

Supreme Court of India

Ashok Kumar vs State Of J & K on 22 January, 1981

Equivalent citations: AIR 1981 SC 851, 1981 CriLJ 439, 1981 (1) SCALE 738, (1981) 2 SCC 73, 1981 (13) UJ 147 SC

Bench: A Varadarajan, S M Ali

JUDGMENT

1. These two Writ Petitions under Article 32 of the Constitution have been filed by Ashok Kumar One from Jail and the other through Shri Bhim Singh. The petitioner was detained under the provisions of Section 8 of the J. & K. Public Safety Act, 1978. It appears that the petitioner was arrested on 26.9.1980 by an order of preventive detention passed under Section 8 of J.& K. Public Safety Act, 1978. The grounds of detention were served on him on the 29th September, 1980. On the 30th September, 1980 the detenu made a representation to the Government from the jail which admittedly does not appear to have been considered at all so far. In the counter affidavit it is averred that the representation of the detenu was sent to the Advisory Board and after receiving the opinion of the Advisory Board the detention was confirmed on 19.12.1980. There is, however, no averment in the counter affidavit filed by the State as to whether or not the representation of the detenu was ever considered by the Government. Even assuming that the representation was considered by the Government on the date of confirmation i.e. 19. 12. 1980 still the order of detention is void for two reasons. In the first place, as pointed out by this Court, a representation has to be considered by the Government within reasonable time without waiting for the opinion of the Advisory Board and secondly as the representation was rejected on 19. 12. 1980 i.e. almost two months after the date of detention without any reasonable explanation that is sufficient to vitiate the order of detention. In fact Mr. Altaf Ahmed, learned Counsel for the State of J. & K. has frankly conceded that there is no material on the record to show that the representation of the detenu was in fact considered at all by the Government or by the detaining authority. For those reasons the constitutional safeguards enshrined in Article 22(5) have been clearly violated and the continued detention of the detenu has been rendered void. We, therefore, allow these petitions and direct that the detenu be released forthwith.