

M.M. Bashir vs State on 20 June, 1950

Equivalent citations: AIR1951ALL357, AIR 1951 ALLAHABAD 357

Author: V. Bhargava

Bench: V. Bhargava

ORDER

V. Bhargava, J.

1. This is an application by one M. M. Bashir for issue of a writ in the nature of habeas corpus. M. M. Bashir is being, detained in jail under the provisions of the Preventive Detention Act, 1950 (Act IV [4] of 1950). The order of detention was passed by the District Magistrate of Aligarh on 27th March 1950, and the grounds of detention were communicated to the applicant soon after. On behalf of the applicant, it is urged that the detention of the applicant was illegal inter alia on the ground that the order of detention passed against him did not lay down the period for which the order of the District Magistrate was to remain in force. The original order passed by the District Magistrate was produced in Court and it clearly showed that the District Magistrate did not lay down the period for which he had directed the detention of the applicant in the custody of the Superintendent of the District Jail, Aligarh. It was contended that since the period of detention was not laid down at all by the detaining authority, the order was vague and indefinite and, therefore, the detention of the applicant was not in accordance with law. This ground must be accepted. An order directing detention of any person without giving the period for which the person is to be detained is not capable of being properly carried out by the authority to whom the order is directed. It is true that Section 3, Preventive Detention Act, 1950 (Act IV [4] of 1950) did not itself lay down that the period of detention must be prescribed in the order but whether a period is prescribed in the order or elsewhere, it is obviously essential that it must be definitely laid down by the detaining authority. On behalf of the State it was argued that under Section 12, Preventive Detention Act, 1950 (Act IV [4] of 1950), any person, detained under the provisions of this Act, could be detained for a maximum period of one year and, therefore, the detention of the applicant should be. considered to be valid until the expiry of the period of one year from the date from which his detention began. This argument is not acceptable to me. Section 12 of the Act merely lays down the maximum periods for which a person can be detained but it does not lay down that in case the detaining authority prescribes no period, the detention will continue for the whole of this maximum period. Most of the provisions of the Indian Penal Code also lay down the maximum period of imprisonment that can be awarded for the commission of offences dealt with in it. It has, however, always been considered necessary that a Court passing a sentence for an offence under the Indian Penal Code must itself lay down the period for which the sentence is to run and if no such period is laid down, it cannot be held that the Court must be deemed to have passed the sentence for the maximum period permissible for

that offence under the Code. Similarly, in this case, it was essential that the District Magistrate of Aligarh, who passed the order of detention, should have exercised his own mind and arrived at a finding about the period for which the detention of the applicant was necessary for purposes mentioned in Section 3, Preventive Detention Act, 1950 (Act IV [4] of 1950). If the District Magistrate did not do so, it cannot be said that the maximum period permissible under Section 12 of the Act is the period for which the District Magistrate desired the applicant to be detained. In these circumstances, it would appear that the detention of the applicant is not in accordance with the procedure prescribed by law and he is, therefore, entitled to be released.

2. Some other grounds were also urged on behalf of the applicant in this application but in view of my finding that the applicant's detention is not in accordance with the law for default of the detaining authority in not prescribing the period of detention, it is unnecessary to enter into those grounds. I, therefore, allow this application and direct that Shri M. M. Bashir be set at liberty at once.