

Mir Abdullah Vs. the State and ors.

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Court : Jammu and Kashmir

Decided On : May-18-1998

Reported in : 1998CriLJ4654

Judge : Syed Bashir-Ud-Din, J.

Acts : J. and K. Public Safety Act, 1978;;

Appeal No. : H.C. No. 584 of 1997

Appellant : Mir Abdullah

Respondent : The State and ors.

Advocate for Def. : R.A. Khan, Govt. Adv.

Advocate for Pet/Ap. : Hassamudin, Adv.

Disposition : Petition dismissed

Judgement :

ORDER

Syed Bashir-Ud-Din, J.

1. The detention of Mir Abdullah on 28-7-97 under orders of District Magistrate Pulwama for a period of 24 months with a view to prevent him from acting in a manner prejudicial to the security of the State (Annexure A) is challenged on

following grounds :-

2. That the detenu has not been furnished order of detention, copy of FIR or the dossier and thereby he has been prevented from making an effective representation to the Government. The detaining authority has not applied its mind to the case and proper subjective satisfaction as envisages by the provisions of Public Safety Act has not been drawn. The detenu though, facing trial in regular case FIR No. 105/97 has been still held without any explanation in preventive custody. The petitioner's case has not been referred to the Advisory Board and the order of detention has not been confirmed within time.

3. Respondents through one Dr. A.B. Sofi under Secretary to the Home Deptt. has filed counter. The detention of Mir Abdullah on 28-7-97 under orders of District Magistrate, Pulwama for a period of 24 months, after he was taken in custody in FIR 145/97 are admitted by the respondents. It is asserted that the grounds of detention and order of detention were served upon the detenu on 11th of August, 1997 and the contents thereof were read over and explained to him in english/urdu which he fully understands. He was also informed of his right to make a representation to the Govt. against the order of detention. The privileged documents were not provided to the detenu. The details of FIR have been given in the grounds of detention. The detaining authority applied its, mind to all facts and circumstances of the case and drew subjective satisfaction after considering the arrest of detenu, recovery of arms, the petitioner's indulgence in activities subversive of and prejudicial to the security of the State. The detaining authority has drawn subjective satisfaction. There has been no inordinate delay in execution of warrant after passing of the detention order dt. 28-7-1997. The detenu has been taken in preventive custody on 11-8-97. The case was referred to advisory board within time on 21-8-97 and the advisory board after according personal hearing to the detenu and, on consideration of the matter opined in favour of continued detention and on receipt of the report the Govt. considered the matter and confirmed detention order on 17-8-97.

4. There has been no violation of any constitutional or statutory right of the detenu and all required provisions of law have been fully complied with. The detention is

not vitiated on any count.

5. Heard the counsel for the parties and considered the matter.

6. In the light of assertions in the counter affidavit in conjunction with the endorsement in the detention order and grounds of detention (Annexure B), it cannot be concluded in the facts and circumstances of this case) that the detenu Mir Abdullah has been adversely or prejudicial affected to make an effective representation to the Govt. against the order of detention. The services of order of detention is there. The grounds reveal that all required details have been given. Even the required material particulars of FIR 146/97 registered at Police Station Shopian figure in a concise and condensed form in the grounds of detention. The detenu is literate and educated man. Therefore, cannot be said to be prejudice in any manner by not being supplied with copy of FIR or the dossier and that too when previliges is claimed in the counter by the State against such documents.

7. There is nothing on record to suggest that all aspects of the case and facts and documents have not entered subjective satisfaction of the detaining authority while applying its mind to the detention of Mir Abdullah. There does not appear to be inordinate or unreasonable delay in passing the order of detention and its execution. The case has been referred to the Advisory Board within prescribed time period and the orders of confirmation have been also within stipulated time period. In fact it is not shown that there has been violation of any provisions of Public Safety Act, in this case.

8. In the totality of circumstances and for the aforesaid reasons the detention is ruled and held as valid and not vitiated on any count. With the result, the petition is dismissed.