

(2022) 05 J&K CK 0069

In the Jammu And Kashmir High Court

Case No : Writ Petition (Criminal) No. 273 Of 2021

Arif Ahmad Khan

APPELLANT

Vs

UT Of J&K & Ors

RESPONDENT

Date of Decision : 27-05-2022

Acts Referred:

Constitution Of India, 1950 — Article 22, 22(4), 22(5)
Jammu And Kashmir Public Safety Act, 1978 — Section 8

Citation : (2022) 05 J&K CK 0069

Hon'ble Judges : M. A. Chowdhary, J

Bench : Single Bench

Advocate : M.A.Qayoom, Sajad Ashraf Ganai

Final Decision : Allowed

Judgement

M.A.Chowdhary, J

1. District Magistrate, Srinagar (hereinafter called 'Detaining Authority') in exercise of powers under Section 8 of the Jammu & Kashmir Public Safety Act, 1978, passed the detention Order No. DMS/PSA/65/2021 dated 20.10.2021 (for short 'impugned order'), in terms whereof the Petitioner namely Arif Ahmad Khan S/O Abdul Majeed Khan R/O Shaheen Colony, Noorbagh, Srinagar (for short 'detenu') was ordered to be detained and lodged in Central Jail, Srinagar, later shifted to Central Jail Agra (U.P).

2. Though the detenu has challenged the detention order on several grounds, but the main ground is that his representations filed against his detention have not been considered till date. It is submitted that because of non-consideration of his representations, the detention order slapped upon him is liable to be quashed. Copies of the representations having been received by the respondents have been filed annexed with the writ petition.

3. The respondents through counter affidavit have defended the order of detention contending 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, Srinagar that it was necessary with a view to prevent the detenu from acting in any manner prejudicial to the 'security of the State' to place the detenu under preventive detention. It is submitted that the detention of the detenu 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 and the right guaranteed to the detenu under the Constitution have strictly been followed in the instant case. It is further submitted that the grounds of detention transpire the activities of the detenu which, on the face of it, 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 detenu under the Act. It is then submitted that the grounds of detention sufficiently connect the detenu with the activities which are highly prejudicial to the security of the State, as such, the detention of the detenu is legal.

4. With regard to the allegation of non-consideration of the detenu's representation, there is no mention in the reply affidavit that the detenu has filed any representation.

5. I have heard learned counsel for the parties and perused material on record including the detention record.

6. Petitioner has pleaded that representation on his behalf had been submitted to detaining authority as well as to Principal Secretary to Government Home Department and also placed on record copies thereof as Annexures V and VI and their receipts dated 09.11.2021 and 11.11.2021 respectively. Despite pleading specifically by the petitioner in sub paras III and IV of para 3 regarding grounds of challenge, respondents except mentioning that the detenu was also informed about his right to make representation against his detention, has not responded as to whether any representation was filed and how the same was dealt with.

7. Keen perusal of the detention record, produced by learned Government Advocate, does not reveal or indicate anything with regard to receipt or disposal of the representations. It is thus evident from the pleadings of the respondents as well as detention record that representation submitted on behalf of detenu in the month of Nov. 2021 have not been considered by them so far.

8. Admittedly, as is evident from the copy of representation dated 02.11.2021 which has been received by the respondent detaining authority on 09.11.2021 and sent through registered postal service to respondent No. 1 on 11.11.2021 the detenu had filed the representations against his detention and the same have not been considered by the respondents till date, inasmuch as, there is no mention with regard to the said representation filed by the respondents neither in the counter affidavit nor in the detention record. In these circumstances, this Court is left with no option, but to accept the stand of the petitioner that he has moved representations against his detention, but the same have not been

considered.

9. Article 22(5) of the Constitution of India, casts legal obligation on the Government to consider the detenu's representation as early as possible. It is the bounden duty of the detaining Authority or the Government, as the case may be, to consider the representation of the detenu and pass appropriate orders thereon. 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 detenu as illegal. Every day 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.

10. In *Tara Chand vs State of Rajasthan & Ors.*, 1980 (2) SCC 321, 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. The Supreme Court in another case *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 & Ors.* 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 aforesaid cases, this court is of the considered view that the said decisions with all fours are applicable to the instant case. Therefore, the detention order is liable to be quashed.

11. In view of the above settled proposition of law, that non-consideration of the detenu's representation constitutes violation of the constitutional right guaranteed under Article 22 of the Constitution, the impugned detention order is vitiated and is not sustainable. Therefore, for this reason alone, writ petition must succeed. Accordingly, the writ petition is allowed and consequently the impugned detention order No. DMS/PSA/65/2021 dated 20.10.2021 is quashed. The Jail Superintendent concerned where the detenu is lodged/detained is directed to release him forthwith, if his detention is not required in connection with any other criminal case(s) pending against him.

12. Record be returned to the concerned.