
(1996) 05 J&K CK 0005
Jammu & Kashmir High Court
Case No: 79(HC(W)) of 1996

Hussam-ud-din Ahmad

APPELLANT

Vs

State and others

RESPONDENT

Date of Decision: May 14, 1996

Citation: (1996) CrLJ 4359 : (1996) KashLJ 347

Hon'ble Judges: B.A.Nazki, J

Bench: Single Bench

Advocate: M.S.Malik, A.Kapoor, Advocates appearing for the Parties

Judgement

A letter was written by one of the detenues HussamuddinAhmad to the Chief Justice of this Court was himself a detenu in District Jail, Kathua. In

his letter to the Chief Justice, Hussamuddin Ahmad had stated that a teen aged boy Shabir Ahmad"" Bhat S/o Abdullah Bhat R/o Satras Maidan

Tehsil and District Anantnag was brought by Police and lodged in Central Jail Kathua. The latter was listed before me and it was treated as a

Habeas 'Corpus' Writ petition. Mr. Kapoor AAG was directed to file affidavits. On various occasions the detenu was presented in this Court and

prima facie the Court was of the opinion after examining the detenu and getting him examined by Senior Advocates of this Court, that he was not.

psychiatrically fit, Eventually, he was referred to the Government Medical College, Jammu, where' he is under treatment in the Psychiatry Hospital.

The doctors have not given their final report as yet. By a separate order, they have been asked to given final report.

The respondents Have filed their counter and staled that the detenu is under detention in pursuance of the District/ Magistrate Anantnag's Order

No. F:20/LIT/DET/PSA/DMA/JC/95/145359 dated:20.10.1995.

'Copy of the grounds of detention has also been placed on record .by the respondents.

I have heard learned counsel for the parties. In the grounds of detention, the respondent have submitted. On 6895 you along with Mukhtiar

Ahmad' (coaccused and Syed Ghulam Hussain Shah were apprehended by the local police. you were arrested in case FIR No. 65/95 Police

Station Thana Mandi Rajouri on 7 8.1995 and are in custody. There are chances of your release, on bail. In case of your release on half you will

prove to be potential threat to the security of the State. Mr. Malik appearing for the detenu has invited my attention to the judgment of the

Supreme Court reported in AIR 1988 SC 934 wherein it has been held that when a person is already in custody, it is not 'sufficient to mention that

the person is being detained because he may get released on bail. The detaining authority has to give compelling reasons far passing a detention

order against a person who is already in custody. Since no compelling reasons have been given by the detaining authority therefore the order

cannot sustain in the present case. It appears from the copies of the detention order which have been annexed with the affidavits that although the

order was passed on 20 10.1995 it was received by the Superintendent, District Jail Kathua on 15.1,1996. Although no date has been given as to

when the order of detention was executed, yet it can be safely said that it had not been executed till 15.1.1996. There is no explanation for delayed

execution of the detention order, which also makes the detention order liable for quashment.

Whether the requirements of law were complied with or not while the detenu was detained, cannot be ascertained because of the fact that that

defenue is noncommunicative and it is not possible to know when the order of detention and the grounds of detention were served on him, and

whether he was produced before the Advisory Board or not ?

For these reasons, I quash the order of detention referred to above and direct the respondents to release the detenu forthwith. In case the father of

the detenue decides that the detenu be treated in the Psychiatry Hospital, the Principal Government Medical College, Jammu, shall provide him the

necessary treatment and keep him in Hospital as long as the Doctors treating the detenu advise him to remain in hospital. On an earlier date, I had directed the District Magistrate concerned and Superintendent of Police CID to submit affidavits as to why they had detained a person i. e. the detenu herein, who prima facie was an insane person ? I have perused their affidavits. It appears that there is no system in ascertaining as to whether a detenu is mentally fit to be jailed or not ?

The Supreme Court has declared that it is illegal and unconstitutional to jail noncriminal mentally ill person and has given directions in the famous

Sheela Barse case reported in 1993 Vol IV SC Cases Page 204 The Supreme Court gave following directions in that case to the Government of

West Bengal ;

1. It is declared that admission of noncriminal mentally ill persons to jails is illegal and unconstitutional.

It is directed that admissions of mentally ill persons to jails in West Bengal on any ground whatsoever be stopped forthwith and the State of West

Bengal is directed to issue instructions to this effect immediately.

It is directed that the function of getting mentally ill persons examined and sent to places of safe custody hitherto performed only by Judicial

Magistrates.

The Judicial Magistrate will, upon a mentally ill person

being produced, have him or her examined by a Mental Health Professional / Psychiatrist and if advised by such MHP/Psychiatrist send the

mentally ill person to the nearest place of treatment and care.

The Judicial Magistrate will send reports every quarter to the High Court setting out the number of cases of persons sought to be screened and

sent to places of safe custody and action taken by the Judicial Magistrate thereon.

In view of the mandate of the judgment of the Supreme Court (supra), all the directions given by the Supreme Court hereinabove must be followed

by the State Authorities in addition to following two directions, while detaining persons under Public Safety Act.

When a detention order is passed against a person, the Police Officers preparing the dossier for submission to the District Magistrates/authorities

concerned who order the detention, shall specifically say whether the detenu is physically and mentally fit to be jailed ?

When a person is detained, as soon as the order detention is

executed, he shall be produced before a Judicial Magistrate, who shall refer him to a competent Doctor for certifying about the detenu's mental

health, If the Doctor opines that the detenu is not mentally fit, the Judicial Magistrate shall order his admission in the nearest Psychiatrist Hospital ?

A copy of this judgment shall be sent to the Chief Secretary, J and K Government, Srinagar. as also to Divisional Commissioners of both the

Provinces, who shall ensure compliance of the aforesaid directions by all the District Magistrates concerned.

With the aforesaid observations, this Habeas writ petition is disposed of,