

Mohammad Akbar Rather Vs. State and anr.

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Court : Jammu and Kashmir

Decided On : Jun-09-2005

Judge : Mansoor Ahmad Mir, J.

Acts : Jammu and Kashmir Public Safety Act, 1978 - Sections 8, 8(2) and 13;
;Arbitration Act - Sections 7 and 25

Appeal No. : HCP No. 50/2004

Appellant : Mohammad Akbar Rather

Respondent : State and anr.

Advocate for Def. : M.A. Beigh, Dy. AG

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

Disposition : Petition allowed

Judgement :

Mansoor Ahmad Mir, J.

1. Subject Mohammad Akbar Rather, son of Wall Mohammad Rather, resident of Doonigund, Tral Teh. Tral, District Pulwama through his father Wali Mohammad Rather, seeks to quash the detention F-290/DMA/Det/PSA/2004/351-56 dated 30.01,2004 (which shall be hereinafter referred as impugned order) passed by

respondent No. 2, District Magistrate, Anantnag in exercise of powers in terms of Section 8 of Jammu & Kashmir Public Safety Act, 1978, whereby the detainee stands detained in detention and lodged in Kotebhalwal Jail, Jammu. The impugned order has been assailed on various grounds taken in the memo of petition.

2. The respondents have filed reply counter affidavit and have resisted the petition.

Heard. Perused. Considered. It is admitted that detainee was in custody in FIR No. 193/2003 under Section 7/25 I.A.Act P/S Bijbehara at the time of passing of impugned order. The detaining authority has not spelled out compelling reasons for detaining the petitioner in detention under Public Safety Act. Even the detaining authority has not made a whisper in the grounds of detention that detainee has applied for bail and whether bail has been granted.

The Apex Court in a judgment reported in AIR 1995 SCW 1841 has held as under;-

When the above principles are applied to the facts of the instant case, there is no escape from the conclusion that the impugned order cannot be sustained. Though the grounds of detention indicate the detaining authority awareness of the fact that the detainee was in judicial custody at the time of making the order of detention the detaining authority has not brought on record any cogent material nor furnished any cogent ground in support of the averments made in grounds of detention that if the aforesaid Surya Prakash Sharma is released on bail he may again indulge in serious offences causing threat to public order. To put it differently, the satisfaction of the detaining authority that the detainee might indulge in serious offences causing threat to public order, solely on the basis of a solitary murder cannot be said to be proper and justified.

3. In another case *Amrit Lal and Ors. v. Union of India* reported in (2001)1 SCC 341 their Lordships of the Supreme Court observed;-

6. The requirement as noticed above in *Binod Singh* case that there is likelihood of the petitioners being released on bail however is not available in the reasoning

available is the 'likelihood of his moving application for bail' which is different from 'likelihood to be released on bail'. This reasoning, in our view, is not sufficient compliance with the requirements as laid down.

4. While applying the test to the instant case the detention order needs to be quashed.

It is profitable to reproduce annexure-P1 herein;-

Office of the District Magistrate Anantnag.

To,

Mohammad Akbar Rather s/o Wali Mohammad Rather R/O Donigund Tehsil Tral Distt. Pulwama.

Order No: F-290/DMA/Det/PSA/2004/351-56

Date: 30.01.2004

(Through Superintendent Central Jail Jammu)

Whereas, you have been detained under order No. F-290/DMA/DET/PSA/2004/351-56 dated 30.01.2004 made by the undersigned under Section 8(2) of the J&K; PSA. Under Section 13 of the J&K; Public Safety Act, 1978 you are hereby informed that your detention order has been ordered on the grounds specified in the annexure hereto. You may also inform the Home Department if you would like to be heard in person by the Advisory Board. You may also made a representation to the Government against the said detention order, if you so desire.

No. DMA IDET1357-62 Sd/-Dated: 30.01.2004 District Magistrate, Anantnag. Copy to the:

1. Principal Secretary to Govt. Home Department, J&K;, Srinagar.
2. Divisional Commissioner, Kashmir, Srinagar.

3. Addl. D.G. Police (CID) J&K; Srinagar/Jammu.

4. Sr. Superintendent of Police Anantnag.

5. Superintendent of Police Kulgam.

6. Superintendent Central Jail Jammu.

7. Wali Mohammad Rather F/O Mohammad Akber Rather R/O Donigund Tehsil Tral District Pulwama.

5. While going through this document, District Magistrate, Anantnag, has endorsed a copy of the same to Superintendent Central Jail, Jammu and the detenue has been informed that he has been detained under Public Safety Act. While going through record, it appears that the detenue was lodged in Central Jail Kotbhalwal, Jammu. In the given circumstances, the communication (annexure-P1) should have been addressed to Superintendent, Central Jail, Kotbhalwal, Jammu and not to Superintendent Central Jail, Jammu. Thus the communication suffers from non-application of mind.

6. It is worthwhile to mention herein that as per the para-3 of the reply, the detention order was executed on 05.02.2004 but as per the communication, referred hereinabove, the detenue was detained on 30.01.2004. Thus it suggests non-application of mind.

7. The executing Officer, namely, Ghulam Mohammad, ASI 6131/NGO has reported on the back of the detention order that he has read over the contents of the warrant to the detenue in Urdu/Kashmiri Language. It is not clear whether contents of warrant were read over to the detenue in Urdu or in Kashmiri language. The said serving officer has not reported that the grounds of detention were read over to the detenue. It appears that said compliance report has been written by some other official. The serving officer has written in his own handwriting the word 'T/imp' only and also signed the report.

8. In the given circumstances, it appears that the grounds of detention were not supplied to the detenue. The matter would have been clinched, if there would have

been affidavit of the serving officer on the file explaining that how and when the contents of warrant, grounds of detention and other material were read over to the detainee and in which language.

9. This view is fortified by the Apex Court judgment reported in 2005 (1) JKJ 7(SC), State Legal Aid Committee, J&K; v. State of J&K; and ors. Thus the mandatory provision of law has not been complied with. On this count also, the detention order needs to be quashed.

10. In view of the above discussion, the petition needs to be allowed and impugned order needs to be quashed. Accordingly, the petition is allowed. The detention order is hereby quashed with the command to the State to release the detainee forthwith provided, he is not required in any other case. Record of the case be returned to Mr. M.A. Beigh, Dy. AG.

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