

(2018) 11 J&K CK 0095

In the Jammu And Kashmir High Court

Case No : Habeas Corpus Petition (HCP) No. 138 Of 2018

**Mushtaq Ahmad Sheikh @APPELLANT@Hash State Of Jammu & Kashmir
And Anr**

Date of Decision : 22-11-2018

Acts Referred:

Jammu And Kashmir Public Safety Act, 1978 — Section 8

Citation : (2018) 11 J&K CK 0095

Hon'ble Judges : Rashid Ali Dar, J

Bench : Single Bench

Advocate : Wajid Haseeb

Final Decision : Allowed

Judgement

1) By virtue of order bearing No.27/DMA/PSA/DET/2018 dated 21.06.2018, passed by respondent No.2-District Magistrate, Anantnag, in exercise of powers conferred under Section 8 of the J&K Public Safety Act, 1978, Mushtaq Ahmad Sheikh S/o Late Ghulam Rasool Sheikh R/o Hallan Verinagh, has been taken into preventive custody and lodged in District Jail, Kathua. Quashment of the said order is sought by medium of instant petition on the grounds mentioned therein.

2) Learned counsel for the petitioner contended that the allegations/grounds of detention are vague and mere assertions. There has been delay in passing the impugned order of detention. Further added that the respondents have violated the procedural safeguards and also ignored to provide material relied upon by the detaining authority while passing the impugned order of detention and thus deprived the detainee of his Constitutional and Statutory rights. Grounds of detention are stated to be vague, baseless, non-existent and unfounded.

3) The respondents, in their counter affidavit, have disputed the averments made in the petition and insisted that the activities of detainee are highly prejudicial to the maintenance of public order. It is pleaded that the detention order and grounds of detention were handed over to the detainee and same were read over and explained to him. The grounds taken by the petitioner are legally misconceived, factually untenable and without any merit. The learned counsel for

the respondents has made available detention records to lend support to the case set up in the counter affidavit.

4) Respondents despite opportunity have not produced the detention records and have also not chosen to appear.

5) Heard learned counsel for the petitioner and also perused the record available on the file.

6) The main plank of argument is that the last alleged activity has occurred in the year 2016 i.e. two years before regarding which FIR Nos.100/2016 and 107/2016 were registered and thereafter no activity has been attributed to the detainee till the passing of impugned order of detention.

7) From the perusal of the grounds of detention it is evident that the last activity, in which allegedly indulged, took place in the year 2016. After a period of two years, the order of detention has been passed on 21.06.2018. Thus, there is inordinate delay in passing the order of detention, which has not been explained by the respondents. The Hon'ble Supreme Court in "Rajinder Arora v. Union of India" (2006) 4 SCC 796, has held:

"21. The question as regards delay in issuing the order of detention has been held to be a valid ground for quashing an order of detention by this court in T. A. Abdul Rahman vs. State of Kerala stating: (SCC pp. 748-49, para 10-11)

"10. The conspectus of the above decisions can be summarized thus: The question whether the prejudicial activities of a person necessitating to pass an order of detention is proximate to the time when the order is made or the live-link between the prejudicial activities and the purpose of detention is snapped depends on the facts and circumstances of each case. No hard-and-fast rule can be precisely formulated that would be applicable under all circumstances and no exhaustive guidelines can be laid down in that behalf. It follows that the test of proximity is not a rigid or mechanical test by merely counting number of months between the offending acts and the order of detention. However, when there is undue and long delay between the prejudicial activities and the passing of detention order, the court has to scrutinize whether the 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 causal connection has been broken in the circumstances of each case.

11. Similarly when there is unsatisfactory and unexplained delay between the date of order of detention and the date of securing the arrest of the detainee. Such a delay would throw considerable doubt on the genuineness of the subjective satisfaction of the detaining authority leading to a legitimate inference that the detaining authority was not really and genuinely satisfied as regards the necessity for detaining the detainee with a view to preventing him from acting in a prejudicial manner."

22. The delay caused in this case in issuing the order of detention has not been explained. In fact, no reason in that behalf whatsoever has been assigned at all."

8) In para 26 "Saeed Zakir Hussain Malik v. State of Maharashtra & Ors" AIR 2012 SC 3235, the Hon'ble Apex Court has held:

"26. As regards the second contention, as rightly pointed out by learned counsel for the appellant, the delay in passing the detention order, namely, after 15 months vitiates the detention itself. The question whether the prejudicial activities of a person necessitating to pass an order of detention is proximate to the time when the order is made or the live-link between the prejudicial activities and the purpose of detention is snapped depends on the facts and circumstances of each case. Though there is no hard and fast rule and no exhaustive guidelines can be laid down in that behalf, however, when there is undue and long delay between the prejudicial activities and the passing of detention order, it is incumbent on the part of the court to scrutinize whether the Detaining Authority has satisfactorily examined such a delay and afforded a reasonable and acceptable explanation as to why such a delay has occasioned."

9) In "Adishwar Jain v. Union of India and another" reported in (2006) 11 SCC 339, the Hon'ble Apex Court has held that "the delay in passing the detention order must be sufficiently explained."

10) In "T. A. Abdul Rahman v. State of Kerala and others "(1989) 4 SCC 741), the Hon'ble Apex Court has held as under:

"10. The question whether the prejudicial activities of a person necessitating to pass an order of detention is proximate to the time when the order is made or the live-link between the prejudicial activities and the purpose of detention is snapped depends on the facts and circumstances of each case. No hard and fast rule can be precisely formulated that would be applicable under all circumstances and no exhaustive guidelines can be laid down in that behalf.

It follows that the test of proximity is not a rigid or mechanical test by merely counting number of months between the offending acts and the order of detention. However, when there is under and long delay between the prejudicial activities and the passing of detention order, the court has to scrutinize whether the detaining authority has satisfactorily examined such a delay and afforded a tenable and reasonable explanation as to how such a delay has occasioned, when called upon to answer and further the court has to investigate whether the causal connection has been broken in the circumstances of each case.

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prejudicial manner".

11) In view of the facts of the present case and the law laid down by the Hon'ble Apex Court as quoted hereinabove, the order of detention impugned does not sustain on above referred grounds, therefore, other grounds projected in the petition are not required to be dealt with.

12) In the backdrop of what has been stated above, the petition is allowed, as a consequence of which, the order of detention bearing No. 27/DMA/PSA/DET/2018 dated 21.06.2018, passed by respondent No.2, quashed. Detenue is directed to be released from the preventive custody forthwith, unless, of course, he not required in any other case.