

ITEM NO.104

COURT NO.7

SECTION X

S U P R E M E C O U R T O F I N D I A  
RECORD OF PROCEEDINGS

WRIT PETITION (CRL.) NO(s). 206 OF 2006

TAZA SARBAAZ

Petitioner(s)

VERSUS

STATE OF JAMMU & KASHMIR

Respondent(s)

(With office report)

Date: 05/10/2010

This Petition was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE HARJIT SINGH BEDI  
HON'BLE MR. JUSTICE CHANDRAMAULI KR. PRASAD

For Petitioner(s)

Mr. Gaurav Aggarwal, Adv. (A.C.)

For Respondent(s)  
For the State

Mr. Sunil Fernandes, Adv.  
Mr. Vikrant Nagpal, Adv.  
Mr. Siddhant Goel, Adv.  
Ms. Renu Gupta, Adv.

For UOI

Mr. Shreekant N. Terdal, Adv.

UPON hearing counsel the Court made the following  
O R D E R

The writ petition is disposed of in terms of  
the signed order.

Fee of Amicus is fixed at Rs. 7,000/-.

WP(Crl.) No. 663 of 2004

1

(KALYANI GUPTA)  
SR. P.A.

(RENU DIWAN)  
COURT MASTER

[SIGNED ORDER IS PLACED ON THE FILE.]

WP(Crl.) No. 663 of 2004

2

IN THE SUPREME COURT OF INDIA  
CRIMINAL ORIGINAL JURISDICTION

WRIT PETITION (CRL.) NO. 206 OF 2004

TAZA SARBAZ

.. PETITIONER(S)

vs.

THE STATE OF JAMMU & KASHMIR

.. RESPONDENT(S)

O R D E R

1. We have heard the learned counsel for the parties.

2. We are told by the learned counsel for the State of Jammu and Kashmir that the petitioner has indeed undergone more than ten years of the sentence under Section 25(1A) of the Arms Act, 1959, for which he had been prosecuted. In other words, as of today, the petitioner has served out the maximum sentence that could be awarded to him.

We

also see from the detention orders passed from time to time including the last one dated 25th January, 2010, which states that the petitioner had been detained for a period of 24 months or till arrangements for his deportation to his native country are made, whichever was earlier.

The

learned State counsel very fairly states that no attempts

WP(Crl.) No. 663 of 2004

3

had been made so far to deport the petitioner to

his

native country i.e. Afghanistan.

We have gone through

several detention orders in which identical directions has been made but admittedly no steps have been taken to carry out the directives. Our attention has also been drawn to

the opinion of the Advisory Board dated 18th Februar

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2000, by the learned Amicus Curiae when the Board ha

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reluctantly approved the detention of the petitioner for another period of 24 months but it had been specifically

directed that the continued detention of the petitioner was unbecoming as no efforts had been made for deporting him. We also notice that all the orders of the Advisory Board have not been placed on record and we are thus unable to see whether such directions had been made in them as well. Unfortunately, even the order of February, 2000, has not been honoured by the respondents and the only justification given now by the learned counsel is that as the prosecution under the Arms Act was pending against the petitioner, he could not be deported. We find this argument to be untenable at this stage and is redundant as well because the maximum sentence that could be imposed on the petitioner has already been undergone by him.

18th

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3. We, accordingly, direct that the petitioner shall be  
WP(Crl.) No. 663 of 2004

4

deported to Afghanistan, his home country within a period of three months from today in accordance with the directions which have been given by this Court in a similar matter i.e. Bhim Singh v. Union of India & Ors. in Writ Petition No. 310 of 2005 decided on 20th September, 2007.

4. We also make it clear that if this order is not complied with we will consider burdening the respondents with very heavy compensation for the continued detention of the petitioner and pass other orders as well. Compliance report be submitted within four months from today.

5. The petition is, accordingly, disposed of as infructuous.

6. Fee of Amicus is fixed at Rs. 7,000/-.

.....J.  
(HARJIT SINGH BEDI)

New Delhi,  
October 05, 2010.

.....J.  
(CHANDRAMAULI KR. PRASAD)