

**HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT SRINAGAR**

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WP(Crl) No.244/2022

*Reserved on: 14.02.2023
Pronounced on: 28.02.2023*

Arif Ahmad KhanPetitioner(s)
Through: Mr. Mir Suhail, Advocate

Versus

U.T.of J&K and Anr.Respondent(s)
Through: Mr. Faheem Nissar Shah, GA

CORAM:

HON'BLE MR JUSTICE VINOD CHATTERJI KOUL, JUDGE

JUDGEMENT

1. Through the medium of this writ petition, petitioner prays for quashment of detention Order No.15/DMA/PSA/DET/2022 dated 10.04.2022, passed by District Magistrate, Anantnag, whereby detenu, namely, *Arif Ahmad Khan S/o Farooq Ahmad Khan R/o Ahad-Gool Akad, at present Mandergund Sakas District Anantnag*, has been placed under preventive detention with a view to prevent him from acting in any manner prejudicial to security of the State, on the grounds made mention of therein.

2. Learned counsel for petitioner has stated 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. He has vehemently argued that a representation was made by father of detenu to respondents for releasing detenu, yet the same was neither considered and decided by respondents nor detenu was produced before Advisory Board for providing him an opportunity of being heard so that he could explain to the members of the Board that detenu is innocent and his order of detention deserves to be revoked and he be set at liberty. He also states that detenu has never associated himself with any terrorist organisation and has also no connection with any terrorist organisation and he has never acted on the directions and

signals of any persons whether inside or outside the Union Territory and that the detenu has never provided any logistic support or transported any arms of any person from one place to another and the detenu is not an OGW and is not in touch with any organisation and has not been taking any instruction from any person. It is also averred that grounds of detention are replica of dossier and unequivocally reflects and shows 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.

3. Respondents have filed reply affidavit, insisting therein that the activities indulged in by detenu are prejudicial to the security of the State, 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. It is insisted that all the relevant material, which has been relied upon by the detaining authority, was provided to the detenu at the time of execution of warrant.

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 submission that has been strenuously urged by learned counsel for petitioner and is also made mention of in the petition, is that representation having been filed by detenu through his father has not been considered by respondents. Perusal of the detention record does not reveal or indicate anything with regard to receipt or consideration of the representation. It is thus, evident from the pleadings of the respondents as well as detention record that the representation submitted on behalf of the detenu has not been considered by the respondents so far. Admittedly, a representation, placed on file, has been filed against detention on 26.04.2022 before the detaining authority and the same has not been considered till date inasmuch as there is no mention in the Reply as to the said representation having been made by the father of the detenu. Thus, 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.

6. 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.”

7. In *K. M. Abdulla Kunhi v. Unio 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.”

8. 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.

9. It is pertinent to mention here that perusal of grounds of detention reveals that the same are replica of dossier with interplay of some words here and there. This, thus, portrays non-application of mind and in the process of deriving of subjective satisfaction, has become causality. While formulating grounds of detention, detaining authority has to apply its own mind. It cannot simply reiterate whatever is written in the dossier. Here it will be apt to notice the observations of the Supreme Court in the case of *“Jai Singh and ors vs. State of J&K” (AIR 1985 SC 764)*, which are reproduced hereunder:

“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

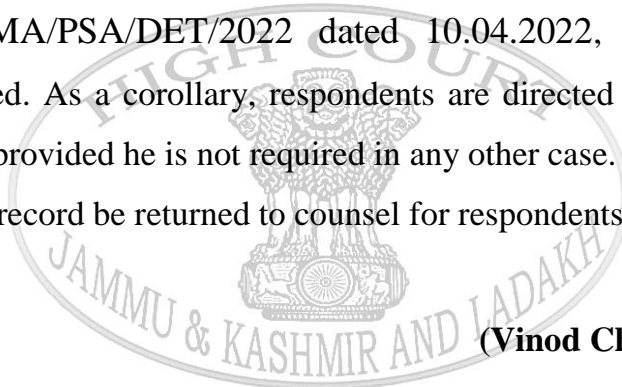
the dossier submitted by the Senior Superintendent of Police, Udhampur, to the District Magistrate requesting that a detention order may kindly be issued. At the top of the dossier, the name is mentioned as Sardar Jai Singh, father's name is mentioned as Sardar Ram Singh and the address is given as village 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."

10. From above settled position of law, it is crystal clear that grounds of detention and dossier, if in similar language, go on to show that there has been non-application of mind on the part of detaining authority. As already noted, in the instant case, it is clear from the record that the dossier and the grounds of detention contain almost similar wording which shows that there has been non-application of mind on the part of the detaining authority. The impugned order of detention is, therefore, unsustainable in law on this ground alone.

11. In such circumstances, in view of the decisions cited supra, the Detention Order No.15/DMA/PSA/DET/2022 dated 10.04.2022, issued against the detenu is quashed. As a corollary, respondents 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.



(Vinod Chatterji Koul)
Judge

Srinagar
28.02.2022
(Qazi Amjad Secy.)

Whether approved for reporting? Yes