

JAMMU AND KASHMIR HIGH COURT

Hissam-Udin Bandey

Vs.

State (Jammu & Kashmir)

Criminal Misc. Matters, Habeas Corpus Applns. Nos.173 to 176 of 2011

(Wazir, C.J., Kilam and Shahmiri, JJ.)

18.01.1955

JUDGMENT

Kilam, J.

1. These are four Habeas Corpus applications submitted by Hissam-ud-Din Baudey, Mir Maqbool Gillani, Abdul Ahad and Mohd. Amin detenus, and will be disposed of by this order.
2. The main ground taken in the said applications is that the detenus have done nothing against the security of the State, that they are loyal subjects of the State, and that their detention is mala fide and should be set aside. Mir Maqbool Gilani, one of the persons detained, has further stated that no order of detention was served on him, nor was a copy thereof given to him, although it was specifically laid down in the order of detention that this should be done.
3. The applications were argued before us for a number of days, and in view of the importance of the points of law involved in them, these were referred to a Full Bench of this Court.
4. The main ground which is common to all the applications taken before us by the applicant's learned counsel is that the declaration with regard to the non-supply of grounds to the detenus was made at a very late date and as such the detention orders are vitiated. Before dealing at length with this argument of the detenus' learned counsel, we think it would be proper to give some dates to facilitate the understanding of the points involved in these applications. The orders of detention in the case of Hissam-ud-Din, Abdul Ahad and Mohd. Amin detenus are dated 28-10-54, while that of Mir Maqbool has been made on 29-10-54, The applications under Section 491, Criminal Procedure Code, were submitted to this Court on 16-8-2011. It is conceded by either side that the detentions having been made for reasons of security of State, the Government is not and was not bound to supply any grounds to the detenus, provided a declaration to this effect is made. The declaration in this case was made on 27-12-1954. It is obvious that this

declaration was made after the Habeas Corpus applications were submitted to this Court.

The argument of the detenus' learned counsel in brief is firstly, that the declaration having been made after the applications were being heard by this Court, it cannot be said to have been made bona fide, and secondly, that the declaration has been made at a very late stage which is enough to vitiate the detentions. In support of his argument, he has referred us to S.8, Preventive Detention Act, in which it is laid down that

"the grounds on which a detention order is based shall be communicated to a detenu as soon as may be, and that earliest opportunity of making a representation to the Government against the order of detention shall be afforded to a detenu."

He has quoted a number of authorities which lay down that the grounds should be supplied to a detenu without any unnecessary delay. Analogically, the detenu's learned counsel has argued that the declaration with regard to the non-supply of grounds should be made within the time-limit prescribed in various authorities for the communication of grounds. His argument in this behalf is ingenious indeed. He has submitted that under Section 8 sub-clause (1), Preventive Detention Act, grounds have to be supplied in all cases as soon as may be excepting in the case of a person detained for security of State reasons, if the Government think that the communication of the grounds will be against public interests. From this he deduces that a detenu should not be kept in suspense and the grounds and also the declaration denying the supply of grounds should be made as soon as may be and otherwise, he argues, the detention itself will become invalid. But a close examination of this argument will reveal a number of fallacies in his argument. Before dealing with the various aspects of this argument, we might, however, make it abundantly clear that it would have been much wiser on behalf of the Government if they had made the declaration at an earlier date. We would like to make it further clear that it is highly undesirable that a detenu should remain in suspense if the making of a declaration with regard to the supply or non-supply of the grounds is delayed. But even then we have got to see as to what is its legal effect. A reference to proviso to S.8, Preventive Detention Act, would show that no time-limit for making a declaration is provided by this section or any other section of the Preventive Detention Act. Such being the case, the Government cannot be forced to act in a manner which may be more desirable, but which the law does not make upon it obligatory.

5. Now in this case the declaration was made before the final decision of the case. We do not find any law that would empower this Court to reject such a declaration, though we might repeat that it is greatly desirable that such a declaration is made as soon after the detention order as the circumstances permit. We cannot deny that some time may be required by the Government to make up its mind as to whether the grounds have or have not to be supplied, but in any case the period so required should not be unreasonably long. But we cannot equally deny that what is desirable is not necessarily obligatory or binding upon the Government. Under these circumstances we do not find any force in the applications of Hissam-ud-Din Bandey, Mohd. Amin and Abdul Ahad.

6. But the case of Mir Maqbool Gilani stands on a different footing from the rest of the detenus. The order of detention in his case provided that a notice of the said order shall be given to the detenu by delivering a copy of this order to him. It appears that no such copy was delivered to him, though it has been stated now by the learned Ag. Advocate General that a copy was delivered to him which he refused to take. But this statement is not borne out by the record. As a matter of fact, after about 21 days of his detention, a copy of the order was actually delivered to him in Kathua Jail. The detenu (Maqbool Gilani) has executed a receipt for this which is to the following effect.

"Iski Nakal Men Ne Kathua Jail Se Hasil Kee," i.e., I received a copy of this notice in Kathua Jail.

The specification of the Kathua Jail in the receipt would reveal that no such copy was given to him previously. The person who delivered to him the notice in Kathua Jail should have - if it was a fact that Gilani had refused previously to take the delivery of the notice - made an endorsement in the record to this effect. Nothing of the sort has been done. In our opinion this is enough to make the detention of Mir Maqbool Gilani improper.

7. It may be stated here that it has been held in a number of rulings of the Supreme Court and other Indian High Courts that when directions as to the execution of an order of detention are given in the order of detention itself, those directions have to be meticulously followed. We have no desire to find fault with any Government in arming itself by law with some extraordinary powers to deal with abnormal situations or unsocial elements, such as black-marketers, smugglers etc., who on account of the exigency of the hour or regard for public interest or safety cannot be dealt with under ordinary law. But, at the same time, we cannot and will not lose sight of the fact that preventive detention is a serious inroad on civil liberties and as such any law which in any way curtails civil liberties has to be very strictly construed. Not only that. We have to see if the law as it is, has or has not been meticulously followed, and if we find even a hairbreadth deviation made from the express provisions of law or a slight disregard of any direction given according to law, we shall have no hesitation in declaring a detention under such circumstances quite illegal. This shall apply with greater force here as the law here is somewhat different and even a bit harsh when compared to the law in force in the other Indian States. Applying this test to the case of Mir Maqbool Gilani, we find that his detention is bad in law.

8. In the result we order that the applications of Hissam-ud-Din Bandey, Abdul Ahad and Mohd. Amin applicants be dismissed. As regards Maqbool Gilani detenu, we hold that his detention is both improper and invalid. We order that he be set at liberty forthwith unless wanted in some other case.

Order accordingly.