

Master Lal Mohd. Sabir

Vs

State of Jammu And Kashmir and Others

Writ Petition No. 588 of 1970

(CJI S. M. Sikri, I. D. Dua JJ)

07.05.1971

JUDGMENT

SIKRI, C.J. -

1. This is a petition under Article 32 of the Constitution challenging the detention of the petitioner by Order No. 50/PDA/70 dated August 3, 1970 passed by Syed Mohammad Shaffi Andrabi, I.A.S., District Magistrate, Poonch, under Section 3(2) read with Section 5 of the Jammu & Kashmir Preventive Detention Act, 1964. In this order it is stated that the District Magistrate is satisfied that with a view to preventing Lal Mohd. son of Fazal-ud-Din, resident of Arri, P. S. Mendhar, District Poonch, from acting in a manner prejudicial to the security of State, it was necessary to detain him. By another order dated August 3, 1970, the said District Magistrate considered it against the public interest to disclose the grounds of detention to Lal Mohd. and he therefore directed in pursuance of Section 8 read with Section 13-A of the Act that the said Lal Mohd. be informed that it was against the security of the State to disclose to him the grounds on which his detention order was made. On August 24, 1970, the Government having considered the order of detention along with the report of the District Magistrate and the grounds on which the order had been made and other particulars having bearing on the matter, approved the said detention order.

2. To the writ petition, 5 parties have been made respondents, (1) Jammu & Kashmir State, (2) Deputy Commissioner (D.M. Poonch), (3) Darshan Singh, D.S.P., C.I.D., Poonch, (4) Sumitter Singh, Officer Incharge, Interrogation Centre, Jammu and (5) Captain Baljore Singh Q. M. 18th Bn. the Sikh Regiment, C/o 56 A.P.O. The first four respondents have filed affidavits in reply to the allegations made in the writ petition. The detenu has appeared in person and he has raised a number of points : (1) that the detention was mala fide, (2) that the detention was illegal, and (3) that the affidavits filed on behalf of the respondents were defective. The case of the petitioner as far as the first point is concerned, is that he was a permanent school teacher and he was a faithful government employee. In 1965, the petitioner used to help the Indian Military under the guidance of one Captain Baljore Singh of Indian Army Intelligence and his subordinates. Captain Baljore Singh is respondent No. 5 in the writ petition. The petitioner stated that he was kidnapped by the Pakistan Guerillas, because he had made inflammatory speeches against them. After being kidnapped from India, he was interrogated in Pakistan and tortured by inhuman and barbarous methods. The petitioner further stated that he remained in the grip of enemy for more than four years till he was released by the High Court of the so-called Azad Kashmir. He was expelled from Pakistan after his release and reached India and he was reinstated in service on the basis of the reports of the Police and C.I.D. authorities. He further alleged that it was Darshan Singh, D.S.P. who wanted bribe in order to enable the petitioner to be treated on duty for the whole period of his arrest and detention in the Pakistan Jails. As the petitioner refused to do so, he was threatened by Darshan Singh and he

complained against Darshan Singh to one Mohd. Aslam, M.L.A. On this, Darshan Singh threatened him. He alleged that Darshan Singh was a habitual bribe taker and he earned thousands of rupees from the returning migrants of Tehsil Mendhar and Havali. He further alleged that on Mohd. Bashir, Head Constable, C.I.D. had personal grudge against him, and the detention orders have been passed due to the efforts of Darshan, D.S.P., Mohd. Bashir Head Constable, C.I.D. Mendhar and cunning and prejudicial men of Rajput community. The respondents have denied all these allegations. The State has filed two detailed affidavits. The affidavits have been sworn to by Mr. A. R. Khajuria, the Deputy Secretary to the Government, Home Department, Jammu and Kashmir Government. We have gone through the affidavits and it is quite clear that if what is stated in the affidavits is true, there cannot be any question of mala fides. We cannot go into the merits whether the facts, no charge of mala fides can be made out. The case of the State is that he was not kidnapped as alleged by the petitioner, but he had some relations namely Mohd. Sharif posted as Captain (nephew) and Mohd. Hussain Havaldar of Pakistan Razakars (brother-in-law) who were posted on behalf of the Government of Pakistan at the border post Kanet District Mirpur. According to the State, the petitioner was supplying information to the said officers till August 1965 when the Razakars entered into Mendhar and actively collaborated with Razakars in attacking the security post at Dhirana where grave damage to the life and property was done. It is further stated that the petitioner had crossed over to Pakistan after cease-fire in October, 1965 along with the raiders, and his relations referred to above were at the border post and it had been reliably reported that they were giving to the petitioner intensive training for spying and had sent him back in Mendhar area in June, 1970. During the period from January, 1970, up to August, 1970, his activities were watched and it was reported that he was working as a Pakistan agent and was securing information about the deployment of the security force from Mendhar area and supplied the said information to his relations. It is further stated that the various reports collected in this manner were brought to the notice of the District Magistrate who after having satisfied about the necessary detention of the petitioner, passed the order of detention against the petitioner. The reinstatement of the petitioner was explained on the ground that it was made without any consultation with the Counter - Intelligence Branch of the State Government.

3. It appears that while in Pakistan, the petitioner passed his B.A. examination from the Punjab University, Lahore, as shown by the certificate which was produced at the time of the reinstatement. It is urged in the affidavit that this was inconsistent with the petitioner's story that he was detained by the Pakistan authorities. The Government submits that the petitioner went over to Pakistan side of his own accord in 1965 and pursued his studies besides preparing himself to do such activities which were prejudicial to the security of the State. Darshan Singh, D.S.P. in his affidavit has denied all the allegations made against him. It is not necessary to refer to them in detail. Sumitter Singh, Deputy Superintendent of Police, C.I.D. has also filed an affidavit. He denied that there was any illegal arrest of the petitioner in June, 1970. He states that the petitioner was arrested on that date in case No. FIR No. 7/70 under Section 2/3-A E.I.M.C.O. (Egress & Internal Movement Control Order) and under Section 4. E.O.A by Mendhar Police on July 13, 1970, and was remanded to police custody for a week. On July 20, 1970, after the expiry of the remand, further remand for one week was taken from Magistrate, Jammu. He further states that the petitioner remained in police custody, Jammu from July, 18, 1970 to July 27, 1970 and it was during this period of investigations that it was confirmed that he was a regular Pakistan Agent and Pakistan Spy since 1965. The State has also filed a letter indicating that the military authorities were of opinion that they suspected that the petitioner was a planted agent of Pakistan. On these facts it is impossible to say that the order of detention has been passed mala fide.

4. The petitioner has raised certain objections as the from of the affidavits of the Deputy Secretary.

The Deputy Secretary obviously can only swear to the affidavit as to facts appearing from the record. He cannot possibly swear the affidavit based on his personal knowledge unless the fact is in his personal knowledge.

5. The next point taken by the petitioner was that it was a case of mistaken identity of the petitioner. He submitted that the detention order does not mention that he is a teacher, and there are a number of people with the same whose fathers bear the name. But from the affidavits filed we are unable to say that there was any mistaken identity. He also controverted certain statements in the affidavit of the D.S.P. that land was allotted to him from village Arri, Tehsil Mendhar. We are not concerned with this fact as it does not bear on the question of identity.

6. Coming to the question of the illegality of the second order dated August 3, 1970 of the District Magistrate, Poonch, the petitioner attacked that part of the order where it is stated that it is against the public interest to disclose the grounds of detention. He referred to the second para of the said order which reads as under :

"Now, therefore, in pursuance of Section 8 read with Section 13-A of Said Act, I hereby direct that the said Lal Mohd. be informed it is against the security of the State to disclose to him the grounds on which his detention order was made."

7. The petitioner said that because the words "against the security of the State" instead of against the public interest have been used in the second para, the order is illegal. We are to see any force in this contention.

8. Section 8(2) of the Jammu & Kashmir Preventive Detention Act, 1964 provides that :

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

9. The District Magistrate first stated that he considered it against the public interest to disclose the grounds of detention; then in the second para; he chose to describe the particular public interest as security of the State. We see nothing wrong in the form used by the District Magistrate. If a thing is not disclosed because it would be against the security of State it is tantamount to saying that it would be against the public interest not to disclose it. The petitioner further submitted that the words "security of the State" do not exist in the Constitution. We referred him to Article 19(2) of the Constitution in that connection.

10. The petitioner further submitted that the detention order does not mention that the Act was amended in 1967. There is nothing in this point, because when the Kashmir Preventive Detention Act, 1964 is mentioned in the detention order it means Act as existing on that date, including the amendments.

11. In the result, the petition fails and is dismissed.

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