

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

Reserved on: 02.11.2023
Pronounced on: 02.12.2023

WP (Crl) No. 51/2023

1. Bari Shah, age 52 years S/o Sh. Gulzar Shah R/o Village Dalyote, Tehsil Kalakote, District Rajouri.Appellant(s)/Petitioner(s)

Through: Mr. Ashok Sharma, Advocate

Vs

- Respondent(s)
1. Union Territory of J&K through Commissioner Secretary to Government, Department of Home, J&K Government, Civil Secretariat, Jammu/Srinagar.
2. District Magistrate, Rajouri.
3. Senior Superintendent of Police, Rajouri.

Through: Mr. Bhanu Jasrotia, GA

Coram: HON'BLE MR. JUSTICE RAJNESH OSWAL, JUDGE

JUDGMENT

1. The petitioner has filed the present petition for quashing the order No. DMR/INDEX-02 dated 11.04.2023 issued by the respondent No. 2, whereby the petitioner has been detained under Section 8 of the J&K Public Safety Act, 1978 (for short "the Act") as his activities have been found to be prejudicial to the maintenance of public order in the District Rajouri.

2. The order of detention has been impugned by the petitioner on the ground that the FIRs referred in the order of detention do not relate to the offences pertaining to disturbance of public order and the four out of six cases arising out of FIRs as mentioned in the order of detention, stand already disposed of. It is also urged that no material relied upon by the detaining authority while issuing the order of detention was provided to the petitioner, thereby depriving the petitioner of his right to make a representation against his detention. It is also averred that the order of detention suffers from non application of mind on the part of the detaining authority and further it has not been passed in accordance with the procedure prescribed under law.
3. The respondents have filed their response stating therein that the petitioner is a notorious criminal and various FIRs stand already registered against him. Taking into consideration the criminal antecedents as well as activities of the petitioner, the order of detention was issued by respondent No. 2. The petitioner has involved himself in criminal anti-social activities including repeated attempts of bovine smuggling from Rajouri District to Kashmir Valley, thereby offending the sentiments of particular religious community and as the acts of the petitioner were considered to be prejudicial to the maintenance of law and order in the District, the order of detention was issued. It is further averred that as per Execution Report submitted by the respondent No. 3, the relevant documents i.e. copy of detention warrant and copy of grounds of detention were provided to the petitioner against proper receipt and the

same were read over to him in English and explained in Urdu/English language, which he fully understood and in token thereof, he appended his signatures on the execution report.

4. Mr. Ashok Sharma, learned counsel for the petitioner vehemently argued that there is a delay of more than 3½ years in passing the order of detention as the latest FIR was registered against the petitioner on 30.10.2019 and that too for offences under Section 341/323/504/506 RPC, the offences which are not relatable to the maintenance of public order. He further submitted that the order of detention was issued by respondent No. 2 being ignorant of the fact that out of six FIRs, four FIRs stood disposed of by the concerned courts. He further submitted that the petitioner is ready to furnish an undertaking that he would never indulge himself again in any act of bovine smuggling.
5. *Per contra*, Mr. Bhanu Jasrotia, learned Government Advocate submits that in the charge sheets arising out of FIR Nos. 13/2018, 14/2018, 41/2018 and 86/2019, the petitioner was convicted by the concerned courts after he pleaded guilty and was accordingly sentenced. He further submitted that the petitioner is a habitual offender and taking into consideration his illegal activities, the respondent No. 2 issued the order of detention.
6. Heard and perused the record.
7. A perusal of the record reveals that after obtaining the opinion of the Advisory Board, the order of detention has been confirmed by the Government and the petitioner has been ordered to be detained for a

period of three months. A perusal of the record further reveals that the dossier was submitted by the respondent No. 3 to the respondent No. 2, thereby recommending the detention of the petitioner under the Public Safety Act and in the dossier, reference has been made to the following FIRs:-

(a) FIR No. 31/2017 u/s 188/03 PCA of Police Station, Dharamsal.

(b) FIR No. 13/2018 u/s 188/03 PCA of Police Station, Dharamsal.

(c) FIR No. 14/2018 u/s 188/03 PCA of Police Station, Dharamsal.

(d) FIR No. 37/2018 u/s 188/03 PCA of Police Station, Kalakote.

(e) FIR No. 41/2018 u/s 188/03 PCA of Police Station, Kalakote.

(f) FIR No. 86/2019 u/s 341/323/504/506 IPC of Police Station, Kalakote.

8. Relying upon the dossier, the respondent No. 2 issued the order of detention. The grounds of detention prepared by the respondent No. 2 depict that the order impugned has been issued taking into consideration that the petitioner had been a habitual bovine smuggler and his activities had the potential of disturbing the maintenance of peace and harmony in the District, Rajouri. Out of six FIRs registered against the petitioner, five FIRs have been lodged in respect of transporting the bovine animals when there was prohibition for the same. Such activities in fact have the potential of disturbing the peace and tranquility of the region and because of this reason only the transportation of the bovine animals is prohibited by the competent authorities. The record further divulges that no illegal activity has been attributed to the petitioner ever since 30.10.2019 when the FIR bearing No. 86 of 2019 under Section 341/323/504/506 RPC was

registered at Police Station, Kalakote, whereas, the order impugned has been passed on 11.04.2023. Thus, there is a gap of more than 3 ½ years between the last illegal activity attributed to the petitioner and the order of detention, which was passed on 11.04.2023. This gap has snapped the live link between the alleged illegal activities and the purpose for which the detention order has been issued by the respondent No. 2. The delay in passing the order of detention is fatal and in this respect, it would be apt to take note of the judgment of the Hon'ble Apex Court in case titled, **'Saeed Zakir Hussain Malik vs. State of Maharashtra'** reported in **(2012) 8 SCC 233**. The relevant paragraph Nos. 27 and 28 read as under:-

“27) 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.

28) It is also the duty of the court to investigate whether casual connection has been broken in the circumstance of each case. We are satisfied that in the absence of proper explanation for a period of 15 months in issuing the order of detention, the same has to be set aside. Since, we are in agreement with the contentions relating to delay in passing the Detention Order and serving the same on detenu, there is no need to go into the factual details.”

9. In view of the above, this Court is of the considered view that the order of detention bearing Order No. DMR/INDEX-02 dated 11.04.2023 issued by respondent No. 2 i.e. District Magistrate, Rajouri is not

sustainable and the same is, accordingly, quashed. In view of the voluntary offer made by the learned counsel for the petitioner under instructions from the petitioner that the petitioner is ready to file an undertaking that he would not henceforth indulge himself in any act of bovine smuggling, this Court deems it proper to direct the petitioner to furnish an undertaking with the District Magistrate, Rajouri that he will not indulge in any activity of bovine smuggling in future. The petitioner be released forthwith, if not required in another case.

10. Record be returned to the learned counsel appearing for the respondents.

(RAJNESH OSWAL)
JUDGE

Jammu
02.12.2023
Neha-II

