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[Preventive Detention] Satisfaction Of Detaining Authority Must Be Based On Collective Scrutiny Of Police Dossier & Connected Docs: J&K&L High Court

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HIGH COURT OF JAMMU & KASHMIR AND LADAKH AT SRINAGAR
WASIM SADIQ NARGAL; J.
WP (Crl) No. 127/2022; 07.11.2022
Sajad Ahmad Bhat *versus* **UT of J&K and Anr.**

Appellant(s)/Petitioner(s) through: Mr. Aamir Dar, Advocate.

Respondent(s) through: Mr. Asif Maqbool, DAG.

JUDGMENT

01. The present writ petition has been filed by the detenue, through his father challenging the legality and validity of the detention order No. 15/DMP/PSA/20 dated 13.07.2020 issued by respondent No. 2, whereby the detenue has been detained under section 8 of the J&K Public Safety Act, 1978. Besides, the petitioner has sought Writ of Mandamus commanding the respondents to release the detenue, namely, Sajad Ahmad Bhat S/o Ghulam Nabi Bhat, R/o Mandakpal Khrew, Pampore, Pulwama, J&K.

02. The petitioner has contended that the Detaining Authority has passed the dentition order mechanically without application of mind inasmuch as the Constitutional and Statutory procedural safeguards have not been complied with in the instant case.

03. It has been further contended that the detenue was arrested by the Security Forces without any justification and was picked from his home and was detained under Public Safety Act (PSA) and lodged in Central Jail, Srinagar. The further case of the detenue is that on 06.05.2020, an FIR No. 17/2020 for commission of offences under sections 147, 148, 336 and 427 IPC was registered by the Police of Police Station, Khrew and the detenue was arrested in connection with the said FIR. He was apprehended and subsequently bailed out as the offences were bailable in nature.

04. The detention order bearing No. 15/DMA/PSA/20 dated 13.07.2020, issued by respondent No. 2, has been impugned by the detenue, through his father, *inter alia* on the grounds :-

I. That the detention order has been passed without due application of mind, the petitioner further submits that the case mentioned in the grounds of detention has no nexus with the detenue and has been fabricated by the police to justify its illegal act of detaining the detenue. The impugned order refers to one FIR, but it does not specify any specific allegation against the detenue and it does not show how the detenue was involved in the case. It is a case where due to insufficient grounds of detention, the detaining authority has ordered detention under open FIR without considering the matter that the detenue had been already bailed out by the Court of Competent Jurisdiction and without applying its mind. The detention order states that the detenue is ***„indulging in instigating and provoking people particularly youth of the area to continue undesirable activities and keep on disturbing the peace and tranquility in the area'.*** *There is nothing in the detention order that discloses the basis of the aforementioned assertions. These are mere allegations without any proof made to justify an illegal detention. On this count, the impugned order deserves to be quashed.*

II. The detenue was granted bail in the FIR and hence the detention is not justified.

III. That the respondents have not acted upon the Impugned detention order and after a gap of almost two years have apprehended the detenue in pursuance of the impugned detention order and hence the detention is not Justified in the eyes of law.

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IV. That the detenue has not been convicted by any court for any offences alleged by the respondents in the concerned FIR. Without there being a single conviction, the detenue has been booked under the preventive detention law in a casual manner.

V. That the allegations/grounds of detention are vague and mere assertions of the detaining authority and no prudent man can make an effective representation against these allegations and can only be defended in a court of law. The petitioner further submits that the case mentioned in the grounds of detention have no nexus with the detenue and has been fabricated by the police in order to justify its illegal action of detaining the detenue. On this ground the detention order in question is bad in law and deserves to be quashed. Despite said fact the detenue has already forwarded a representation to the government and the same has not been decided or even considered.

VI. That the detenue was not informed that within what time frame he can make a representation against his detention order to the detaining authority or to the respondent no. 1, which is in total violation of the rights of the detenue as guaranteed under Article 22 of the constitution. On this ground also, the order passed by the Respondent No.2 is bad in law and deserves to be quashed.

VII. That the detenue has not been produced before the Advisory Board and no opportunity of being heard has been ever provided to the detenue by the said advisory Board nor opined about his continuous detention.

VIII. That the grounds of this detention were never explained to the detenue in his local language which he could have understood.

05. It has been contended by the learned counsel by the petitioner that the respondents have acted upon the impugned order after a gap of 02 years and, thus, there is a delay in execution which renders the order impugned as bad in the eyes of law and liable to be quashed.

06. Learned counsel for the petitioner vehemently argued that one solitary incident and registration of an FIR in which, the detenue has granted bail cannot be a basis for detaining the detenue and the basis for issuing the order of detention is registration of an FIR.

07. The main plank of the argument of the learned counsel for the petitioner is that the order impugned in para 01 specifically reflects that Senior Superintendant of Police (SSP), Awantipora has produced material record, such as dossier and other connected documents and in para 02 of the order of detention dated 13.07.2020, it has been specifically reflected that the District Magistrate has simply perused the contents and recommendations mentioned in the **dossier only** and has **not seen the other connected documents** while passing the order of detention, which clearly proves beyond any shadow of doubt that it is totally non-application of mind and all the material has not been gone in detail while passing the order of detention, which vitiates the same and liable to set aside.

08. It has further been urged by the learned counsel for the petitioner that all the material has not been taken into consideration by the Detaining Authority while passing the order of detention, accordingly, the detenue has been denied of effective representation, which is in violation of section 13(1) of the Public Safety Act (PSA), 1978

09. *Per contra*, the learned counsel for the respondents has argued that the activities of the detenue have been found to be prejudicial to the maintenance of public order. The detention of the detenue was recommended by the Police and in support of the same, the concerned SSP has submitted a dossier supported by relevant material and the Detaining Authority after applying its mind and arriving at a subjective satisfaction found that it was

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necessary to detain the detenue, with the ultimate aim to prevent him from acting in any manner prejudicial to the public order, as such, he was detained by virtue of the impugned order.

10. It is further submitted by the respondents that after detaining the detenue, the entire record was served upon him and was also informed about his right to submit representation against his detention and grounds which have been urged by the petitioner are highly misconceived, untenable and without any merit. It is the specific stand of the respondents that the grounds of detention reflected in the order of detention are precise, proximate, pertinent and relevant. The incidents substantiate the subjective satisfaction arrived at by the answering respondents, and the order gives a complete picture of the activities of the detenue.

11. The learned counsel for the respondents further submits that the impugned order has been passed by the Detaining Authority after complete independent application of mind to the facts and circumstances of the case and after perusing the dossier furnished by the police concerned supported by record/material. After due application of mind and perusing the record, it was found that the activities of the detenue were highly prejudicial to the maintenance of public order, and therefore, he was detained strictly in accordance with the provisions of Public Safety Act (PSA), 1978.

12. It is further submitted by the respondents that the adequacy of the material relied upon by the detaining authority, is not open to judicial review. The detenue had been evading his arrest from the order of detention, the warrant was executed and detenue taken into preventive custody after the contents of warrants were read over and explained to him, in lieu of which the detenue put his signatures on the executed copy of warrant. He was also informed about his right to file representation and, thus, the order is legal, justified and good in the eyes of law.

13. I have heard the learned counsel for the parties and perused the record.

<u>LEGAL ANALYSIS:</u>

14. The order impugned is a classic example of total non-application of mind by the detaining authority as the grounds of detention are reproduction of the contents of the dossier.

15. I have perused the detention record supplied to me by the learned counsel for the respondents and I have no hesitation in holding that the grounds of detention are replica of the dossier with interchange of some words here and there, which exhibits total non-application of mind by the Detaining Authority and in the process, arriving at **subjective satisfaction has become a causality** which is pre-requisite for passing the detention order. It was incumbent on part of Detaining Authority to have applied its mind independently after going through all the material supplied to him should have arrived at a conclusion. But in the present case, the detaining authority has passed the order in a casual manner as the grounds of detention are replica of the grounds mentioned in the dossier. While formulating the grounds of detention, the Detaining Authority has to apply its own mind independently after arriving at a subjective satisfaction and the Detaining Authority cannot simply reiterate whatever is written in the dossier.

16. I am fortified by the observations of the Hon'ble Supreme Court in the case of **"Jai Singh and Ors. Vs. State of J&K" (AIR 1985 SC 764)**, which are reproduced as under:

"First taking up the case of Jai Singh, the first of the petitioners before us, a perusal of the grounds of detention shows that it is a verbatim reproduction of the dossier submitted by

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the Senior Superintendent of Police, Udhampur, to the District Magistrate requesting that a detention order may kindly be issued. At the top of the dossier, the name is mentioned as Sardar Jai Singh, father"s name is mentioned as Sardar Ram Singh and the address is given as village Bharakh, Tehsil Reasi. Thereafter it is recited "The subject is an important member of ...."

Thereafter follow various allegations against Jai Singh, paragraph by paragraph. In the grounds of detention, all that the District Magistrate has done is to change the first three words "the subject is" into "you Jai Singh, S/o Ram Singh, resident of village Bharakh, Tehsil Reasi". Thereafter word for word the police dossier is repeated and the word "he" wherever it occurs referring to Jai Singh in the dossier is changed into „you" in the grounds of detention. We are afraid it is difficult to find proof of non- application of mind. The liberty of a subject is a serious matter and is not to be trifled with in this casual, indifferent and routine manner.

17. In another case, titled **"Noor-ud-Din Shah v. State of J&K & Ors." 1989 SLJ 1**, this Court quashed the detention order, which was only a reproduction of the Dossier supplied to the detaining authority on the ground that it amounted to non-application of mind. The Court observed as under:

"I have thoroughly by examined the dossier submitted by the Superintendent of Police, Anantnag, to District Magistrate, Anantnag as also the grounds of detention formulated by the latter for the detention of the detenue in the present case, and I find the said grounds of detention are nothing but the verbatim reproduction of the dossier as forwarded by the Police to the detaining authority. He has only changed the number of paragraphs, trying in vain to give it a different shape. This is in fact a case of non-application of mind on the detaining authority. Without applying his own mind to the facts of the case, he has acted as an agent of the police. It was his legal duty to find out if the allegations leveled by the police against the detenue in the dossier were really going to effect the maintenance of public order, as a result of the activities, allegedly, committed by him. He had also to find out whether such activities were going to affect the public order is future also as a result of which it was necessary to detain the detenue, so as to prevent him from doing so. After all, the preventive detention envisaged under the Act is in fact only to prevent a person from acting in any manner which may be prejudicial to the maintenance of public order, and not to punish him for his past penal acts. The learned District Magistrate appears to have passed the impugned order in a routine manner being in different to the import of preventive detention as or detained in the Act, Passing of an order without application of mind goes to the root of its validity, and in that case, the question of going into the genuineness or otherwise of the grounds does not arise. Having found that the detaining authority has not applied his mind to the facts of the case while passing the impugned order, it is not necessary to go to the merits of the grounds of detention, as mandated by Section 10-A of the Act."

18. In **Ghulam Mohammad Payer V/s State and Another 2022(11) SLJ 660** this Court in para 6 held as under:-

"Contents of the order impugned are suggestive of the fact that the Detaining Authority (respondent No.2) has in huff recorded the order. In the order respondent No. 2 has recorded that he has gone through the contents of the dossier which shows that he has not gone through the material forming base for such dossier. Furthermore, it is recorded that the detenue be detained lodged in Kothbhalwal, jail for a period of one year."

19. Thus, applying the ratio of aforesaid cases and after going through the record, it is abundantly clear that the dossier and the grounds of detention contain almost similar wording which shows that there has been total non- application of mind on the part of the

Detaining Authority, therefore, detention order cannot sustain the test of law and liable to be quashed.

20. Besides, no consideration/weightage has been given to the fact that the detenue was already granted bail and, in such a case, the respondents ought to have exercised their right to seek cancellation of the bail or approached higher forum if there was any alleged violation of the conditions of the bail or activities of the detenue was prejudicial to the interest of the State as alleged by the respondents. The respondents have not availed the said remedy and instead issued the order of detention. But such detention cannot be made a substitute for the ordinary law and absolve the investigating authorities of their normal functions of investigating crimes which the detenue may have committed.

21. Preventive detention cannot be used as an instrument to keep a person in perpetual custody without trial. The offences alleged to have been committed by the detenue were such as to attract punishment under the prevailing laws, but that had to be done under the said prevalent laws and taking recourse to preventive detention laws in the present case was not warranted. Detention cannot be made a substitute for ordinary law and absolve investigating authorities of their normal functions of investigating crimes, which detenue may have committed.

22. **In "Ramesh Yadav Vs. District Magistrate, Etah and Ors." (1985) 4 SCC 232** the Hon'ble Supreme Court has observed as follows:

"6. On a reading of the grounds, particularly the paragraph which we have extracted above, it is clear that the order of detention was passed as the detaining authority was apprehensive that in case the detenue was released on bail he would again carry on his criminal activities in the area. ***If the apprehension of the detaining authority was true, the bail application had to be opposed and in case bail was granted, challenge against that order in the higher forum had to be raised****. Merely on the ground that an accused in detention as an under trial prisoner was likely to get bail an order of detention under the National Security Act should not ordinarily be passed."*

23. In an identical case, the Hon'ble **Supreme Court in case titled Vijay Narian Singh Vs State of Bihar & Ors (1984 3 SCC 14),** has held as under:

"When a person is enlarged on bail by a competent criminal court, great caution should be exercised scrutinizing the validity of an order of preventive detention which is based on the very same charge which is to be tried by the Criminal Court."

24. In **Abdul Rashid Lone Vs state of J&K and others, 2010 (4) JKJ 554** the Hon'ble Court held has under:

"If the petitioner is found disturbing law and order of misusing the bail granted to him the authorities would be at liberty to move the appropriate court to get the bail orders cancelled. One does not know how the detaining authority would have acted if was made aware of the above details.

25. It is not borne from the record whether the Detaining Authority while arriving at a subjective satisfaction has given due weightage to the factum of the detenue being bailed out with regard to the alleged offences under sections 147, 148, 336 and 427 IPC mentioned in FIR No. 17/2020 which were bailable in nature. It is also not borne from the record whether the FIR, bail order and other relevant material has been perused by the Detaining Authority while passing the detention order as the order of detention reflects that the District Magistrate, Pulwama has perused the contents and recommendation mentioned in the **dossier, only**.

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26. I am fortified by the view taken by the Hon'ble Supreme Court in **"Rushikesh Tanaji Bhoite vs. State of Maharashtra & Ors." Reported in (2012) 2 SCC 72** wherein the Apex Court observed that:

"9. In a case where detenue is released on bail and is enjoying his freedom under the order of the court at the time of passing the order of detention, then such order of bail, in our opinion, must be placed before the detaining authority to enable him to reach at the proper satisfaction."

"10. We cannot attempt to assess in what manner and to what extent consideration of the order granting bail to the detenue would have effected the satisfaction of the detaining authority but suffice it to say that non-placing and non-consideration of the material as vital as the bail order has vitiated the subjective decision of the detaining authority."

27. In the grounds of the dentition, it has been specifically mentioned that the detenue has pelted stones on the police party while passing through Sharshali Haj Mohalla, Khrew and thereby, they were prevented from discharging their lawful duties regarding which FIR No. 17/2020 was registered under section 147, 148, 336 and 427 IPC in Police Station, Khrew in which he has been granted bail.

28. Besides, it has also been reflected in the grounds of dentition that the detenue met with some chronic stone pelters, criminals on whose motivation he agreed to carry on activities prejudicial to the maintenance of peace, public order and tranquility in the area without specifying the details of the persons and the exact date on which he met with the so called chronic stone pelters. In absence of the material supporting the aforesaid allegations or specifying details of such incident, it cannot be held that his activities are prejudicial to the maintenance of peace, public order and tranquility nor there is any whisper in the record substantiating these vague allegations.

29. Thus, all these allegations leveled in the grounds of detention are vague without any substance and basis and cannot be relied upon while upholding the order of detention as the Detaining Authority has not arrived at the subjective satisfaction on objective basis before passing the impugned order.

30. Since no particular incident, event or details have been reflected in the grounds of detention which is the basis for passing the impugned order, accordingly, the detenue has been denied of effective representation as the detenue is not aware of the material which has been applied against him while passing the order impugned.

31. The Constitution Bench of the Supreme Court, more than six decades ago, has interpreted Article 22(5) of the Constitution in **Dr Ram Krishan Bhardwaj v. The State of Delhi and others, 1953 SCR 708** , observed as under:-

".......Preventive detention is a serious invasion of personal liberty and such meager safeguards as the Constitution has provided against the improper exercise of the power must be jealously watched and enforced by the Court. In this case, the petitioner has the right, under article 22(5), as interpreted by this Court by majority, to be furnished with particulars of the grounds of his detention "sufficient to enable him to make a representation which on being considered may give relief to him." We are of opinion that this constitutional requirement must be satisfied with respect to each of the grounds communicated to the person detained, subject of course to a claim of privilege under clause (6) of article 22. That not having been done in regard to the ground mentioned in subparagraph (e) of paragraph 2 of the statement of grounds, the petitioner's detention cannot be held to be in accordance with the procedure established by law within the meaning of article 21. The petitioner is therefore entitled to be released and we accordingly direct him to be set at liberty forthwith."

32. In **Shalini Soni (Smt.) & Others v. Union of India and Others, (1980) 4 SCC 544** it was aptly observed that the accused must have proper opportunity of making an effective representation. The Court observed thus:

"...Communication of the grounds presupposes the formulation of the grounds and formulation of the grounds requires and ensures the application of the mind of the detaining authority to the facts and materials before it, that is to say to pertinent and proximate matters in regard to each individual case and excludes the elements of arbitrariness and automatism (if one may be permitted to use the word to describe a mechanical reaction without a conscious application of the mind). It is an unwritten rule of the law, constitutional and administrative, that whenever a decision making function is entrusted to the subjective satisfaction of a statutory functionary, there is an implicit obligation to apply his mind to pertinent and proximate matters only eschewing the irrelevant and the remote. Where there is further an express statutory obligation to communicate not merely the decision but the grounds on which the decision is founded, It is a necessary corollary that the grounds communicated, that is, the grounds so made known, should be seen to pertain to pertinent and proximate matters and should comprise all the constituent facts and materials that went in to make up the mind of the statutory functionary and not merely the inferential conclusions. Now, the decision to detain a person depends on the subjective satisfaction of the detaining authority. ***The Constitution and the statute cast a duty on the detaining authority to communicate the grounds of detention to the detenu.*** *From what we have said above,* ***it follows that the grounds communicated to the detenu must reveal the whole of the factual material considered by the detaining authority and not merely the inferences of fact arrived at by the detaining authority.*** *The matter may also be looked at from the point of view of the second facet of Article 22(5).* ***An opportunity to make a representation against the order of detention necessarily implies that the detenu is informed of all that has been taken into account against him in arriving at the decision to detain him. It means that the detenu is to be informed not merely, as we said, of the inferences of fact but of all the factual material which have led to the inferences of fact. If the detenu is not to be so informed the opportunity so solemnly guaranteed by the Constitution becomes reduced to an exercise in futility.*** *Whatever angle from which the question is looked at, it is dear that "grounds" in Article 22(5) do not mean mere factual inferences but mean factual inferences plus factual material which led to such factual inferences. The 'grounds' must be self sufficient and self explanatory. In our view copies of documents to which reference is made in the 'grounds' must be supplied to the detenu as part of the 'grounds."*

33. The Hon'ble Supreme Court in **Khudiram Das v. State of West Bengal and others, (1975) 2 SCC 81** has observed that Article 22(5) insists that all basic facts and particulars which influenced detaining authority in arriving at subjective satisfaction leading to passing of order of detention, must be communicated to detenue. Para 13 of said judgment is reproduced hereunder:

"....... Section 8(1) of the Act, which merely re-enacts the constitutional requirements of Article 22 (5), insists that all basic facts and particulars which influenced the detaining authority in arriving at the requisite satisfaction leading to the making of the order of detention must be communicated to the detenu , so that the detenu may have an opportunity of making an effective representation against the order of detention. It is, therefore, not only the right of the Court, but also its duty as well, to examine what are the basic facts and materials which actually and in fact weighed with the detaining authority in reaching the requisite satisfaction. The judicial scrutiny cannot be foreclosed by a mere statement of the detaining authority that it has taken into account only certain basic facts and materials and though other basic facts and materials were before it, it has not allowed them to influence its satisfaction. The Court is entitled to examine the correctness of this statement and determine for itself whether there were any other basic facts or materials, apart from those admitted by it, which could have reasonably influenced the decision of the detaining authority and for that purpose, the Court can certainly require the detaining

authority to produce and make available to the Court the entire record of the case which was before it. That is the least the Court can do to ensure observance of the requirements of law by the detaining authority."

34. In **Ganga Ramchand Bharvani v. Under Secretary to the Government of Maharashtra and others**, reported in **(1980) 4 SCC 624**, the Hon'ble Supreme Court observed at paragraph 16 in the following terms:

"The mere fact that the grounds of detention served on the detenu are elaborate, does not absolve the detaining authority from its constitutional responsibility to supply all the basic facts and materials relied upon in the grounds to the detenu. In the instant case, the grounds contain only the substance of the statements, while the detenu had asked for copies of the full text of those statements. It is submitted by the learned Counsel for the petitioner that in the absence of the full texts of these statements which had been referred to and relied upon in the grounds 'of detention', the detenus could not make an effective representation and there is disobedience of the second constitutional imperative pointed out in Khudiram's case. There is merit in this submission."

35. Except general statements, there is no material on record which shows that the detenue is acting is such a manner, which is dangerous to the public order. The solitary incident in the present case in which he has already been granted bail is not enough to curtail the personal liberty of the detenue by passing the order impugned.

36. The reliance is placed upon the observations made by this Court in a reported judgment in the case **"Sohanlal Surajaram Visnoi Vs. State of Gujarat", reported in 2004 (2) GLR 1051,** wherein para 07 the Court has observed as under:-

"7. At the outset, it may be noted that the contention advanced on behalf of the petitioners that no preventive detention order can be recorded in a solitary incident or instance or offence cannot be accepted in toto. The detaining authority can pass the order of detention even on the basis of a solitary incident or instance, provided there is justifiable subjective satisfaction on objective material and consideration that such incident or offence is likely to create disturbance of "public order", and which needs to be controlled and curbed preventively. There must be convincing reasons and justifiable material that the impugned activity or action is likely to cause adverse and prejudicial impact on the maintenance of "public order". Emphasis is laid on "public order" and not "law and order" which belongs to the realm of general law. After having taken into account the statutory definitions of the persons branded as "bootlegger" or "dangerous person" under the PASA Act, and detailed factual matrix of each case, the solitary incident or instance in question in these petitions has not been shown or spelt out from the record as affecting the "public order" or likely to create public disturbance or prejudicial or adverse to the maintenance of "public order", and therefore, the continued detention of the detenus in each case has not been shown to be justifiable, and in this context, in exercise of the powers under Article 226 of the Constitution of India, this Court is left with no alternative in this group of petitions, but to quash and set aside the orders in each matter, with the result that all the petitions are required to be allowed while quashing and setting aside the detention orders passed against detenus in this group. The view which this Court has taken in this group of petitions is also reinforced by the observations and directions contained in the latest decision of the Hon'ble Supreme Court in the case of Darpan Kumar Sharma alias Dharban Kumar Sharma Dharaben Kumar Sharma v. State of Tamilnadu and others, reported in (2003)2 SCC 313."

37. The allegations leveled in the order of detention is an off-shoot of registration of an FIR in which the detenue has yet to be tried and has been released on bail. The allegations leveled in the said FIR cannot be the basis for issuing the order impugned.

38. I am fortified by the view taken by Bombay High Court in **Lalookhan Haideralikhan vs. M.M. Kamble, (1996 Crl.LJ 801)** which has held as under:

"According to the show cause notice, these instances are sufficient to attract the provisions of Section 110(a) of the Code. The notice does not say that the crimes registered against the petitioner at Sr. Nos. (ii) and (iii) ended in his conviction. S. 110(a) can only be attracted when a person is proved by habit a robber, house-breaker, thief or forgerer by habit or a receiver of stolen property. The proof will only be available after the petitioner is found guilty of the charge leveled against him. This is not the case of respondent No.2 that the charges leveled against the petitioner as contained in (ii) and (iii) of the show cause notice have been proved at the trial. The object of the proceedings under this section is prevention and not punishment for offences. The drastic measure cannot be taken against the petitioner till the charge leveled against him is proved. On the admitted facts action under Section 110(a) of the Code on the basis of the grounds at Sr. Nos. (ii) and (iii) of the show cause notice is unwarranted. The show cause notice does not fall within the purview of Section 110(a) of the Code."

39. On the perusal of the detention record produced by the learned counsel for the respondents, the ground projected regarding vagueness of the averments made in the grounds of detention, appears to be forceful. There is no mention of the particulars of the place, the identity of the persons alleged to have received support of the detenue and the particulars of the period in the grounds of detention. These grounds, being vague and lacking in material particulars, as such, the detenue could not make an effective representation against his detention, on the basis of these vague allegations. Thus, there has been violation of constitutional guarantees envisaged under Article 22(5) of the Constitution. Thus, the detention order is illegal and unsustainable. In my aforesaid view, I am fortified by the judgments of the Supreme Court in the case of **Jahangirkhan FazalKhan Pathan vs. Police Commissioner, Ahmadabad, (1989) 3 SCC 590, Abdul Razak Nanekhan Pathan v. Police Commissioner, Ahmadabad, AIR 1989 SC 2265.**

40. Admittedly, the dentition order was issued way back on **13.07.2020** and was approved on **21.07.2020** but the same was executed on **19.03.2022** and the date of receipt of the grounds of detention is **19.03.2022**. Since there is delay of almost 02 years in executing the order of detention and the respondents have failed to explain satisfactorily the delay in executing the dentition order and, accordingly, in the present case, the subjective satisfaction gets vitiated.

41. I am fortified by the view taken by the Hon'ble Supreme Court in **A. Mohammed Farook vs. Jt. Secy. To Government of India (2000) 2 SCC 360.**

"09. There is catena of judgments on this topic rendered by this Court wherein this Court emphasized that the detaining authority must explain satisfactorily the inordinate delay in executing the detention order otherwise the subjective satisfaction gets vitiated. Since the law is well settled in this behalf we do not propose to refer to other judgments which were brought to our notice.

10. As indicated earlier the only explanation given by the detaining authority as regards the delay of40 days in executing the detention order is that despite their efforts the petitioner could not be located at his residence or in his office and therefore the order could not be executed immediately. No report from the executing agency was filed before us to indicate as to what steps were taken by the executing agency to serve the detention order. In the absence of any satisfactory explanation explaining the delay of 4o days, we are of the opinion that the detention order must stand vitiated by reason of non execution thereof within a reasonable 5 time. From Annexure P,2 (the proceeding sheet of the M.M. Court Madras) it appears that the petitioner (accused) was present in the court of

Additional Chief Metropolitan Magistrate on 25.2.1999 as well on 25.3.1999. Despite such opportunities neither the detaining authority nor the executing agency as well as sponsoring authority were diligent to serve the detention order on the petitioner at the earliest. In this view of the matter, we are of the opinion that the subjective satisfaction of the detaining authority in issuing detention order dated February 25, 1999 is vitiated It is in these circumstances it is not possible for us to sustain the 20 detention order."

42. In **P. U. Iqbal vs. Union of India and Ors. (1992) 1 SCC 434** the Hon'ble Supreme Court has held as under:-

"14. Now, there can be no doubt--and the law on this point must be regarded as well settled by these two decisions--that if there is unreasonable delay between the date of the order of detention and the date of arrest of the detenu, such delay, unless satisfactorily explained, would throw considerable doubt on the genuineness of the subjective satisfaction of the District Magistrate and it would be a legitimate inference to draw that the District Magistrate was not really and genuinely satisfied as regards the necessity for detaining the petitioner."

15. Chinnappa Reddy, J. speaking for the Bench in Bhawarlal Ganeshmalji v. State of Tamil Nadu has explained as follow:

It is further true that there must be a „live and proximate link' between the grounds of detention alleged by the detaining authority and the avowed purpose of detention namely the prevention of smuggling activities. We may in appropriate cases assume that the link is 'snapped' if there is a long and unexplained delay between the date of the order of detention and the arrest of the detenu. In such a case, we may strike down an order of detention unless the grounds indicate a fresh application of the mind of the detaining authority to the new situation and the changed circumstances. But where the delay is not only adequately explained but is found to be the result of the recalcitrant or refractory conduct of the detenu in evading arrest, there is warrant to consider the 'link' not snapped but strengthened.

18. It is manifestly clear from a conspectus of the above decisions of this Court, that the law promulgated on this aspect is that if there is unreasonable delay between the date of the order of detention and the date of arrest of the detenu, 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 the detention and the purpose of detention is snapped in arresting the detenu. A question whether the delay is unreasonable and stands unexplained depends on the facts and circumstances of each case."

43. For the reasons aforementioned, the present petition is allowed. The impugned order of detention bearing No. 15/DMP/PSA/20 dated 13.07.2020 issued by respondent No. 2 – District Magistrate, Pulwama, is set aside/quashed. The detenue, namely, Sajad Ahmad Bhat S/o Ghulam Nabi Bhat, R/o Mandakpal Khrew, Pampore, Pulwama, J&K, is ordered to be released from the preventive custody forthwith provided he is not required in connection with any other case(s).

44. ***Disposed of***, accordingly.

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