

Suna Ullah Butt

Vs

State of Jammu and Kashmir and Others

Writ Petition No. 195 of 1972

(I.D. Dua, J. M. Shelat, H. R. Khanna JJ)

16.08.1972

JUDGMENT

KHANNA, J. -

1. This is a petition through jail under Article 32 of the Constitution for issuing a writ of habeas corpus by Suna Ullah Butt, who has been ordered by the District Magistrate, Poonch to be detained under Section 3(2), read with Section 5 of the Jammu and Kashmir Preventive Detention Act, 1964 (hereinafter referred to as the Act) with a view to preventing him "from acting in any manner prejudicial to the security of the State".

2. The order of detention was passed by the District Magistrate on October 24, 1971. In pursuance of the detention order, the petitioner was taken into custody the same day and was explained the substance of the detention order. The petitioner was thereafter kept in Central Jail, Jammu. The grounds of detention were communicated to the petitioner on November 1, 1971, in accordance with Section 8 of the Act, which requires that such grounds should be communicated to the detenu as soon as possible but not later than ten days from the date of detention. The order of detention was approved by the Chief Minister, who was incharge of the Home Department on November 12, 1971. The case of the petitioner was placed before the Advisory Board on December 16, 1971. The Board communicated its opinion on February 19, 1972, that the detention of the petitioner was justified. An order confirming the detention order was thereafter made by the State Government on March 3, 1972, under Section 12 of the Act.

3. The grounds of detention gave the following particulars :

"You, Suna Ullah s/o Khawaja Mahad Joo, r/o Sri Chohana, p/s Surankot, District Poonch, were recruited as a source by Cap. Kiani and Subedar Shah of Pak Intelligence in 1968, when you had crossed over to POK and settled at Palandri.

2. Working as source of the above mentioned officers, you introduced Abdul Ghani s/o Asda Rather, resident of your own village, Rafiq s/o Goffar Joo r/o Poonch and Ghulam Mohi-ud-din s/o Karim Joo r/o Seri Chohana with Pak Intelligence, who were recruited as sources by them. These sources supplied vital Indian Army informations to Pak Intelligence.

3. You at the instance of abovementioned officers of Pak Intelligence crossed over to our side in September, 1971, with the purpose of further applying Indian Army informations to Pak Intelligence.

In view of the above your activities were found extremely prejudicial to the security of the State, hence you were detained under the Jammu and Kashmir Preventive Detention Act, so that you are prevented from indulging in such nefarious activities."

4. The petition has been resisted by the State of Jammu and Kashmir and other respondents and the affidavit of Shri Mohammad Amin, Additional Secretary to the Government of Jammu and Kashmir, Home Department, has been filed in opposition to the petition.

5. Arguments have been addressed by Mr. Om Prakash amicus curiae on behalf of the petitioner, while the respondents have been represented by Mr. R. H. Dhebar.

6. The first contention which has been raised by Mr. Om Prakash on behalf of the petitioner is that he was arrested on October 6, 1971, and was already in custody when the detention order was made against him on October 24, 1971. It is stated that no detention order can legally be made against a person who is already in custody on the date of the detention order. It is, in our opinion, not necessary to express an opinion on the abstract proposition of law that no detention order can be made against a person who is already in custody on the date of the making of such order because, in the present case, we find that the petitioner was not in custody on October 24, 1971, when the order for his detention was made. As no express ground had been taken by the petitioner in his petition that the detention order was not legal because of his being in custody on the date of the making of that order, no averment was made in the affidavit initially filed on behalf of the respondents on the point as to whether the petitioner was or was not in custody on the date the detention order was passed. When an argument on that score was advanced, we adjourned the case to enable the respondents to file affidavit on the point. Two affidavits have thereafter been filed on behalf of the respondents. According to the affidavit of Shri Krishanlal Gupta, Station House Officer, Police Station Poonch, the petitioner was arrested on October 6, 1971, in a case under the International Movement Control Ordinance, Public Security Act, Enemy Agent Ordinance, and Indian Arms Act. The petitioner was, however, released in that case on October 20, 1971. It is further in the affidavit of Shri Gupta that the petitioner was not in the custody of the police on October 24, 1971, when the order for his detention was made. The other affidavit which has been filed is that of Dr. Ravindra Gupta, Officiating Superintendent of Central Jail, Jammu. According to Dr. Gupta, the records show that the petitioner was brought to Central Jail, Jammu on October 26, 1971, in pursuance of order, dated October 24, 1971, of the District Magistrate, Poonch. There appears to be no cogent ground for disbelieving the statements contained in the affidavits of Shri Krishanlal Gupta and Dr. Ravindra Gupta. It is manifest from these two affidavits that the petitioner was not in custody on October 24, 1971, when the order for his detention was made by the District Magistrate.

7. The second contention of Mr. Om Prakash relates to the fact that the period for which the petitioner was to be detained has not been mentioned in the order of the State Government, dated March 3, 1972, confirming the detention order. It is urged that the failure of the State Government to specify the period of detention introduces an infirmity in the detention of the petitioner. This contention, in our opinion, is without any force. According to sub-section (1) of Section 12 of the Act, in any case where the Advisory Board has reported that there is, in its opinion, sufficient cause for the detention of a person, the Government may confirm the detention order and continue the detention of the person concerned for such period as it thinks fit. Section 13 of the Act specifies the maximum period of detention. According to that section, the maximum period for which a person may be detained in pursuance of any detention order, which has been confirmed under Section 12, shall be two years from the date of detention. It is further provided that nothing in the section shall affect the power of the Government to revoke or modify the detention order at any earlier time. It is,

in our opinion, difficult to infer from the language of Section 12 of the Act that the State Government while confirming the detention order should also specify the period of detention. All that the section requires is that, if the Advisory Board has reported that there is, in its opinion, sufficient cause for the detention of the person, the Government may confirm the detention order. There is nothing in the section which enjoins upon the Government to specify the period of detention also while confirming the detention order. The concluding words of sub-section (1) of Section 12, according to which the Government may continue the detention of the person concerned for such period as it thinks fit, pertain to and embody the consequence of the confirmation of the detention order. It is, however, manifest that the period for which a person can be detained after the confirmation of the detention order is subject to the limit of two years, which is the maximum period of detention for which a person can be detained, vide Section 13 of the Act.

8. Apart from the above, we are of the opinion that it is not always practicable and feasible for the State Government at the time of confirming the detention order to specify the period of detention. The continued detention of the detenu, subject to the maximum period prescribed by the Act, depends upon a variety of factors and the State Government would have to take into account all the circumstances including fresh developments and subsequent events in deciding whether to keep the detenu in detention for the maximum period or to release him earlier. It has accordingly been provided in sub-section (2) of Section 13 of the Act that the State Government would have the power to revoke or modify the detention order at any time earlier than the expiry of two years from the date of detention.

9. We may also mention in the above context that in the case of *Ujagar Singh v. The State of Punjab*, ([1952] SCR 756; AIR 1952 SC 350 : 1953 Cri. LJ. 142) this Court, while dealing with a case under the Preventive Detention Act, held that non-specification of any definite period in a detention order made under Section 3 of that Act was not a material omission as would render the order to be invalid.

10. So far as the grounds of detention are concerned, it is manifest that the activities of the petitioner mentioned therein are germane to the object for which detention can be ordered. Sub-section (1) of Section 3 of the Act provides inter alia that the Government may if satisfied with respect to any person that with a view to preventing him from acting in any manner prejudicial to the security of the State it is necessary so to do make an order directing that such person be detained. The activities of the petitioner mentioned in the grounds of detention show that he was having contact with Pakistan Intelligence Officers and was assisting them in securing vital information relating to Indian Army. It is obvious that the above activities of the petitioner impinge upon the security of the State. No legal infirmity can consequently be found in the order for the detention of the petitioner which was made with a view to prevent him from acting in any manner prejudicial to the security of the State.

11. The petition consequently fails and is dismissed.

</html