

(2022) 12 J&K CK 0018
In the Jammu And Kashmir High Court
Case No : Writ Petition (Criminal) No. 439 Of 2022

Abid Ahmad Dar	Vs	APPELLANT
Union Territory Of JK & Ors		RESPONDENT

Date of Decision : 13-12-2022

Acts Referred:

Constitution Of India, 1950 — Article 22, 22(5)

Citation : (2022) 12 J&K CK 0018

Hon'ble Judges : Moksha Khajuri Kazmi, J

Bench : Single Bench

Advocate : M. I. Qadri, Owais Shafi, Faheem Shah

Final Decision : Allowed

Judgement

Moksha Khajuria Kazmi, J

1. In the instant Habeas Corpus petition, the petitioner has assailed the detention order No. DMB/PSA/2022/32 dated 27.06.2022, passed by respondent No. 2- District Magistrate, Budgam (for short 'the detaining authority'), whereby one Abid Ahmad Dar S/O Noor Mohd. Dar R/O Dalipora Chadoora, Budgam, (for short detenu), has been detained under the provisions of J&K Public Safety Act, 1978.

2. Though the petitioner has challenged the detention order on various grounds, but the main ground of challenge to the non-consideration of the representations filed against the detention order. It is averred that because of non-consideration of the representations, the detention order is liable to be quashed. Copy of the representations having been received by the respondents is annexed with the writ petition.

3. The respondents have filed their objections and have defended the order of detention, stating therein that the order of detention was passed by the detaining authority after being satisfied on the basis of the material available including the dossier submitted by Senior Superintendent of Police, Budgam, that

it was necessary with a view to prevent the detainee from acting in any manner prejudicial to the security of the State to place the detainee under preventive detention. It is submitted that the detention of the detainee has been ordered strictly in accordance with the provisions of J&K Public Safety Act, 1978 (for short 'the Act') and the procedural safeguards prescribed under the provisions of the Act, have strictly been followed in the instant case.

4. It is further stated that from the grounds of detention it would transpire that the activities of the detainee are highly prejudicial to the security of the State and, therefore, there was no option left to the detaining authority, but to order detention of the detainee under the Act. It is also submitted that the grounds of detention sufficiently connect the detainee with the activities which are highly prejudicial to the security of the State, as such, the detention of the detainee is legal.

5. With regard to the allegation of non-consideration of the detainee's representations, it is stated in the counter affidavit that the detainee did not make any representation in respect to his detention order.

6. I have heard learned counsel for the parties and perused material made available including the detention record.

7. It is quite evident that representations have been made by the detainee against his detention which have been received by the respondents, but have not been considered till date, as the postal receipts placed on record would show. In these circumstances, this Court is left with no option, but to accept the stand of the petitioner that the detainee has made representations against his detention, but the same has not been considered. It is the bounden duty of the detaining Authority or the Government, as the case may be, to consider the representation of the detainee and pass appropriate orders thereon.

8. Article 22(5) of the Constitution of India, casts legal obligation on the Government to consider the detainee's representation as early as possible. There should be no slackness, indifference and callous attitude in consideration of the representation of the persons who are detained. Any unexplained delay would be breach of constitutional imperative and it would render the continued detention of the detainee as illegal. Each day's delay in dealing with the representation has to be explained and the explanation offered must be reasonably indicating that there was no slackness or indifference.

9. In *Tara Chand vs State of Rajasthan and others*, 1980 (2) SCC 321, the Hon'ble Supreme Court has held that any inordinate and unexplained delay on the part of the Government in considering the representation renders the very detention illegal.

10. The Supreme Court in another case of *Rahmatullah vs State of Bihar*, AIR 1981 SC 2069 has held that clause (5) of Article 22 by necessary implication guarantees the constitutional right to a proper consideration of the

representation. The obligation of the Government to afford to the detenu an opportunity to make representation is distinct from the Government's obligation to refer the case of the detenu along with representation to the Advisory Board to enable it to form its opinion and send a report to the Government. Therefore, it is implicit in clauses (4) and (5) of Article 22 that the Government, while discharging its duty to consider the representation, cannot depend upon the views of the Board on such representation. It has to consider the representation on its own without being influenced by any such view of the Board. The Supreme Court in the case of Kundanbhai Dulabhai Sheikh vs. District Magistrate Ahmedabad and others, 1996 CrL.J 1981 quashed the detention order only on the ground of delay in disposing of the representation. Having gone through the observations of the Supreme Court in the said case, I am of the considered view that the said decision with all fours is applicable to the instant case. Therefore, the detention order is liable to be quashed.

11. In view of the above settled proposition of law, I am of the view that non-consideration of the detenu's representations constitutes violation of the constitutional right guaranteed under Article 22 of the Constitution and also exhibits failure of the Government to discharge its statutory obligation/function. Therefore, for this reason alone, writ petition must succeed.

12. Accordingly, the writ petition is allowed and the impugned detention order No. DMB/PSA/2022/32 dated 27.06.2022. (supra) is quashed. The Jail Superintendent concerned is directed to release the detenu forthwith, if his detention is not required in connection with any other criminal case pending against him.

13. Record be returned to the concerned against proper receipt.