

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: 06/05/2010 This Petition was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE HARJIT SINGH BEDI
HON'BLE MR. JUSTICE K.S. RADHAKRISHNAN

For Petitioner(s)

For Respondent(s) Mr. Tabrej Ahmad,Adv.
Mr. Anis Suhrawardy,Adv.

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

This writ petition has been filed under Art.32 of the Constitution through jail by the petitioner who is presently confined in the high security ward of Tihar Jail, New Delhi.

A challenge has been levelled to his continued detention since 19th October, 1997 under successive detention orders issued by the Government of Jammu and Kashmir under the Public Safety Act, 1978. It has been averred in the writ petition that he along with several others had been arrested in October 1997 by the Indian

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Army on the border area of Jammu and Kashmir and after being shifted from one interrogation centre to the other, had been finally transferred to the Central Jail, Tihar, on 19th October 1997 and since then is confined therein. It has been further pointed out that he had been challaned and tried in FIR No. 187 of 1997 under Sec.7/25 IA Act and the Jammu and Kashmir Public Safety Act and after trial, had been acquitted by the

Trial Court but though acquitted continues to remain in jail on account of successive detention orders.

In the counter filed on behalf of the State of Jammu and Kashmir by Ms. Dilshad, Deputy Director, Home Department, Government of Jammu and Kashmir, Jammu, it has been pointed out that the petitioner was an Afghan national and a member of an unlawful organization Tehreek-e-Jehad and had entered the valley with the intention of terrorising and disturbing public peace and that he was specially trained to handle sophisticated weapons and had received his training and combat experience in Afghanistan under Ahmad Shah Masood. It has accordingly been emphasized that despite his acquittal in the criminal case it was not feasible to release him and for this reason successive detention orders had been made till such time that he was deported from India to Afghanistan.

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We put it to the learned counsel for the State who appeared before us as to the attempts made to deport the petitioner to Afghanistan as his continued detention may be unlawful if he was to be indefinitely incarcerated and would perhaps be hit by Art.21 of the Constitution. The learned counsel was unable to tell us the present state of affairs.

We accordingly adjourn this matter to 17th August, 2010, with the direction that a comprehensive affidavit be filed by a responsible officer of the State of Jammu and Kashmir and the Union of India, which is also impleaded as a co-respondent and numbered as respondent No.3, and to inform us about the status with regard to the petitioner's deportation to Afghanistan.

Mr. Mulkh Raj Vij who had been appointed as amicus curiae in this matter has not appeared before us

though the case was called over twice.

We accordingly

discharge Mr. Mukh Raj Vij from this matter and appoint

Mr. Gaurav Aggarwal, Advocate as amicus curiae to

assist us. The petition be served on the Union of India

through the Attorney General.

[SUMAN WADHWA]
COURT MASTER

COURT MASTER

[VINOD KULVI]