner that he was entitled to make a representation to the Government against his order of detention if he so desired. A copy of the compliance report made by me is attached herewith as Annexure 'RN'.

7. The petitioner was arrested by S. I. Abdul Rahim. In the affidavit filed by the said S. I, it is stated that after taking the petitioner into custody he read over and explained the contents of detention order to the petitioner in Urdu, a language which the petitioner speaks and understands and obtained the signatures of the petitioner on the back of the detention.

8. There is no rejoinder to the deposition of either Shri Chanchal Singh or Shri Abdul Rohm. According to Mr. Malik, however, the Superintendent, Central Jail or S. I, Abdul Rahim had no authority to translate and explain the order of detention or the grounds of detention which could only be done by the detaining authority himself or by a person specifically authorised by the detaining authority and therefore the explaining of the grounds of detention or the order of detention by these two officers was meaningless and not a due compliance of law.

9. The order of detention was served on the petitioner by S.I. Abdul Rahim. It was, therefore, he who was required to read over and explain the contents of the order of detention to the petitioner. According to his affidavit he had done the needful in the language understood by the petitioner and had obtained his signatures in token thereof. There is no requirement that the order of detention must be explained by the detaining authority himself and as a matter of fact it is not only improbable but also impossible because the detaining authority under the Act is not expected to personally go and arrest and detain a detenu. It is proper service of the order of detention and the grounds of detention, if at the time of his arrest and detention, the same are translated to him in the language that he understands. The purpose of explaining the order of detention or the grounds of detention is to enable him to understand as to why and on what grounds he has been detained so that he can represent against it, if he so wishes. In the face of the affidavits of Abdul Rahim and Chanchal Singh it is not open to the petitioner to say that the grounds of detention had not been explained to him. I, therefore, do not find any merit in the second ground of attack either.

10. The third ground of attack in my opinion is equally unfounded. The grounds of detention which have been reproduced elsewhere in the judgment clearly spell out the basic facts, which were taken into consideration by the detaining authority to order the detention of the petitioner. These basic facts are in the nature of introductory facts or the history of the case which led to the detaining authority to arrive at his satisfaction that it was essential to detain the petitioner to prevent him from acting in any manner prejudicial to the security of the State. That such introductory facts can be given in the grounds of detention is well settled and an order of detention does not become invalid if these facts are given in the grounds.

(See in this connection AIR 1081 SC 28:1980 Cri LJ 1286). The purpose of giving the grounds of detention with clarity and necessary details is to enable the detenu to know the case against him and to make an effective representation. It is, therefore, necessary that full particulars and definite grounds must be disclosed to the detenu and if the grounds of detention are vague or indefinite, it would render the order of detention vulnerable. Whereas it is the duty of the court to protect the personal freedom of a citizen against arbitrary or unconstitutional invasion by the executive authority, the court will not set at naught an order of the executive authority on mere fanciful apprehensions or narrow technicalities specially where the detention has been ordered for reasons of the security of the State. The court has to consider all facts and circumstances of a given case with a view to find out whether the order of detention suffers from any illegality or is otherwise violative of the constitutional right of personal liberty of a citizen. The court cannot ignore that, however, carefully an order of detention may be drafted, some vagueness can always invariably be discovered if search for it is made microscopically. It is only where the vagueness or indefiniteness of the grounds of detention is such that it makes an effective representation by the detenu not possible that the detention would be held to be vitiated by the Court. Mere omission of time, place or the exact date where the prejudicial activity was indulged into would not amount to any contravention of the; constitutional right of the detenu to make representation. (See in this connection : 1951 CriLJ373).

11. In Lawrence Joachim Joseph D'Souza v. State of Bombay : 1956 CriLJ935 , wherein it was held that if the nature of activities for which the detention was ordered was such that no better particulars could be given, the detention order was not vitiated. In that case, in the grounds of detention it was alleged that the detenu with the financial help of the Portuguese Government was carrying on espionage activities with the help of underground workers and was collecting security information on the border area and making them available to the Portuguese Authorities. Precisely the grounds conveyed to the detenu were (Para 4):

With the financial help given by the Portuguese authorities you are carrying on espionage on behalf of the Portuguese Government with the help of underground

workers, You are also collecting intelligence about the security arrangements on the border area and you make such intelligence available to the Portuguese authorities. These activities which are being carried on by you with the object of causing further deterioration in the relation between the Portuguese Government and the Indian Government. over the question of Goan National Movement, are prejudicial to the security of India and to the relations of India with. Portugal.

12. The grievance of the detenu in that ease that sufficient particulars had not been furnished to him was rejected by ; their Lordships by observing (Para 4):

It was true that the allegations were not as precise and specific as might have been desired. But having regard to the nature of the alleged activities of the appellant, it was not unlikely that no more could be gathered or furnished.

13. In the instant case, the grounds of detention which were served on the petitioner inter alia told him of his activities and in particular about his paying clandestine visit to POK for meeting named Pak security officers and supplying information of Army Intelligence on various occasions. Keeping in view the activities alleged against the petitioner, it cannot be said that any better information could be supplied to him to enable him to make an effective representation. The grounds of detention cannot be rendered vague or indefinite merely because the exact date on which the petitioner is stated to have crossed over the border or the exact place on the border from which he crossed over to POK or the time or date when he had met a particular person in Pak or in POK had not been supplied to him. The information given to the petitioner, in the instant case in the grounds of detention, was much more than had been supplied to the detenu in Lawrence's case 1956 Cri LJ 935)(supra) where the argument of vagueness was repelled by their Lordships, as already noticed. It would bear repetition to say that the object of giving information to a detenu about the grounds of detention is to provide him with an opportunity to make an effective representation and nothing more. Mr. Malik has not been able to point out how that constitutional right of the petitioner has been infringed and how the detenu was unable to make an effective representation on the basis of the information supplied to him in the grounds of detention. It is worthwhile to mention here that though

sufficient opportunity was given to the detenu to make a representation, yet, he made no representation and at no point of time complained either to the Government; or to the Advisory Board constituted Under Section 14 of the J & K PublicSafety Act 1978 that the grounds of detention were vague and indefinite and prevented him from making an effective representation. Thus, for what has been said above, I do not find that the grounds of detention served on the petitioner were either vague or indefinite, There has been no violation of Article 22(5) of the Constitution of India in the instant case. Third ground of attack also must fail.

14. After considering the case in all its aspects, I am of the opinion, that the detention of the petitioner is legal and does not call for any interference,

15. The Habeas Corpus petition is accordingly hereby dismissed.

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