

Vakil Singh

Vs

The State of J. & K. and Another

Writ Petition No. 132 of 1974

(A . C. Gupta, R. S. Sarkaria JJ)

10.10.1974

JUDGMENT

SARKARIA, J. -

1. The petitioner challenges the validity of the order of his detention passed by the District Magistrate, Jammu under Section 3(1) of the Maintenance of Internal Security Act, 1971 (for short, the Act).
2. The petitioner is a resident of Pindi Charikan Kalan P. S. Bishna, District Jammu. He was arrested on April 9, 1973 in connection with a case registered at that police station under Sections 3 and 6 of the Indian Passport Act, Section 2 read with Section 3 of the Egress and Ingress Movement Control Order, Section 4 read with Section 5 of the Explosive Substances Act and Section 25 of the Indian Arms Act. He was produced before the Executive the District Magistrate First Class, Bishna on April 10, 1973 and remanded to police custody for 10 days. He was kept in Police Station, Bishna upto April 14, 1973 and thereafter transferred to the Additional Police Lock Up, Sadar, Jammu for interrogation. On April 20, 1973, the Chief Judicial Magistrate remanded him to police custody for a further period of five days. After interrogation, he was let off by the police on April 24, 1973 under Section 169 of the Code of Criminal Procedure for want of sufficient evidence.
3. According to the counter-affidavit filed on behalf of the respondents, the petitioner was, about five days after his release, arrested from his village Pindi Charkan Kalan by the Station House Officer, Bishna on April 29, 1973 in execution of the impugned order of detention that had been passed against him by the District Magistrate on April 27, 1973. He was committed to Central Jail, Jammu on April 30, 1973.
4. The order of detention stated that the District Magistrate was satisfied that with a view to preventing the petitioner "from acting in any manner prejudicial to the security of the State it is necessary so to do."
5. The particulars of the grounds of detention which according to the respondents, were served on the detenu, were :

Shri Vakil Singh cited above is a Pak Agent, who worked for Pak F.I.U. He supplied India Army information to Pak F.I.U. Officers through Mian Reham of Jumbian a notorious Pak agent and courier. He also paid various visits to Pudwal, Maharajke and Sialkot for supplying of Indian Army Intelligence to Pak FIU Officers. In lieu of the same he had been receiving money from Pak FIU.

6. Mr. Mukhoty, learned Counsel appearing as amicus curiae for the petitioner has sought to make out these points : (1) The detaining authority has been extremely casual in its approach and the impugned order was passed without application of mind; (2) Neither the grounds of detention nor the order of the State Government confirming the detention were communicated and explained to the detenu; (3) The grounds of detention are vague and in consequence, the detenu was deprived of the opportunity of making a proper representation; (4) Assuming that the order of detention was served on the detenu, it was served when the latter was already in jail. In such a situation, it could not be predicated that the order had been passed with a view to prevent him from acting in a manner prejudicial to the security of the State. The order of detention therefore is an act of colourable exercise of jurisdiction.

7. In amplification of the first and the fourth points, Mr. Mukhoty has invited our attention to the copy of the communication, dated April 27, 1973, (hereinafter referred to as the 'communication') whereby the grounds specified in the annexure thereto were sent to the Superintendent, Central Jail for service upon the detenu. Stress has been placed on the words "has been detained" and "has been ordered" in the body of this communication and on the endorsement thereunder to the effect :

Copy to (1) The Superintendent, Central Jail, Jammu in duplicate for informing the detenu accordingly.

8. It is argued that the words "has been detained" occurring in the opening paragraph of this communication and "informing the detenu" in the endorsement to the Superintendent, Central Jail indicate that the petitioner was on that date i.e. April 27, 1973, an inmate of the Central Jail. In this connection Counsel has referred to the averments in paragraph 2 of the writ petition which are to the effect that after his arrest on April 9, 1973, in respect of the investigation of substantive offences, the petitioner was never released from custody till his transfer to the Central Jail, Jammu on April 30, 1973.

9. Mr. Mehta, learned Counsel for the respondent-State, on the other hand, submits that the copy of the communication (Annexure 'D') should be read along with the detention order (Annexure 'A') and the categorical averments made in the two counter-affidavits filed on behalf of the State. Thus read, it is maintained, it would be clear that on April 27, 1973, the petitioner was not in custody.

10. It appears to us that the contention of Mr. Mehta must prevail.

11. It is the case of the petitioner, himself, that he was committed to the Central Jail, Jammu on April 30, 1973. No capital therefore could be made out of the endorsement, dated April 27, 1973, asking the Superintendent, Central Jail, Jammu to serve the grounds annexed to that letter upon the detenu. Obviously, the communication together with the endorsement thereunder to the Superintendent, Central Jail, was prepared, in anticipation of the arrest and admission of the petitioner to the Central Jail, Jammu in pursuance of the order of detention. The mere fact that this communication and the endorsement to the Superintendent of Jail bear the date 'April 27, 1973', is of no avail to the petitioner when it is common ground that on that date he was not an inmate of the Jail. For the same reason, the words "has been detained" in the communication could not, by any stretch of language, be construed as indicating that on April 27, 1973, the petitioner was in detention. The occur in association with the phrase "in pursuance of Order No. 7 of 1973, dated April 27, 1973" and have to be read in the context of that order.

12. It may be noted that Section 5 of the Act gives power to the detaining authority to specify the

place of detention in the order of detention. In view of this provision, the District Magistrate specified the Central Jail, Jammu as the place of detention. Section 4 of the Act says that a detention order may be executed in the manner provided for the execution of warrants of arrest under the Code of Criminal Procedure. Accordingly, the endorsement in the detention order, dated April 27, 1973, stated :

Forwarded in duplicate to Shri Hari Chand S. I., S.H.O. P/S Bishna for execution of the order as provided by Section 4 of the Maintenance of Internal Security Act 1971. Notice of the order shall be given to Vakil Singh s/o Inder Singh Caste Jat r/o Pindi Charkan Kalan Police Station Bishna District Jammu by reading over the same to him.

13. It is against this background that the statement in the counter-affidavits are to be appreciated.

14. Originally, the counter-affidavit in this case on behalf of the respondents was filed by Shri Pearey Lal Tikku, Under-Secretary in Home Department, Government of Jammu and Kashmir. As this affidavit was silent with regard to certain facts, the respondents were allowed by an order of this Court to file a further and better affidavit. Accordingly, they have filed the further affidavit which has been sworn to by Shri O. N. Ahengar, Deputy Secretary to the Government of Jammu and Kashmir, Home Department.

15. Mr. Mukhoty took exception to these affidavits on the ground that neither of them had been sworn by the District Magistrate who passed the detention order. It was pointed out with reference to the verifications that the deponents had not personally dealt with the case of the detainee. In support of his arguments, learned Counsel referred to some rulings of this Court (i.e. Deben Das v. State of W. B. (AIR 1973 SC 1331 : 1973 Cri LJ 1270); Shaik Hanif v. State of W. B. ((1974) 1 SCC 637) and Bhut Nath v. State of W. B. ((1974) 1 SCC 645), wherein it was stressed that the best-informed person to file a counter-affidavit in response to a rule nisi issued by this Court, is the person who passed the detention order.

16. The Deputy Secretary, however, has explained that Shri Parma Nand, who had passed the detention order, "is no longer District Magistrate Jammu and is not available for swearing this affidavit". In view of the fact that this further affidavit has been filed at short notice with the permission of this Court, we think that the explanation given for not filing the affidavit of Shri Parma Nand is not unsatisfactory. The under-Secretary and the Home Secretary who have filed the first and the subsequent affidavits respectively, are responsible officers in the Home Department of the Secretariat, which, as stated by Mr. Mehta at the Bar, deals with the case of such detainees.

17. In the counter, the Deputy Secretary has stated that "the petitioner was first arrested by the police of Police Station Bishna on April 9, 1973 for investigation of the case F.I.R. No. 5 of 1973 registered in that station. He was kept in custody under orders of remand obtained from Magistrates for interrogation, and was released by the police under Section 169, Cr. P.C. for want of sufficient evidence on April 24, 1973. He was rearrested by Station House Officer, Bishna in execution of the detention order, dated April 27, 1973, passed by the District Magistrate Jammu on April 29, 1973, and at the time of this arrest the detention order was read over and explained in Dogri language to the petitioner who then signed, in English, on the back of the order. The deponent has categorically stated that "the petitioner was not in custody at the time of service of detention order". He has further averred that the petitioner was lodged the Central Jail, Jammu on April 30, 1973 and was served with the grounds of detention on the same date through the Superintendent of the Jail and the grounds of detention were explained to him "in vernacular" and "in token thereof petitioners'

signatures were taken". "Petitioner was duly informed that he was entitled to make representation to the Government against his detention." It is also stated that the petitioner, however, did not make any representation.

18. Mr. Mukhoty contends that much reliance should not be placed on the affidavit of the Deputy Secretary because in it the State has improved upon the first version given in the counter filed by the Under-Secretary. These "improvements and variations", proceeds the argument, have been made as an after-thought, after the State had come to know about the points canvassed on behalf of the petitioner at the previous hearing.

19. The contention is devoid of merit.

20. The necessity for the further affidavit arose because the affidavit of the Under-Secretary was obscure or silent on several points. The further affidavit has been filed with the permission of the Court. There is no discrepancy between the two affidavits. The further affidavit only clarifies or supplies what was left indistinct or unsaid in the earlier one. The State Counsel has in compliance with the direction of the Court produced the official records of the case. He has tendered for inspection the copy of the original order of detention. It purports to bear the endorsement of the police officer. It is to the effect that detention order has been served upon the detenu and explained to him in Dogri. It purports to bear the signature of Vakil Singh, in English. We have also perused the original copy of the communication dated April 27, 1973, whereby the grounds of detention were endorsed to the Superintendent Jail for service upon the detenu. It bears not only the endorsement of the Deputy Superintendent Jail, that the grounds have been served upon the detenu and explained to him, but also the signature of the detenu in English, in token of such service.

21. These records confirm what has been stated by the Deputy Secretary in his affidavit on these points. We have no reason therefore, to doubt the correctness of the facts as averred by the Deputy Secretary.

22. Thus it stands established that on the date when the order of detention was served upon the petitioner he was neither in police nor in jail custody. In view of this finding, it is not necessary to examine whether a detention order made against and served upon a person in jail is valid. Nor do we propose to overburden this judgment with an academic discussion of the various decisions of this Court bearing on that question, cited at the Bar. Suffice it to say that point No. (4) does not arise.

23. Dilating on point No. (2), Mr. Mukhoty contends that the records produced by the State purporting to bear the endorsements of the police officer and the Deputy Superintendent, Central Jail, Jammu, respectively, might be a fabrication. In this connection he has pointed out three circumstances : First, that in the earlier affidavit filed by Shri Tiku, it was not stated that the petitioner did not make any representation despite the communication of the grounds of detention. Second, that the averment in the further affidavit filed by the Deputy Secretary that the petitioner did not make any representation was improbable if the detenu had, in reality, been served with such grounds. Third, that the signatures alleged to be that of the detenu under the aforesaid endorsements, do not tally with his undisputed signature on the statement of undertaking given by the detenu when he was released on parole.

24. The first two circumstances are no ground to doubt the sworn word of the Deputy Secretary, or, the authenticity of this official record. The reason why he did not make any representation, despite service of the grounds of detention, is known only to the petitioner. It will not be out of place to

mention here that he did not make any representation even when he was out of jail on one month's parole. As regards the third, it is true that on the statement of undertaking the detenu appears to have signed his name with 'V', while his signatures on the copies of the order of detention and the grounds of detention begin with the letter 'W'. But the admitted signatures of the detenu on the writ petition and its companion affidavit, also begin with the capital 'W' and not with 'V'. The variation between his signatures on the 'undertaking' and on the endorsements, only shows that the petitioner does not sign his name in one set fashion but differently. It is not contended that he is an illiterate person. Indeed, all these documents were signed by him, in English.

25. We would accordingly negative the contention in regard to point No. (2), also, and hold that the grounds of detention were duly communicated to the detenu.

26. Now we turn to the question whether the grounds of detention are vague.

27. To show that the grounds are so, Mr. Mukhoty points out that the abbreviation, F.I.U., in these grounds was unintelligible. On the last date of hearing, proceeds the argument, it could not be deciphered even by the Court and the Counsel for the parties, much less could a layman like the detenu make out head or tail out of it. It is stressed that only in the further affidavit of the Deputy Secretary has it been explained that F.I.U. stands for Field Intelligence Unit. It is further submitted that the dates on which the petitioner met Mian Reham or paid visits to Pudwal, Maharajke and Sialkot had not been disclosed; nor was the amount of money received from Pakistan F.I.U. mentioned in the 'grounds'.

28. This contention also appears to be devoid of force.

29. We have reproduced the particulars of the grounds of detention, in full, earlier in this judgment. Read as a whole they appear to be reasonably clear and self-sufficient to bring home to the detenu the knowledge of the grounds of his detention. The abbreviation F.I.U. occurs four times in these grounds, but each time in conjunction with PAK, and twice in association with the words 'Pak Officers'. The collocation of words and the context in which F.I.U. occurs makes its purport sufficiently intelligible. 'Grounds' within the contemplation of Section 8(1) of the Act means 'materials' on which the order of detention is primarily based. Apart from conclusions of facts, 'grounds' have a factual constituent, also. They must contain the pith and substance of primary facts but not subsidiary facts or evidential details. This requirement as to the communication of all essential constituents of the grounds was complied with in the present case. The basic facts, as distinguished from factual details, were incorporated in the material communicated to the detenu. He was told the name of the notorious PAK agent and courier (Mian Reham resident of Jumbian) through whom he was supplying the information about the Indian Army. He was informed about the places in Pakistan which he was visiting. He was further told that in lieu of the supply of this information he had been receiving money from Pakistan. Nothing more was required to be intimated to enable him to make an effective representation. The facts which were not disclosed were not basic facts, and their non-disclosure did not affect the petitioner's right of making a representation. As recited in the communication under cover of which the grounds of detention were served on the detenu, those factual details were withheld by the detaining authority because in its opinion, their disclosure would have been against public interest.

30. In our opinion, there is no room for the argument in the present case that the factual details about the alleged espionage activities of the petitioner were withheld from him with any ulterior motive.

31. Be that as it may, the details withheld were not an essential constituent of the grounds of detention. The basic material or the substance of the primary facts in a clear, succinct and intelligible form, which was sufficient to enable the detainee to make a representation, was duly communicated to him.

32. For the foregoing reasons, we are of the opinion that the impugned order does not suffer from any defect which would warrant an interference by this Court. The petition fails and is dismissed. The rule is discharged.

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