

HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT SRINAGAR

WP(Crl) No.807/2022

Reserved on: 06.12.2023

Pronounced on : 28.12.2023

Shabir Ahmad Wani alias Shabu

.... Petitioner(s)

Through: - Mr. Wajid Haseeb, Advocate

V/s

Union Territory of J&K & anr.

.....Respondent(s)

Through: - Mr. Sajad Ashraf, GA

CORAM : HON'BLE MRS. JUSTICE SINDHU SHARMA, JUDGE

JUDGMENT

01. By way of this petition, the order of detention No. DMA/PSA/100/2022 dated 31.08.2022 passed by the District Magistrate, Srinagar, has been assailed by the detenu, vide which the detenu has been detained under Section 8 of the Jammu & Kashmir Public Safety Act, 1978 to prevent him from acting in any manner in the activities which are prejudicial to the maintenance of security of the State. The said order has been assailed through his wife-Usma Shabir.

02. The order of detention has been assailed by the detenu on multiple grounds but the learned counsel for detenu has laid emphasis on the ground that there is delay in execution of the detention order which has rendered the detention unsustainable. It is submitted that the detenu was already in custody and facing trial when the detention order was passed by the Detaining Authority on 31.08.2022, but no effort was made by the

respondents to execute the order and delay in execution of the same has rendered the detention unjustified and unsustainable. The contention of the detenu is that the detenu is facing trial in FIR No.08/2022U/S 13, 18, 19, 39 ULA (P) Act of the unlawful activities (Prevention) Act 1967 and is in judicial custody. The detenu came to know that detention order has been passed against him on 31.08.2022, while he was in custody and has availed the same by way of present writ petition. The contention of the learned counsel for the detenu is that the detention order was executed on 14.06.2023 and there is delay of more than nine months in the execution of the detention, which has rendered the detention unsustainable. It was next submitted, that the material relied upon by the respondents while ordering the detention of the detenu has not been supplied to him. The procedural safeguards provided under Public Safety Act and Constitutional rights guaranteed under Article 22(5) have not been complied with.

03. Mr. Sajad Ashraf, learned GA has filed counter affidavit as well as produced the detention record. It is submitted by him

04. It is submitted by him that the detenu was detained under the provisions of the Jammu and Kashmir Public Safety Act, 1978 validly by virtue of detention order dated 31.08.2022 issued by the District Magistrate, Srinagar. Detaining Authority has fulfilled all the statutory requirements and constitutional guarantees as provided to the detenu. The grounds of detention, order of detention as well as entire material relied upon by the Detaining Authority has been communicated to the detenu

and he was also informed of his right to make an effective representation against the order of detention.

05. Heard learned counsel for the parties and perused the record also.

06. District Magistrate, Srinagar, detained the detenu vide detention order dated 31.08.2022 after considering the dossier submitted by the Senior Superintendent of Police and considering the activities of the detenu as prejudicial to the maintenance of security of the State. The grounds of detention reveals that the detaining authority was aware that the detenu was arrested in FIR No. 08/2022U/S 13,18,19,39 ULA (P) Act and is in judicial custody in the case. The respondents in the grounds of detention have held that the detenu might get bail and if he gets bail, he would join terrorist attach and execute acts of terror. It was also submitted that the detenu would disturb peace and create a chaotic atmosphere and also instigate youth to indulge in anti-national activities. In order to stop the detenu from indulging in activities at this stage the respondents found it imperative to detain him under the provisions of J&K Public Safety Act.

07. The respondents despite arriving at the subjective satisfaction that it is necessary to detain him under the provisions of the Public Safety Act, made no effort to execute the order. The order of detention has been passed on 31.08.2022 but the same has been executed on 14.06.2023. There is delay of almost nine months in execution of the said order. There is no explanation tendered for the delay of more than nine months in execution of the detention order despite the fact that the detenu was in

custody and this casts a shadow of doubt on the necessity of passing of the order of detention as the same has rendered its purpose irrelevant

08. The Hon'ble Apex Court, while considering a similar proposition in **Manju Ramesh Nahar V. Union of India and others, AIR 1999 SC 2622**, where there was a delay of more than five months in executing the order, has held as under;

“8. This object can be achieved if the order is immediately executed. If, however, the authorities or those who are responsible for the execution of the order, sleep over the order and do not execute the order against the person against whom it has been issued, it would reflect upon the “satisfaction” of the detaining authority and would also be exhibit of the fact that the immediate necessity of passing that order was wholly artificial or non-existent.”

In **A. Mohammed Farook vs. Jt. Secy. To G.O.I. and ors, (2000)**

2 SCC 360, the Hon'ble Apex court has held that:

“the only contention before the Court was that of delay in executing the order of detention. In that case, the detention order was passed on 25.02.1999 but the authorities have chosen to execute the detention order only on 06.04.1999 after an inordinate and unreasonable delay of nearly 40 days. In the absence of proper and acceptable reasons for the delay of 40 days in executing the detention order, this Court concluded that the subjective satisfaction of the Detaining Authority in issuing the detention order dated 25.02.1999 gets vitiated and on this ground quashed the same.”

Similarly, in **K. P. M. Basheer V. State of Karnataka and**

another, AIR 1992 SC 1353, the Hon'ble Apex court has held that:

“...Under these circumstances, we are of the view that the order of detention cannot be sustained since the ‘live and proximate link’ between the grounds of detention and the purpose of detention is snapped on account of the undue and unreasonable delay in security the appellant/detenu and detaining him...” The Detaining Authority, despite observing in the grounds of detention that in case detenu was not put in preventive detention, he might again indulge in the alleged activities but did not execute the order to the detenu timely. This inordinate delay in executing the detention order vitiates the same.

09. The Detaining Authority, despite observing in the grounds of detention that in case detenu was not put in preventive detention, he might again indulge in the alleged activities but did not execute the order to the

detenu timely. This inordinate delay in executing the detention order has rendered the detention unsustainable. In these circumstances, after passing the detention order on 31.08.2022 the detaining authority did not execute the same till 14.06.2023. The execution of Public Safety Act warrant was on 14.06.2023. This apart, the detenu was already in custody and there was no chance of him being released on bail nor the bail was granted to him, therefore, there was no occasion for passing of the order of detention. It was next submitted that the respondents did not provide all the material relied upon by the detaining authority while passing the order of detention.

10. Perusal of the record also reveals that in terms of the execution report, detenu has been provided the detention order (01 leaf), notice of detention (01 leaf), grounds of detention (03 leaves), dossier of detention (Nil) and other documents (01 leaf) while executing the order of detention. This has resulted in an infraction of the Constitutional and statutory rights available to the detenu to make an effective representation before it as well as to the Government.

11. It is statutory and mandatory requirement under the Public Safety Act that all the documents which are considered and relied upon by the detaining authority in forming his opinion, be supplied to the detenu.

12. Article-22(5) of the Constitution of India provides that when any person is detained, the Detaining Authority shall, as soon as may be, communicated to the detenu, the grounds on which the detention order has been made and shall afford him an earliest opportunity of making an effective representation against the order of the detention. This right to make a representation can only be exercised by the detenu provided all the

material relied upon, while passing the order of detention are provided to be detenu. In order to make an effective representation, the detenu must know the fact of what weighed in the mind of the Detaining Authority for passing the impugned order of detention.

13. In Sophia Ghulam Mohd. Bham V. State of Maharashtra and others, AIR 1999 SC 3051, the Apex Court observed as under:-

“... The right to be communicated the grounds of detention flows from Article 22(5) while the right to be supplied all the material on which the grounds are based flows from the right given to the detenu to make a representation against the order of detention. A representation can be made and the order of detention can be assailed only when all the grounds on which the order is based are communicated the detenu and the material on which those grounds are based are also disclosed and copies thereof are supplied to the person detained, in his own language.....”

14. In Icchu Devi Choraria (Smt.) v. Union of India and others, (1980) 4 SCC 531, the Supreme Court dealt with in great the significance of clause (5) of Article 22 and sub-section 3 of Section 3 of COFEPOSA Act.

The Apex court observed as under:

“Now it is obvious that when Clause (5) of Article 22 and Subsection (3) of Section 3 of the COFEPOSA Act provide that the grounds of detention should be communicated to the detenu within five or fifteen days, as the case may be, what is meant is that the grounds of detention in their entirety must be furnished to the detenu. If there are any documents, statements or other materials relied upon in the grounds of detention, they must also be communicated to the detenu, because being incorporated, in the grounds of detention, they form part of the grounds and the grounds furnished to the detenu cannot be said to be complete without them. It would not therefore be sufficient to communicate to the detenu a bare recital of the grounds of detention, but copies of the documents, statements and other materials relied upon in the grounds of detention must also be furnished to the detenu within the prescribed time subject of course to Clause (6) of Article 22 in order to constitute compliance with Clause (5) of Article 22 and Section 3, Sub-section (3) of the COFEPOSA Act. One of the primary objects of communicating the grounds of detention to the detenu is to enable the detenu, at the earliest opportunity, to make a representation

against his detention and it is difficult to see how the detenu can possibly make an effective representation unless he is also furnished copies of the documents, statements and other materials relied upon in the grounds of detention.”

15. In view of the aforesaid reasons, there is no need to advert to other grounds raised in this petition. This petition is allowed and the detention order No. DMA/PSA/100/2022 dated 31.08.2022 passed by the District Magistrate, Srinagar, under which detenu-Shabir Ahmad Wani @ Shabu S/o Sh. Ghulam Mohi-ud-din Wani R/o Shalkadal Karfali Mohalla, Habakadal, Srinagar, is under detention, is quashed. Accordingly, the respondents are directed to release the detenu from the custody forthwith, if he is not required in any other case.

16. Detention record be returned to learned counsel for the respondents by the Registry forthwith.

(Sindhu Sharma)
Judge

SRINAGAR
RAM MURTI/PS
28.12.2023

Whether the order is speaking : *Yes/No*
Whether the order is reportable : *Yes/No*