

Bansi Lal Kaul vs State Of Jammu & Kashmir on 16 October, 1970

Equivalent citations: (1970)3SCC196, 1971(III)UJ58(SC), AIR ONLINE 1970 SC 39, 1970 (3) SCC 196

Author: S.M. Sikri

Bench: I.D. Dua, S.M. Sikri, V. Bhargava

JUDGMENT

S.M. Sikri, J.

1. This is a petition under Article 32 of the Constitution challenging the petitioner's detention. It was stated in the petition that the petitioner was arrested on June 25, 1970 and was detained in Police Station Koti Bagh till June 26, 1970 without any warrants. It was further stated that the petitioner was not served with any warrants at the time of arrest but was made to sign the warrants of detention issued from the District Magistrate Srinagar, in Central Jail after the lapse of over ten days.

2. This Court issued rule nisi and assigned a Counsel to appear as amicus curiae.

3. The Deputy Secretary to the Government of Jammu and Kashmir, Home Department, has filed an affidavit on behalf of the State. It is stated therein that the District Magistrate, Srinagar, by order dated June 25, 1970, ordered that the petitioner be detained under the Jammu and Kashmir Prevention Detention Act, 1964, with a view to preventing him from acting in any manner prejudicial to the security of the State. The said order of detention was executed on June 26, 1970 by the Deputy Superintendent of Police, City South Zone, Srinagar. It is further stated that the petitioner was informed of the District Magistrate's order dated June 25, 1970 that it was against the public interest to disclose to him the grounds on which the detention order was made. The said order of detention was approved after the case had been placed before the Chief Minister in charge of the Home Department. It was further stated that the notice of the detention order was given by the executing officer, Shri A.M. Watali, to this petitioner by reading over the same to him and further that the petitioner was also informed by the Superintendent, Central Jail, Srinagar, that it was against public interest to disclose to him the grounds on which the detention order was made and in token thereof the petitioner had signed the order of non-disclosure of grounds.

4. The petitioner filed a rejoinder affidavit. He re-iterated that he was arrested on June 25, 1970 and not on June 26, 1970. He denied that he was ever informed of the order of the District Magistrate.

He further stated that he was informed of the order dated June 25, 1970, on July 6, 1970. He further alleged that the order of the Home Minister approving the detention of the petitioner was never communicated to him within the prescribed period of 24 days. It was denied that the order of the Government was passed on July 16, 1970, as it purported to do on the face of it.

5. This petition was heard immediately after Writ Petition No. 310 of 1970 in which we have just delivered judgment. The only additional point raised by the learned Counsel was that as order No. PDA/DMS/86/70 dated June 25, 1970, which directed that the petitioner be informed that it was against public interest to disclose to him the grounds on which the detention order was not communicated to him till July 6, 1970, the detention order is bad. The learned Counsel for the State showed the original order to us and it bears the signature of the petitioner and under it the date July 3, 1970, appears. In view of this we must hold that the affidavit sworn to before us by the petitioner regarding this fact is false and that as a matter of fact he was informed of the said order on July 3, 1970.

6. We need not go into the question whether he was arrested on June 25 or June 26, 1970 because even if he was arrested on June 25, 1970 without any warrant this would not make the present detention illegal.

7. In the result the petition fails and is dismissed.