

Mushtaq Ahmad Khan Vs State of J & K

Court: Jammu & Kashmir High Court

Date of Decision: Nov. 28, 2003

Citation: (2004) 1 SriLJ 166

Hon'ble Judges: Muzaffar Jan, J

Bench: Single Bench

Advocate: J.I.Ganai, B.A.Tak, Advocates appearing for the Parties

Judgement

1. Habeas Corpus Petition has been filed praying to quash order of detention No. 127 of 2001 dated 22.12.2001.

2. The main grounds taken in the Habeas Corpus petition are that the detenue was arrested in FIR 294/2001 under section 7/25 Indian Arms Act.

Police Station Bandipora and during the continuation of arrest in the said FIR, the order of detention was passed on vague, extraneous and

imaginary grounds without any justification. The grounds of detention were not read over and explained to the detenue at the time of execution of

the order of detention and the material constituting the basis of the grounds of detention were not furnished to the detenue, in order to enable the

detenue to make a meaningful representation. The detenue had not applied for bail and was not being released on bail therefore, the assumption of

the detaining authority, that in the event of detenue being released on bail, the detenue would indulge in prejudicial activities, is without application

of mind and on this ground, order of detention deserves to be quashed.

3. While admitting that the detenue was arrested in FIR 127/2001 on 22.12.2001, Police Station Bandipora the stand and submission of the

respondents is that the detenue was found indulging in activities prejudicial to the security of the state and in order to prevent the detenue from his

involvement in prejudicial activities in future the order of detention was passed. At the time of execution of the order of detention, the grounds of

detention were read over and explained to the detenue and he was informed of his right to make representation. The relevant record making the

basis of the grounds of detention were furnished to the detenue in order to enable the detenue to make a representation. On these submissions, it is

prayed that since there is no procedural lapse, therefore, the Habeas corpus petition be dismissed.

4. Heard learned counsel for the parties at length. The Learned counsel for the petitioner has taken number of grounds to challenge the order of

detention, but has confined his submissions to the aspect that as the detainee had not applied for bail and would not be released in a non bailable

offence, therefore there was no occasion for the detaining authority to assume that the detainee would be released on bail and in the event of his

release, he would indulge in activities prejudicial to the security of the state. The argument has to be accepted for multiple reasons.

5. On admitted facts, the detainee was arrested in FIR 294/2001, offence under section II 25 Indian Arms Act, Police Station Bandipora and had

not applied for bail in the said pending FIR. In the absence of submission of an application, seeking bail in the court competent to take cognizance

of the bail application, the assumption of the detaining authority, that the detainee was likely to be released on bail and in the event of his being

released on bail, the detainee would indulge in activities prejudicial to the security of the state, seems to have been made without application of

mind. In the present case, no bail application is shown to have been submitted and the accused is not shown to have been released on bail by any

court in the FIR 294/2001. The detaining authority has not shown awareness of this fact in the order of detention, therefore, the order of detention

has obviously been passed, without application of mind and is liable to be quashed. Habeas Corpus petition is accordingly allowed and order of

detention No. 127 of 2001 dated 22.12.2001 is quashed. The detainee Mushtaq Ahmad Khan S/o Ghulam Rasool Khan R/o Nowpora

Bandipora, shall be released forthwith, unless required in any other case.