

Barkat Ali

Vs

State of Jammu and Kashmir

Writ Petition No. 313 of 1970

(S. M. Sikri, I. D. Dua, V. Bhargava JJ)

22.10.1970

JUDGMENT

SIKRI, J. -

1. This is a petition under Article 32 of the Constitution complaining that the petitioner is under illegal detention. We direct issue of rule nisi and the State Government has filed an affidavit through the Deputy Secretary to the Home Department, Jammu and Kashmir Government.

2. It appears that the Government vide its order No. ISD : 530 of 1970, dated June 25, 1970, ordered that the petitioner be detained under Section 3(1)(b) of the Jammu and Kashmir Preventive Detention Act, 1964. Section 3(1)(b) enables the Government to make orders to detain a person "if satisfied with respect to any person who is a foreigner within the meaning of the Foreigners Act, 1946, that with a view to regulating his continued presence in the State or with a view to making arrangements for his expulsion from the State, it is necessary so to do."

It is stated in the affidavit of the respondent that "the petitioner was recruited as an agent by the Pakistan Intelligence, paid several visits to the State and had planted explosives under some bridges on the National High Way with the intention to disrupt communications. He was apprehended on 29/30th November, 1959, within the State when he had come to one of his missions. During the course of investigation some more explosives had been recovered on his information. The case was registered in P/S Saddar Jammu for contravening the provisions of Indian Passport Act, the Enemy Agents Ordinance, the Explosives Substances Act and Section 224 and 332 of the R.P.C. The case was tried by the Special Judge who sentenced him to undergo eleven years rigorous imprisonment."

The order of detention, according to the affidavit, was read over and explained to the petitioner in Urdu and his thumb-impression was taken in token of the fact that he fully understood the contents of the order. It was further stated that the case of the detenu was referred to the Advisory Board as required under Section 10 of the Jammu and Kashmir Preventive Detention Act, and the opinion of the Board was awaited.

The learned counsel who was appointed amicus curiae at the first hearing, said that under Section 11(1) the Board had to report within 10 weeks from the date of detention and as it had not reported within that period the detention was illegal. It, however, appears that Section 11 of the Act had been amended by the Jammu and Kashmir Preventive Detention (Amendment) Act, (Jammu and Kashmir) (Act VIII of 1967) and for the words "ten weeks" the words "five months" were substituted.

The learned counsel further said that the detention was mala fide because the State had failed to make the necessary arrangements to deport the petitioner to Pakistan. It appears that the State cannot directly deport the petitioner but has to refer the matter to the Central Government for making necessary arrangements and this has taken some time. But we are unable to hold that this delay in making arrangements affects the validity of the detention, though we trust that arrangements will be made very soon to deport him to Pakistan.

In the result the petition fails and is dismissed.

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