

Talib Hussain

Vs

State of Jammu and Kashmir

Writ Petition No. 109 of 1970

(I. D. Dua JJ)

07.07.1970

JUDGMENT

DUA, J. -

1. Talib Hussain alias Abdul Rehman son of Feroz Din forwarded through Central Jail, Jammu, his application for a writ of habeas corpus. According to the averments made therein the petitioner was arrested on September 4, 1968, but the warrant for his detention was dated September 10, 1968. Up to December 12, 1969, he was neither shown the warrant of detention nor were the grounds of his detention communicated to him. He was served with a copy of the warrant of detention on December 12, 1969. The petitioner had by then already filed an application for a writ of habeas corpus (W.P. No. 400 of 1969) but that application was withdrawn by him. On December 5, 1968, the petitioner was transferred from interrogation centre to the Central Jail, Jammu. On December 10, 1968, he was told that the grounds of detention could not be disclosed to him and this was long after the expiry of ten days from his arrest. The petitioner was tortured at the interrogation centre, Jammu, and his signatures were forcibly obtained on a piece of blank paper. The petitioner claimed to be a permanent resident of village Azamabad, police station Thana Darhal, Tahsil and District Rajouri. His arrest was alleged to be mainly due to personal grudges of Fazal Hasan and Nazir Hasan.

2. According to the return the petitioner was detained on September 11, 1968, pursuant to the order dated September 10, 1968. The petitioner was informed that it was against public interest to disclose to him the grounds on which the order of his detention had been made. The Government approved the order of detention on September 30, 1968. The order of detention was read out to the petitioner and its contents explained to him in Urdu and the petitioner at the time of detention affixed his signature on the order as a token of having understood the same. The order under Section 8 read with Section 13-A of the Jammu and Kashmir Preventive Detention Act to the effect that it was against public interest to disclose to the petitioner the grounds of detention was made on September 10, 1968 and not on December 10, 1968, as suggested by the petitioner. The date December 10, 1968, on the copy attached to the reply of the Government was due to a typing error.

3. On behalf of the petitioner it was argued that the petitioner's detention started prior to the order of detention and that his detention must on that account be held to be illegal from its inception and therefore wholly void justifying his release. It was further submitted that there was no material showing that the orders made against the petitioner were explained to him in his own language.

4. I had a look at the original records produced by the respondent. It is clear that the order of detention dated September 10, 1968, was explained to the petitioner on September 11, 1968. The

order of detention is as under :

"Whereas I. C. B. Budgjar, I.A.S. District Magistrate, Rajouri, am satisfied that with a view to preventing Shri Talib Hussain alias Abdul Rehman s/o Feroz Din r/o Azamabad P. S. Darhal now Gujranwala, West Pakistan, from acting in a manner prejudicial to the security of the State it is necessary so to do.

Now, therefore, in exercise of the powers conferred by Section 3(2), read with Section 5 of the Jammu and Kashmir Preventive Detention Act, 1964, I. C. B. Budgjar, I.A.S. District Magistrate, Rajouri hereby direct that the said Talib Hussain alias Abdul Rehman s/o Feroz Din be detained in Additional Police lock up P. S. Saddar, Jammu, subject to such conditions as to maintenance, discipline and punishment for breaches of discipline as have been specified in the Jammu and Kashmir Detenus General Order of 1968."

The order under Section 8 read with Section 13-A of the Jammu and Kashmir Preventive Detention Act dated September 10, 1968, reads thus :

"Whereas Shri Talib Hussain alias Abdul Rehman s/o Feroz Din r/o Azamabad P. S. Darhal now Gujranwala, West Pakistan, has been detained in pursuance of order No. DIR/27/68, dated 10-9-1968, made by me under Section 3(2), read with Section 5 of the Jammu and Kashmir Preventive Detention Act, 1964, with a view to preventing him from acting in any manner prejudicial to the security of the State, and

Whereas, I consider it against the public interest to disclose the grounds of detention to the said Talib Hussain alias Abdul Rehman s/o Feroz Din;

Now, therefore, in pursuance of Section 8, read with Section 13-A of the said Act I hereby direct that the said Talib Hussain alias Abdul Rehman be informed that it is against the public interest to disclose to him the grounds on which his detention order was made."

At the back of this order there is an endorsement, dated September 13, 1968, by Shri B. M. Dhar that the contents of the order had been explained to the detenu in the language understood by him. It is thus clear that the petitioner was informed that it was against public interest to disclose to the petitioner the grounds of his detention.

5. Now, the petitioner having been detained with a view to preventing him from acting in a manner prejudicial to the security of the State and it having been considered against public interest to disclose to him the grounds of his detention, it is clear that by virtue of the provisions of Section 13-A (2)(b)(ii) of the Jammu and Kashmir Preventive Detention Act, Section 8(1) of that Act, and by virtue of Section 13-A (2)(c), Section 10 of that Act, were both inapplicable to this case. These provisions merely serve to demonstrate that the question of security of the State is of paramount importance and is placed above the right to personal liberty of an individual whose activities are a danger to such security. Activities prejudicial to the security of the State always pose a threat to the public peace and safety and in the event of a crisis arising out of such activities, the rights of individuals have to be postponed to the larger considerations of State.

6. In regard to the submission that the petitioner was arrested and deprived of his personal liberty long before the order of his arrest and this invalidated his detention, it is sufficient to point out that

in habeas corpus proceedings the Court has to consider the legality of the detention on the date of hearing. If on the date of hearing it cannot be said that the aggrieved party has been wrongfully deprived of his personal liberty and his detention is contrary to law, a writ of habeas corpus cannot issue.

7. I am expressing no opinion in this case on the question of the effect of the withdrawal of the earlier petition by the petitioner.

8. The petitioner's detention cannot, therefore, be considered to be contrary to procedure established by law and cannot be held to be illegal so as to justify his release. This petition fails and is dismissed.

</html