

Swaran Singh

Vs

State of Jammu and Kashmir and Others

Writ Petition (Criminal) No. 191 of 1988

(G. L. Oza, K. Jagannatha Shetty JJ)

18.11.1988

JUDGMENT

JAGANNATHA SHETTY, J. –

1. In this writ petition under Article 32 of the Constitution, the detention of Swaran Singh, the petitioner under Section 8 of the Jammu and Kashmir Public Safety Act, 1978 (the "Act") has been challenged.

2. The order of detention dated January 7, 1988 was made by the District Magistrate, Jammu. The grounds of detention are as under :

You started indulging in the terrorist activities right from your childhood. At the stage of 16 years, you committed a double murder in the year 1978 in which you were convicted for life imprisonment by the Session Court, Kathua. You were later on acquitted by the Hon'ble High Court of J & K State in the year 1979. After your acquittal you went to Nepal and learnt driving and came back in the year 1984. During the course of time you developed intimacy with one Mohinder Singh alias Pappi, a hardcore extremist/terrorist, who had earlier been involved in a murderous assault and was arrested by ASI Ishar Dutt Sharma (now SI) the then I/C Police Post Miran Sahib as a result of which Mohinder Singh alias Pappi was much humiliated and pledged to take revenge. Accordingly, you along with Mohinder Singh alias Pappi, Ranjit Singh and Gurudev Singh attacked and caused serious injuries to Ishar Dutt, SI on November 24, 1985 who has become permanently crippled for the whole of his life. You are still facing the said attempt to murder case.

2. During the month of December 1985, you had gone to Delhi with your truck where you met with your associate Mohinder Singh alias Pappi who introduced you to one Balbir Singh s/o Bhan Singh r/o Kurukshetra, Haryana, a hardcore extremist/terrorist and an active member of AISSF. Thereafter, you along with Mohinder Singh and Balbir Singh hatched a conspiracy to loot a bank in order to procure money and to manage their bail in the attempt to murder case registered against you and others.

3. As a result of the conspiracy hatched, you along with Balbir Singh made an unsuccessful attempt to loot the cash from the Cashier of Co-operative Bank, R. S. Pura on November 27, 1986 in which you along with Balbir Singh were apprehended by the local people and handed over to police. You were released from judicial custody on December 16, 1987.

3. Ground 4 deals in detail other similar activities of the petitioner.

4. There then, the order reads :

Your above narrated activities are quite prejudicial and detrimental to the security of the State. You have links with hardcore extremists like Balbir Singh s/o Bhan Singh, Mohinder Singh alias Pappi etc. You have also been introduced to notorious Pak smugglers/agents through whom you procure arms and ammunition which was to be used in terrorist/disruptive activities. Your remaining at large was a constant security threat for the State. As such it was felt necessary to detain you under PSA of 1978 for the security of the State, for a period of 24 months so as to prevent you from continuing the nefarious activities.

Sd/- (Ghanshyam) IAS, District Magistrate, Jammu##

5. Counsel for the petitioner first contended that the activities attributed to the detenu are concerned with two districts Jammu and Kathua. The order of detention issued by the District Magistrate, Jammu is, therefore, illegal since it ought to have been issued by the Divisional Commissioner of the Division or by the State Government. Our attention was drawn to Section 8(2) of the Act. But we do not find any sustenance therefrom to the contention urged. Section 8(2) does not state that in inter-district activities, the Divisional Commissioner alone is competent to pass an order of detention. Power to detain has been conferred on the Divisional Commission as well as the District Magistrate. There is, therefore, no substance in the first contention.

6. It was next urged that the petitioner was released on bail on December 16, 1987 and was earlier discharged from the offence under the Terrorist Act which the detaining authority has failed to take into consideration. We do not think that there is any merit in this contention either. The detaining authority was aware of the bail granted to the detenu of December 16, 1987. Ground 3 specifically refers to this event. Apart from that, the order of detention is not rested only on alleged offence in respect of which the bail was granted to the petitioner. There are other more serious allegations set out in the grounds of detention.

7. It was next urged that the petitioner was arrested on the date of the detention order itself but he was lodged in the Central Jail after a month where the memorandum of grounds of detention was served. We have carefully examined the material on record in regard to this contention. We do not find anything to discredit the allegations in the affidavits of the concerned persons. The order of detention was passed on January 7, 1988. The petitioner was not arrested on that day. He was arrested on February 15, 1988 by J. K. Anand, Inspector CID, Jammu. He has filed an affidavit stating that he arrested the petitioner on February 15, 1988. It is corroborated by the affidavit of Assistant Superintendent Central Jail, Jammu. The latter has stated that the detenu was admitted in Central Jail, Jammu on February 15, 1988 in compliance with detention order through J. K. Anand, Inspector CID, Jammu. It was also stated that he himself served the grounds of detention upon the petitioner in Urdu language on February 18, 1988 and explained the contents to him in the language known to him. We have no reason to disbelieve these averments.

8. As to the other contentions that the grounds of detention are vague and the activities attributed to the petitioner are not prejudicial to the security of the State, we gave our earnest consideration but find little substance in it. The grounds of detention which we have earlier extracted indicate that the activities alleged against the petitioner are indeed grave and certainly prejudicial to the security of

the State. The grounds are not vague but specific. There are instances with identity of persons and places mentioned in the grounds of detention. We thus find no constitutional or statutory infirmities in the impugned detention.

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

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