

Ashok Kumar Binny

Vs

State of Jammu & Kashmir and Others

Hans Raj

Vs

State of Jammu & Kashmir and Others

Writ Petition No. 8333 of 1981

(R.S. Pathak, E.S. Venkataramiah JJ)

### JUDGMENT

PATHAK, J. –

1. The petitioners Ashok Kumar Binny and Hans Raj have been detained by the Government of Jammu & Kashmir under Section 8 of the Jammu & Kashmir Public Safety Act, 1978. They have filed these petitions for a writ in the nature of habeas corpus directing their release.
2. The petitioners Hans Raj as detained on August 17, 1981 while the petitioner Ashok Kumar Binny was detained on October 1, 1981. It is pointed out that although their cases have been referred to the Advisory Board, the Advisory Board has not submitted its report yet to the Government and as right weeks from the date of detention have expired there has been a violation of sub-section (1) of Section 16 of the Public Safety Act. In the circumstances, it is urged, the further detention of the petitioners is invalid. When these petitioners were called on for hearing, Mr. Altaf Ahmed, appearing for the respondents, placed before us a wireless communication received by him from the State Government stating that the Advisory Board was programmed to sit today and instructing him to seek adjournment in these cases. We are unable to grant the adjournment because it seems to us that any proceeding now taken by the Advisory Board can be of no consequence in supporting the further detention of the petitioners.
3. The petitioners enjoy a fundamental right under Article 21 not to be deprived of their personal liberty except according to procedure established by law. In cases where the Government resorts to preventive detention, clauses (4) to (7) of Article 22 prescribe the conditions relating to preventive detention. A perusal of these clauses will make it immediately apparent that the Constitution places the greatest emphasis on severely limiting the period of preventive detention and envisages time-bound stages for the proceedings of a case as it reached its determination. The Jammu & Kashmir Public Safety Act contains provisions which specify the successive stages and also prescribe the period within each stage must be completed. Section 15 declares that after a detention order has been made the Government must, within four weeks from the date of the detention order, place before the Advisory Board the grounds on which the order has been made, the representation made by the order, and, where the order has been made by an officer, also the report by such officer. Thereafter, subsection (1) of Section 16 provides that the Advisory Board, after considering the material before it and such further material as it may deem necessary and after hearing the person

concerned, shall " submit its report to the Government within eight weeks from the date of detention". The obligation placed on the Advisory Board to submit its report within the prescribed period must be construed strictly inasmuch as the personal liberty of a person is involved and having regard to the emphasis which the Constitution has placed, and which emphasis is reflected in the Act, on the necessity of expeditiously determining whether the detention of the person concerned should be continued.

4. In the case before us, it is clear that the period prescribed by sub-section (1) of Section 16 of the Act for the submission of its report by the Advisory Board has already expired. On that ground alone, it must be held that the further detention of the two petitioners is invalid. We are supported in this view by *Shri Mritunjoy Pramanik v. State of W. B.* (1972(2 SCC 586 : 1972 SCC (Cri) 904 : AIR 1973 SC 847,.

5. We allow these writ petitions and direct the State of Jammu & Kashmir and other respondents to release the petitioners Ashok Kumar Binny and Hans Raj forthwith. Immediately on their release, the Chief Secretary, State of Jammu & Kashmir, will intimate to this Court that their release has been effected.

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