
(2005) 09 J&K CK 0024
In the Jammu And Kashmir High Court
Case No : HCW No. 629 Of 2004

Sajad Mehmood	Vs	APPELLANT
State and Others		RESPONDENT

Date of Decision : 29-09-2005

Acts Referred:

Constitution of India, 1950 — Article 22
Public Safety Act, 1978 — Section 13, 8

Citation : (2005) JKJ 594 Supp

Hon'ble Judges : Nirmal Singh, J

Bench : Single Bench

Advocate : Shakoor Malik, B.S.Salathia, Advocates appearing for the Parties

Judgement

1. This petition under Section 103 of the Constitution of J&K State read with Article 226 of the Constitution of India has been filed for quashing detention order No.6/PSA/2003 of 2003 communicated to the petitioner vide letter No. DMR/6670 dated 30.12.2003 and directing the release of the petitioner.

2. Learned counsel for the petitioner has assailed the order of detention on number of grounds, however, he has restricted his submission on the sole ground that the representation submitted by the petitioner has not been decided. It was submitted by learned counsel for the petitioner that the order of detention has been issued without application of mind as the detenu at the time of issuance of the detention order was already in the custody of police in FIR No. 142 of 2003 under Sections 307/120B/121/122/124A RPC registered with Police Station Thannamandi and there was no likelihood of the petitioner being released on bail. It was further contended that in fact the petitioner had not applied for bail, as such, there

was no compelling reason to detain the petitioner. Learned counsel also submitted that no period of detention was shown in the detention order.

3. Respondents have filed counter in which it has been admitted that petitioner was in custody when the order of detention was passed but the detention order was passed, as there was every eventuality of detainee being released on bail. Respondents have not denied the fact of filing of representation by the detainee and its pendency.

4. Respondents were directed to produce the record vide order dated 9.8.2005. Thereafter on 23.9.2005 learned Counsel for the respondents sought time for seeking instructions. But record has not been produced. Mr. B.S. Salathia, learned AAG pointed out that he has informed the respondents that record has to be produced but despite knowledge record has not been produced for the reasons best known to the respondents.

5. The sole contention of the learned counsel for the petitioner is that representation submitted by the detainee has not been decided and it has the effect of violating the constitutional guarantee of earlier disposal of the representation. In *Rama Dhondu Borade v. V.K. Saraf, Commissioner of Police and Ors.*, AIR 1989 SC 1861 the Apex Court has held as under:

The detainee has an independent constitutional right to make his representation under Art. 22(5) of the Constitution. Correspondingly, there is a constitutional mandate commanding the concerned authority to whom the detainee forwards his representation questioning the correctness of the detention order clamped upon him and requesting for his release, to consider the said representation within reasonable dispatch and to dispose the same as expeditiously as possible. This constitutional requirement must be satisfied with respect but if this constitutional imperative is observed in breach, it would amount to negation of the constitutional obligation rendering the continued detention constitutionally impermissible and illegal, since such a breach would defeat the very concept of liberty the highly cherished right which is enshrined in Art. 21 of the Constitution. True, there is no prescribed period either under the provisions of the Constitution or under the concerned detention law i.e. National Security Act, within which the representation should be dealt with. The use of the words "as soon as may be" occurring in Art. 22(5) of the Constitution reflects that the representation should be expeditiously considered and disposed of with due

promptitude and diligence and with a sense of urgency and without avoidable delay. What is reasonable dispatch depends on the facts and circumstances of each case and no hard and fast rule can be laid down in that regard. However, in case the gap between the receipt of the representation and its consideration by the authority is so unreasonably long and the explanation offered by the authority is so unsatisfactory, such delay could vitiate the order of detention.

In *K.D. Shiekh v. District Magistrate Ahmedabad*, AIR 1996 SC, 2998, the Apex Court has held as under:

Turning now to the main question relating to the early disposal of the representation, we may immediately observe that this Court, in a large number of cases, has already laid down the principle in clear and specific terms that the representation has to be disposed of at the earliest and if there has been any delay in the disposal of the representation, the reasons for the delay must be indicated to the Court or else the unexplained delay or unsatisfactory explanation in the disposal of the representation would fatally effect the order of detention and in that situation, continued detention would become bad.

6. Similar proposition came up for consideration before Allahabad High Court in *Sarmister v. Superintendent District Jail Muzaffarnagar and Ors.*, reported as 1999 (1) CCrJ, 601 and their lordships, relying upon a full bench decision of the same Court in *Raj Bhadur Yadav v. State of U.P and Ors.*, held as under:

In view of the clear mandate of law requiring all the concerned Authorities, the Advisory Board, the appropriate Government and the Central Government, before whom the detenu is entitled to plead/represent for revocation/modification of the detention order should act with promptitude and reasonable dispatch no distinction can be made while judging the matter of delay on the part of the State Government (appropriate Government or the Central Government. It needs no emphasis that in dealing with a matter of personal liberty of a citizen the authority, whether it is specifically required by a provision under the Act or not, should act with utmost promptitude in disposing of the representation.

7. From a bare reading of the counter affidavit filed by the respondents it is clear that the respondents have not denied in clear terms the filing of

representation by the detainee nor respondents have stated anything regarding the disposal of the representation. When the representation is not

decided expeditiously it causes serious prejudice to the detainee. That being so, the valuable right guaranteed under Art. 22 of the Constitution of

India read with Section 13 of Jammu and Kashmir Public Safety Act, has been violated, therefore, the detention becomes illegal and bad in law.

8. For the above reasons this petition is allowed and the order of detention bearing Order No.6/PSA/2003 of 2003 communicated to the

petitioner vide letter No. DMR/6670 dated 30.12.2003, issued by District Magistrate, Rajouri, is quashed. Respondents are directed to release

the detainee, namely, Sajad Mehmood S/O Bashir Ahmed R/O Rajdhani tehsil Thanamandi District Rajouri, from the preventive detention

forthwith, provided he is not required in any substantive offence(s).