

Mst. Rosha Vs. State and ors.

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Court : Jammu and Kashmir

Decided On : Jul-23-2002

Reported in : 2003CriLJ1394

Judge : R.C. Gandhi, J.

Acts : Jammu and Kashmir Public Safety Act, 1978 - Section 13

Appeal No. : H.C. No. 267 of 2001

Appellant : Mst. Rosha

Respondent : State and ors.

Advocate for Def. : R.G. Gadda, Govt. Adv.

Advocate for Pet/Ap. : S.M.S. Geelani, Adv.

Judgement :

ORDER

R.C. Gandhi, J.

1. Petitioner by means of this petition seeks to quash the detention order No. 86/2001 dated 24-7-2001, passed by District Magistrate, Baramulla, in exercise of powers under Section 8 of J & K Public Safety Act, 1978, (hereinafter the Act) directing preventive detention of the detehue Mohmmad Maqbool Rishi alias Jan-

Nisar S/ o Mohmmad Sultan Rishi R/O Buthoo, Bandipora. The Respondents State in exercise of the powers under Section 17 of the Act has confirmed the detention order for a period of 24 months.

2. The detention order has been challenged on various grounds including that the detenue has not been communicated the grounds of detention and also not informed to make a representation to the Government against the detention order.

3. The respondents have filed counter-affidavit stating therein, that the detention order has been approved by the Govt. vide Govt. order No. 1499 of 2001 dated 2-8-2001. The detenue was taken into preventive custody on 7-8-2001 in execution of the detention order. The detention order has been confirmed by the Government in exercise of powers under Section 17 of the Act vide Govt. order No. 1814 of 2001 dated 1-10-2001. The grounds of detention have been read over and explained to the detenue in the language which he understood and also informed to make a representation to the Govt. against the detention order. Besides, the father of the detenue has also been informed to make a representation against the detention order to the Government.

4. Heard learned counsel for the parties and perused the record.

5. Learned counsel for the petitioner has submitted that the respondents-Detaining Authority, was under legal obligation in terms of the provisions of Section 13 of the Act to communicate the grounds of detention to the detenue and inform him to make a representation against the detention order to the Govt. His further submission is that as this aspect of law has not been satisfied and complied with by the respondents, therefore, continuous detention of the detenue is illegal and deserves to be set aside. In rebuttal the learned counsel for the respondents has submitted, that the mandate of Section 13 of the Act has been completed with by the respondents by communicating the grounds of detention to the detenue in the language which he fully understood.

6. Respondents in reply to the grounds of petition have stated in the counter-affidavit, that the grounds of detention were read over and explained to the detenue in the language which he understood. It is further submitted in reply to

ground (k), that 'as already submitted that the detainee has understood the contents of warrant as well as that of the grounds of detention and only then gave receipt thereof which is on the file.'

7. Learned counsel for the respondents was directed to make the record of the detainee available including the file of which mention has been made in the counter-affidavit. He has submitted the same which has been perused by the Court. Perusal whereof reveals that there is no such evidence on record to substantiate or to support the plea of the respondents as taken in the counter-affidavit that grounds of detention have been read over and explained to the detainee. The file contains letter dated 23-7-2001, addressed to Shri Mohammad Maqbool alias Jan-Nisar by the Detaining Authority informing him to make a representation against the detention order. There is no proof on record to show that this letter has been communicated and served so as to create an evidence that the detainee has been informed to make a representation to the Government against the detention order in compliance to the provisions of Section 13 of the Act. For convenience Section 12 of the Act is reproduced and reads as under :--

'13. Grounds of order of detention to be disclosed to persons affected by the order.
(1) When a person is detained in pursuance of a detention order, the authority making the order shall, as soon as may be, but ordinarily not later than five days and in exceptional circumstances and for reasons to be recorded in writing, not later than ten days from the date of detention communicate to him the grounds on which the order has been made, and shall afford him the earliest opportunity of making a representation against the order to the Government.

(2) Nothing in Sub-section (1) shall require the authority to disclose facts which it considers to be against the public interest to disclose.'

8. The mandate of the aforesaid provision of law requires the Detaining Authority to communicate the grounds of detention to the detainee and inform him of making a representation to the Govt. against the detention order. The preventive detention can be continued only if the provisions of law contained in the Act, are complied with. Breach of mandatory provisions of law is enough to interfere with the order of detention. The grounds of detention are required to be communicated to the

detenue with an object. The object behind the communication of the grounds of detention to the detenue is that the detenue must be in a position to understand and know the circumstances for which preventive detention has been ordered enabling him to make a representation to the Govt. against the detention order, based on grounds of detention unless grounds of detention are communicated making him to understand in the language which he understands, the detenue is not in a position to make a representation to the Government.

9. It is obligatory upon the respondents to make out before the Court that the action of respondents does not suffer on account of non-observation of provisions of laws required to be observed post detention order. The detention cannot be continued unless the other mandatory provisions of law such as Section 13 of the Act are complied with. Section 13 mandates that grounds of detention are to be communicated with the object as stated above. Respondents have not complied with the provisions of Section 13 of the Act. The preventive detention of the detenue, therefore, in breach of Section 13 of the Act, cannot be permitted to continue. The detention order, therefore, deserves to be quashed and is quashed.

10. Respondents are directed to release the detenue Mohmmad Maqbool Rishi alias Jan-Nisar S/o Mohmmad Sultan Rishi R/O Buthoo, Bandipora District Baramulla, forthwith, if not required in any other case.