

Jaya Mala vs Home Secretary, Government Of Jammu & ... on 29 July, 1982

Equivalent citations: AIR1982SC1297, 1982CRILJ1777, 1982(1)SCALE558, (1982)2SCC538, 1982(14)UJ859(SC), AIR 1982 SUPREME COURT 1297, 1982 CRIAPPR(SC) 241, 1982 SCC(CRI) 502, 1982 UJ (SC) 859, 1981 (2) SCC 538, 1982 (2) SCC 538, (1982) CHANDCRIC 118

Bench: D.A. Desai, P.N. Bhagwati

JUDGMENT

1. On May 6, 1982, we made the following order:

This is a petition for writ of habeas corpus for release of Riaz Ahmed who has been detained under the Public Safety Act, 1978. The petition has been brought by the petitioner for release of Riaz Ahmed from the detention on various grounds set out in the writ petition. We are of the view for the reasons which we shall record later that the detention of Riaz Ahmed is invalid and we accordingly allow the writ petition and direct that Riaz Ahmed be set at liberty forthwith.

Here are the reasons.

2. District Magistrate, Jammu, respondent 5 herein, made an order dated October 17, 1981, directing detention of Riaz Ahmed @ Riaz, son of Mir Mohammad, resident of Julaka Mohalla, Jammu Tawi, under Section 8 of the Jammu & Kashmir Public Safety Act, 1978 ('Act' for short). Pursuant to this order the detenu was arrested on October 18, 1981, and "detained in Sub-Jail, Rasi, but this order was modified on October 19, 1981, and the detenu was detained in Central Jail, Jammu. Grounds of detention were communicated on October 20, 1981, and were served upon the detenu on October 21, 1981. Detenu appears not to have made any. representation even though it is alleged that he was advised about his right to make a representation. As required by Section 8 of the Act, respondent 1 by the order dated October 26, 1981, approved the order of detention made by respondent 5. The case of the detenu was referred to 'the Advisory Board on November 13, 1981, and the Advisory Board on December 10, 1981, opined that there' was sufficient cause for detention of the detenu. Thereafter the Government of State of Jammu & Kashmir confirmed the order of detention under Section 17 of the Act on December 12, 1981.

3. Petitioner Jaya Mala who happens to be associated with some legal aid committee for helping needy persons from the State of, Jammu & Kashmir received a letter dated April 15, 1982, from Ayaz Khan, a student in the B.A. class of Jammu University stating that the detenu is his brother and that for the reasons set out in the letter the petitioner should move the Court for appropriate relief. Thereupon the petitioner filed the present petition.

4. this Court ordered a notice to be issued on April. 29, 1982, making it returnable on May 5, 1982, and the notice carried an intimation that the matter will be finally heard on that day.

5. A return has been filled by Shri A. Sahasranaman, respondent 5, District Magistrate of Jammu, asserting that in view of the grounds 40 served upon the detenu it became necessary for him to make the impugned order of detention. detailed return has been filed by one Mr. K.S. Salathia, Deputy Secretary, Home Department, Jammu & Kashmir Government, to which he has annexed documents R-1 to R-7.

6. At the outset a brief reference to the two grounds by itself with out anything more would be sufficient to dispose of the petition. In ground No. 1 it is alleged that on January 10, 1981, when detenu was travelling by mini-bus, the conductor of the bus demanded fare which,, the detenu refused to pay and left the bus after administering threats. Subsequently on the same day detenu along with 7-8 other persons, three of whom are named, stopped the mini-bus at Hari Chock, Jammu and attacked the conductor Chander Shekhar with a dagger with the intention to kill him and caused injuries to his person. The second ground recites that on August 1, 1981, around 12 noon detenu in company of 3-4 other associates took lemon water from Navin Kumar Jain Rehri Walla at Mubarak Mandi and refused to pay for the same and on further demand detenu took out a dagger (khokhri) and threatened saying "By demanding money you are inviting your death."

7. In respect of each incident set out in the grounds F.I.R. has been lodged. If every infraction of law having a penal sanction by itself is a ground for detention danger looms large that the normal criminal trials, and criminal courts set up for administering justice will be substituted by detention laws often described as lawless law. There is not the slightest suggestion that witnesses are not forthcoming in respect of the alleged infraction of law. Why the normal investigation was not pursued is a question difficult to answer. If in respect of the incident of January 10, 1981, a charge could have been laid under Section 307, I.P.C., on the face of it, a serious charge, the detenu as accused could have been arrested and if he moved for bail the same could have been legally resisted. The incident dated August 1, 1981, at best discloses va threat and the offence could at best be one under Sections 504 and 506, I.P.C. It is not made clear in the return why normal procedure of investigation, arrest and trial has not been found adequate to thwart the criminal activities of the detenu. It is not for a moment suggested that power under the preventive detention law cannot be exercised where a criminal conduct which could not be easily prevented, checked or thwarted, would not provide a ground sufficient for detention under the preventive detention laws. But it is equally important to bear in mind that every minor infraction of law cannot be upgraded to the height of an activity prejudicial to the maintenance of public order. Non-application of mind of the detaining authority becomes evident from the frivolity of grounds on which the detention order is founded.

8. But there is a greater infirmity which strikes at the root of the order. It is alleged in the petition that detenu was a, minor aged about 17 years at the time of arrest and detention and that it is difficult to even conceive that this school going minor boy would indulge into such activities as to be a serious threat to the maintenance of public order. In para 7 of the petition it is alleged that the detenu was not even 17 years of age at the time of his detention. In the return filed on behalf of the State, the only assertion is that this averment is misconceived and needs no reply. But in para 2 of

the return under the heading 'Paragraph-wise reply' it was denied that the detenu was a minor and it was further averred that his age was between 18 and 19 years. In support of this averment reliance was placed upon report as to the age issued by Dr. T.R. Sharma attached to Government Medical College, Jammu. Dr. Sharma appears to have examined the detenu for ascertaining his age by radiological and orthopaedic test on May 3, 1982. The relevant portion of the report reads as under;

Epiphysis around ankle, lencem wrist, elbow and shoulder joints have appeared and completely fused. Epiphysis for iliac crest has appeared and partially fused. Radiological age is between eighteen and nineteen years.

9. Detenu was arrested and detained on October 18, 1981. The report by the expert is dated May 3, 1982, that is nearly seven months after the date of detention; Growing in age day by day is an involuntary process and the anatomical changes in the structure of the body continuously occur. Even on normal calculation, if seven months are deducted from the approximate age opined by the expert in October, 1981 detenu was around 17 years of age, consequently the statement made in the petition turns out to be wholly true. However, it is notorious and one can take judicial notice that the margin of error in age ascertained by radiological examination is two years on either side. Undoubtedly, therefore, the detenu was a young school going boy. It equally appears that there was some upheaval in the educational institutions. This, young school going boy may be enthusiastic about the students' rights and on two different dates he marginally crossed the bounds of law. It passes comprehension to believe that he can be visited with drastic measure of preventive detention. One cannot treat young people, may be immature, may be even slightly misdirected, may be a little more enthusiastic, with a sledge hammer. In our opinion, in the facts and circumstances of this case the detention order was wholly unwarranted and deserved to be quashed.

10. We must record our appreciation that Mr. Altaf Ahmed, learned standing counsel for the State of Jammu and Kashmir submitted the State case with utmost fairness.