

(2022) 11 J&K CK 0032

In the Jammu And Kashmir High Court

Case No : Writ Petition (Criminal) No. 106 Of 2022

Mehraj u Din Parray

APPELLANT

Vs

Union Territory Of J&K And Another

RESPONDENT

Date of Decision : 17-11-2022

Acts Referred:

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

Citation : (2022) 11 J&K CK 0032

Hon'ble Judges : Vinod Chatterji Koul, J

Bench : Single Bench

Advocate : Wajid Haseeb, Sajad Ashraf

Final Decision : Disposed Of

Judgement

Vinod Chatterji Koul, J

1. Through the medium of this writ petition, the petitioner prays for quashment of detention Order No.DMS/PSA/138/2019 dated 22.11.2019, passed by District Magistrate, Srinagar, whereby detenu, namely, Mehraj-u-Din Parray S/o Ghulam Mohammad Parray R/o Soiteng Lasjan, Srinagar, has been placed under preventive detention with a view to prevent him from acting in a manner prejudicial to the maintenance of public order, on the grounds made mention of therein.

2. The grounds of challenge, inter alia, stated and averred by petitioner in the instant writ petition are that the allegations made in the grounds of detention are vague and indefinite and no prudent man can make an effective representation against these allegations inasmuch as the cases mentioned in grounds of detention have no nexus with detenu and detaining authority has not given any reasonable justification to pass impugned order of detention; that grounds of detention are replica of dossier and unequivocally reflect and show non-application of mind on the part of detaining authority and as a consequence of which impugned order of detention is liable to be quashed; that last alleged

activity attributed to detenu in terms of grounds of detention had taken place in the year 2017 and thereafter no fresh activity has been attributed to detenu and as a result whereof, detention order has been passed after a delay of two years from the last activity and this delay between the activity and detention order has snapped the proximity of detention order with alleged apprehension more particularly given the fact that detenu was at large during the period of this delay and no fresh activity has been attributed to him which would have warranted to nurture the apprehension as mentioned in the grounds of detention; that detention order has been passed on 22.11.2019, but it has been executed in March 2022, that is after a delay of more than two years and despite the fact that detenu was all along available for execution during this period, the impugned detention order was not executed; that post detention, a representation was filed by detenu through his wife, which was not considered by respondents; that grounds of detention are replica of dossier.

3. Respondents have filed reply affidavit, insisting therein that the activities indulged in by detenu are prejudicial to the maintenance of public order, and that the activities narrated in the grounds of detention have been reiterated in the reply affidavit filed by respondents. The factual averments that detenu was not supplied with relevant material relied upon in the grounds of detention have been refuted. According to respondents, impugned order of detention could not be executed due to COVID-19 and that mere filing of representation does not accrue the petitioner a right to be released from the custody.

4. I have heard learned counsel for the parties and considered the matter. I have gone through the detention record produced by counsel for respondents.

5. The case set up by petitioner in the petition is that last alleged activity attributed to detenu in grounds of detention had taken place in the year 2017 and thereafter no fresh activity has been attributed to detenu and that detention order has been passed after a delay of two years from the last activity and this delay between the activity and detention order has snapped the proximity of detention order with alleged apprehension more particularly in view of the fact that detenu was at large during the period of this delay and no fresh activity has been attributed to him warranting to nurture apprehension as alleged in grounds of detention. It is also the case of petitioner that detention order has been passed on 22.11.2019, but it has been executed in March 2022, that is after a delay of more than two years, and despite the fact that detenu was all along available for execution during this period, the impugned detention order was not executed. Thus, it is contended that there is no nexus, proximate and live link between the allegations levelled in the grounds of detention as the last activity referred to and attributed to detenu is of the year 2017, and, therefore, there is no compelling reason given by detaining authority to pass order impugned. Submission of counsel for petitioner is that detaining authority has passed the impugned detention order mechanically without application of mind, inasmuch as the grounds of detention are vague, indefinite, non-existent on which no prudent

man can make an effective representation against such allegations. It is further contended that the Constitutional and Statutory procedural safeguards have not been complied with in the instant case and the grounds of detention are replica of dossier and unequivocally reflects and shows non-application of mind on the part of detaining authority.

6. The question whether the prejudicial activities of a person requiring to pass a detention order is proximate to the time when the order is made or the live-link between prejudicial activities and purpose of detention is snapped, depends on facts and circumstances of each case. Nonetheless, when there is an undue and long delay between the prejudicial activities and passing of detention order, the court has to scrutinise whether detaining authority has satisfactorily examined such a delay and afforded a tenable and reasonable explanation as to why such a delay has occasioned, when called upon to answer and further the court has to investigate whether the casual connection has been broken in the circumstances of each case.

There is no plausible, cogent and material ground given by the respondents in their reply affidavit to rebut the contentions of petitioner raised by him in the petition on hand, to justify delay of 29 months (two years and five months) between passing of impugned order of detention dated 22.11.2019, and its execution on 25.03.2022. Mere assertion of respondents in their reply affidavit that due to COVID-19, detenu could not be placed under preventive detention in terms of impugned order for long 29 months, i.e., from November 2019 to March 2022, will not render any assistance to their case, rather it weakens their stand vis-à-vis the case set up by petitioner.

Law in this regard is settled. Reference to this extent is made to Suresh Mahato v. The District Magistrate, Burdwan and others (175) 3 SCC 554; Bhawarlal Ganeshmalji v. State of Tamil Nadu (179) 1 SCC 465. The Supreme Court in a Petition for Special Leave to Appeal (Crl.) Nos.6683/2022 titled as Sushanta Kumar Banik v. State of Tripura and others, 2022 SCC Online SC 1333, has held that if there is unreasonable delay between the date of the order of detention & actual arrest of the detenu and in the same manner from the date of the proposal and passing of the order of detention, such delay unless satisfactorily explained throws a considerable doubt on the genuineness of the requisite subjective satisfaction of the detaining authority in passing the detention order and consequently render the detention order bad and invalid because the "live and proximate link" between the grounds of detention and the purpose of detention is snapped in arresting the detenu.

When the present case is tested on the touchstone of law laid down by the Supreme Court in the abovementioned cases, undoubtedly, there is no cogent explanation coming to fore from perusal of grounds of detention with reference to the live-link between prejudicial activities and purpose of detention and resultantly impugned detention order is liable to be quashed.

7. Another submission that has been strenuously urged by learned counsel for petitioner and is also made mention of in the present petition, is that representation, post detention, filed by detenu through his wife has not been considered by respondents. To this, it is submission of respondents in their reply affidavit that mere filing of representation does not accrue the petitioner a right to be released from the custody when petitioner is involved in antinational and antisocial activities which are detrimental to the maintenance of public order. There is no mention qua considering and deciding the representation of petitioner in the reply affidavit and it is, thus, inferable that the representation has not been considered by respondents. Therefore, there is substance in the submission of learned counsel for petitioner that non-consideration of representation of detenu vitiates impugned order of detention. Law in this regard is settled as the Supreme Court in *Tara Chand v. State of Rajasthan and others*, 1980 (2) SCC 321 and *Raghavendra Singh v. Superintendent, District Jail, Kanpur and others* (1986) 1 SCC 650, has held that if there is inordinate delay in considering the representation that would clearly amount to violation of the provisions of Article 22(5) as to render the detention unconstitutional and void.

8. In *Rajammal v. State of Tamil Nadu and others*, 1999(1) SCC 417, it has been held as follows:

"It is a constitutional obligation of the Government to consider the representation forwarded by the detenu without any delay. Though no period is prescribed by Article 22 of the Constitution for the decision to be taken on the representation, the words "as soon as may be" in clause (5) of Article 22 convey the message that the representation should be considered and disposed of at the earliest."

9. In *K. M. Abdulla Kunhi v. Union of India* (1991) 1 SCC 476, it has been held as follows:

".... it is settled law that there should not be supine indifference, slackness or callous attitude in considering the representation. Any unexplained delay in the disposal of the representation would be breach of the constitutional imperative and it would render the continued detention impermissible and illegal."

10. In *Ummu Sabeena v. State of Kerala*, (2011) 10 SCC 781, the Supreme Court has held that the history of personal liberty, as is well known, is a history of insistence on procedural safeguards. The expression 'as soon as may be', in Article 22 (5) of the Constitution of India, clearly shows the concern of the makers of the Constitution that the representation, made on behalf of detenu, should be considered and disposed of with a sense of urgency and without any avoidable delay.

11. For the foregoing reasons and discussion, the instant petition is disposed of and Detention Order No.DMS/PSA/138/2019 dated 22.11.2019, passed by Deputy Commissioner, Srinagar, is quashed. As a corollary thereof, respondents, including the Jail Superintendent concerned, are directed to set the detenu at liberty forthwith provided he is not required in any other case. Disposed of.

12. Detention record be returned to counsel for respondents.