

SUPREME COURT OF INDIA
RECORD OF PROCEEDINGS

WRIT PETITION (CRL.) NO.310 OF 2005

BHIM SINGH

Petitioner(s)

VERSUS

UNION OF INDIA & ORS.

Respondent(s)

(With appln(s) for c/delay in filing counter affidavit,
c/delay for filing detailed affidavit in pursuance to
the direction of this Hon'ble Court Order dated 20.4.2007
and office report)

Date: 28/09/2007 This Petition was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE B.N. AGRAWAL

HON'BLE MR. JUSTICE P.P. NAOLEKAR

For Petitioner(s)

In-person

Mr. P.V. Yogeswaran,Adv.
Dr. Beem Pratap Singh,Adv.
Mr. B.S. Billowaria,Adv.
Mr. Manjur Alam,Adv.

For Respondent(s)

Ms. Jayashree Anand,AAG.

Mr. Karunakar Mahalik,Adv.
Mr. K.K. Mahalik,Adv.
for Mr. Arun Kumar Sinha,Adv.

Mr. Anil K. Jha,Adv.

Mr. A. Sharan,ASG.
Ms. Binu Tamta,Adv.
Ms. Sushma Suri,Adv.
Mr. T.S. Doabia,Sr.Adv.
Mr. D.S. Mahra,Adv.

for Ms. Anil Katiyar,Adv.

Mr. Anis Suhrawardy,Adv.

Ms. Shamama Anis,Adv.
Mr. S. Mehdi Imam,Adv.

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Mr. Praveen Swarup,Adv.

Mr. Ankur Mittal,Adv.

Mr. Javed Mahmud Rao,Adv.

Mr. Shahid Ali Rao,Adv.
Mr. Sandeep Singh,Adv.

Mr. Ratan Kumar Choudhuri,Adv.

Mr. Binod K. Upadhyay,Adv.

Mr. Raj Kumar Gupta,Adv.
Mr. C.P. Pandey,Adv.

of Jammu and Kashmir. The chart filed along with the affidavit, sworn on 10th September, 2007, shows that this detinue was in custody in FIR No.172/02 under Section 3/4 POTA, 14 FA, Police Station Bijbehara and he is under detention in Central Jail, Sangroor, within the State of Punjab. It is unfortunate that in the affidavit filed on behalf of the State, it has nowhere been stated that copy of the first information report was sent to any Court. From this, we have no option, but to presume that no copy of the first information report was sent to Court; as such, we have no difficulty in coming to the conclusion that no case is pending for trial against the detinue. In view of this, the aforesaid case instituted against the detinue

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at the police station is quashed. In these circumstances, the State is obliged to recommend case of the detinue for deportation.

So far as detinue no. 44, Mohd. Farooq Raja, S/o Mohd. Sheir is concerned, it has been stated in the affidavit filed on behalf of the detinue that he was arrested on 19th April, 1995, has remained in jail for a period of more than twelve years in spite of the fact that the maximum sentence that could have been awarded for the offence alleged is two years. These facts have been admitted in the affidavit filed on behalf of the State of Jammu and Kashmir. The case against the detinue, arising out of F.I.R. No.3 of 2004, is pending in the Court of Judicial Magistrate, Kupwara, within the State of Jammu and Kashmir. As the detinue has already served the maximum period of sentence, for the reasons assigned in relation to detinue no. 11, we are of the view that it would be just and expedient to quash his prosecution. Accordingly, prosecution of the aforesaid detinue in the said case is hereby quashed.

In relation to detinue no. 47, Qudrat Ullah @ Masood, it has been stated in the affidavit filed on behalf of the detinue that he was arrested on 20th October, 1994, has remained in custody for a period of more than twelve and a half years, made accused in two cases and in each one of them, the maximum sentence that could be awarded is two years, therefore, even if sentences are awarded consecutively, the maximum period for which this detinue was required to remain in custody would be four years. So far the State is concerned, these facts have not been disputed. The two cases arising out of F.I.R. No.172 of 1994, Police Station, Kanachak and F.I.R. No.06 of 2004, Police Station CIK, are pending against the detinue in the Court of 3rd Additional Sessions Judge, Jammu. In view of the fact

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that the detinue has already served out the maximum period of sentence, even if awarded consecutively in the aforesaid two cases, for the reasons stated in relation to detinue no. 11, we are of the view that it would be just and expedient to quash prosecution of this detinue. Accordingly, we hereby quash prosecution of the detinue in the aforesaid two cases.

The Chief Secretary, State of Jammu and Kashmir is, accordingly, directed to see that recommendation is made to the Central Government for deportation of detinue nos. 11, 20, 44 and 47 in such a manner so that communication is received by the Home Secretary, Government of India by 31st October, 2007.

The Union of India is directed to take the final decision upon the recommendations made by the State Government in relation to the aforesaid thirteen detenuess by 12th December, 2007, and file an affidavit to this effect within the same time before this Court.

Put up this matter on 14th December, 2007.

In relation to the remaining 39 persons, the petitioner is directed to prepare a fresh chart showing thereunder, detinue number, name, parentage and address of detinue, number of pending case, designation and station of the officer before whom case is pending and name of the jail in which detinue is lodged. It may be clarified that if at one station cases of more than one detinue are pending, in the chart they may be shown at one place.

For considering the cases of the said 39 detenuess, place the matter on 8th October, 2007.

Let copies of this order be made over to the petitioner, learned counsel appearing on behalf of the Union of India as well as the State of Jammu and Kashmir

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by 1st October, 2007. Copies of this order may be sent by fax as well to the Chief Secretary, State of Jammu and Kashmir and Home Secretary, Government of

India for the needful.

[Alka Dudeja]
Court Master

[Om Prakash]
Court Master