

(2022) 04 J&K CK 0057

In the Jammu And Kashmir High Court

Case No : Writ Petition (Criminal) No. 226 Of 2021

Sadam Ahmad Lone @ Sadaam

APPELLANT

Vs

UT Of J&K And Ors

RESPONDENT

Date of Decision : 22-04-2022

Acts Referred:

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

Citation : (2022) 04 J&K CK 0057

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

Bench : Single Bench

Advocate : Mian Tufail, Rais Ud Din

Final Decision : Allowed

Judgement

M.A.Chowdhary, J

1. District Magistrate, Ganderbal (hereinafter called 'Detaining Authority') in exercise of powers under Section 8 of the Jammu & Kashmir Public Safety Act, 1978, passed the detention Order No. 03/DMG/PSA/2021 dated 21.10.2021 (for short 'impugned order'), in terms whereof the Petitioner namely Sadam Ahmad Lone @ Sadaam S/O Ghulam Mohammad Lone R/O Gund Mohalla Koreg Tullamulla (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 representation filed against his detention has 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. Copy of the representation having been received by the respondents is 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, Ganderbal that it was necessary with a view to prevent the detenu from acting in any manner prejudicial to the 'security of the UT of J&K ' 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 Union Territory of J&K 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 UT of J&K , as such, the detention of the detenu is legal.

4. With regard to the allegation of non-consideration of the detenu's representation, in the reply affidavit, there is no mention 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. It has been contended on behalf of the petitioner 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 copy thereof as Annexure IV and its receipt. Despite pleading specifically by the petitioner in paras III and IV of para 3 regarding grounds of challenge, respondents except mentioning that the detenu was also informed about his right to submit representation against his detention, has not responded as to whether any representation was filed and how the same was dealt with.

7. On 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 representations 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 2.11.2021 which has been received by the respondents on the same day, the detenu had filed the representation against his detention and the same has not been considered by the respondents till date, inasmuch as, there is no mention with regard to the said representation filed by the respondents either in the counter affidavit or 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 representation against his detention, but the same has 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 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 of the Constitution of India, 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.

11. 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.

12. 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 is a failure of the Government to discharge its function. Therefore, for this reason alone, writ petition must succeed. Accordingly, the writ petition is allowed and the impugned detention order No. 03/DMG/PSA/2021 dated 21.10./2021 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(s) pending against him.

13. Record be returned to the concerned.