ASHOK KUMAR BINNY AND HANSRAJ

v.

STATE OF JAMMU & KASHMIR & OTHERS

December 10, 1981

[R.S. PATHAK AND E.S. VENKATARAMIAH, JJ.]

Jammu and Kashmir Public Safety Act 1978 Section 16(1) scope of.

The petitioners were detained under the Jammu & Kashmir Public Safety Act 1978. Their cases were referred to the Advisory Board, which did not submit its report yet to the Government, although eight weeks from the date of detention had already expired. It was argued that there was a violation of sub section (1) of Section 16 of the Public Safety Act and therefore, further detention of the petitioners was invalid.

Accepting the petitions it was,

HELD : (1) The petitioners enjoy a fundamental right under Article 21 of the Constitution not to be deprived of their personal liberty, except according to procedure established by law. In cases where a Government resorts to preventive detention, Clauses (4) to (7) of Article 22 prescribe the conditions relating to preventive detention. A perusal of these Clauses will make it immediately apparent that the constitution places the greatest emphasis on severely limiting the period of preventive detention and envisages time bound stages for the processing of a case as it reaches its determination. The Jammu & Kashmir Public Safety Act contains provisions which specify the successive stages and also prescribe the period within which each stage must be completed. [143 H, 144 A-B]

2. It is clear that the period prescribed by sub-s. (1) of s. 16 of the Act for the submission of its report by the Advisory Board has already expired. Sub-s. (1) of s. 16 provides that the Advisory Board, after considering the material before it and such further material as it may deem necessary and after hearing the person concerned, shall "submit its report to the Government within eight weeks from the date of detention." The obligation placed on the Advisory Board to submit its report within the prescribed period must be construed strictly in as much as the personal liberty of a person is involved and having regard to the emphasis which the Constitution has placed, and which emphasis is reflected in the Act, on the necessity of expeditiously determining whether the detention of the person concerned should be continued. [144 B-F]

Shri Mritunjoy Pramanik v. *The State of West Bengal*, [1972] 2 S.C.C. 586, referred to.

ORIGINAL JURISDICTION : Writ Petition (Criminal) Nos. 8333 and 8365 of 1981.

(Under article 32 of the Constitution of India)

Bhim Singh and *P.D. Sharma* for the Petitioners.

Altaf Ahmad for the Respondent.

The Judgment of the Court was delivered by

PATHAK, J. The petitioners Ashok Kumar Binny and Hans Raj have been detained by the Government of Jammu and Kashmir under s. 8 of the Jammu & Kashmir Public Safety Act, 1978. They have filed these petitions for a writ in the nature of habeas corpus directing their release.

The petitioner Hans Raj was detained on 17th August, 1981 while the petitioner Ashok Kumar Binny was detained on 1st October, 1981. It is pointed out that although their cases have been referred to the Advisory Board, the Advisory Board has not submitted its report yet to the Government, and as eight weeks from the date of detention have expired there has been a violation of sub-s. (1) of s. 16 of the Public Safety Act. In the circumstances, it is urged, the further detention of the petltioners is invalid. When these petitions were called on for hearing, Mr. Altaf Ahmed, appearing for the respondents, placed before us a wireless communication received by him from the State Government stating the Advisory Board was programmed to sit today and instructing him to seek adjournment in these cases. We are unable to grant the adjournment because it seems to us that any proceeding now taken by the Advisory Board can be of no consequence in supporting the further detention of the petitioners.

The petitioners enjoy a fundamental right under Article 21 not to be deprived of their personal liberty except according to

A procedure established by law. In cases where the Government resorts to preventive detention, clauses (4) to (7) of Article 22 prescribe the conditions relating to preventive detention. A perusal of these clauses will make it immediately apparent that the Constitution places the greatest emphasis on severely limiting the period B of preventive detention and envisages time-bound stages for the processing of a case as it reaches its determination. The Jammu and Kashmir Public Sefety Act contains provisions which specify the successive stages and also prescribe the period within which each stage must be completed. Section 15 declares that after a detention order has been made the Government must, within four C weeks from the date of the detention order, place before, the Advisory Board the grounds on which the order has been made, the representation made by the person effected by the order, and where the order has been made by an officer, also the report by such officer. Thereafter, sub-s. (1) of s. 16 provides that the Advisory Board, after considering the material before it and such D further material as it may deem necessary and after hearing the person concerned, shall "submit its report to the Government within eight weeks from the date of detention". The obligation placed on the Advisory Board to submit its report within the prescribed period must be construed strictly inasmuch as the personal liberty of a person is involved and having regard to the emphasis which E the Constitution has placed, and which emphasis is reflected in the Act, on the necessity of expeditiously determining whether the detention of the person concerned should be continued.

In the cases before us, it is clear that the period prescribed by F sub-s. (1) of s. 16 of the Act for the submission of its report by the Advisory Board has already expired. On that ground alone, it must be held that the further detention of the two petitioners is invalid. We are supported in this view by *Shri Mritunjoy Pramanik* v. *The State of West Bengal.*(1)

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We allow these writ petitions and direct the State of Jammu and Kashmir and other respondents to release the petitioners

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(1) [1972] 2 SCC 586.

Ashok Kumar Binny and Hans Raj forthwith. Immediately on their release, the Chief Secretary, State of Jammu and Kashmir, will intimate to this Court that their release has been effected. A

N.K.A. *Petitions allowed.* B