

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

Reserved on: 11.12.2024

Pronounced on: 20.12.2024

WP(Crl) No.782/2022

SHAHID SHAFI SHEIKH

...PETITIONER(S)

Through: - Mr. Wajid Haseeb, Advocate.

Vs.

U T OF J&K & ORS.

...RESPONDENT(S)

Through: - Mr. Mubashir Majid Malik, Dy. AG.

CORAM: HON'BLE MR. JUSTICE SANJAY DHAR, JUDGE

JUDGMENT

1) The petitioner has challenged detention order No.DMS/PSA/80/2022 dated 30.08.2022, issued by District Magistrate, Srinagar (for brevity "*detaining authority*"). In terms of the aforesaid order, *Shri shahid Shafi Sheikh* (for short "*detenue*") has been placed under preventive detention and lodged in Central Jail, Kotbhalwal Jammu, in order to prevent him from indulging in the activities which are prejudicial to the security of the State.

2) The petitioner has contended that the impugned order has been issued without application of mind as the allegations mentioned in the grounds of detention have no nexus with the detenue and that the same have been fabricated by the police in order to justify its illegal action of detaining the detenue. It has been contended that the grounds of detention are vague, non-existent on which no prudent man can make a representation against such allegations. It has been further contended that

the safeguards provided under law have not been complied with in the instant case, inasmuch as whole of the material which formed basis of the impugned detention order has not been supplied to the petitioner. It has been further contended that the representation filed by the detainee against his detention has not been considered.

3) Upon being put to notice, the respondents appeared through their counsel and filed their reply affidavit, wherein they have disputed the averments made in the petition and insisted that the activities of the detainee are highly prejudicial to the security of the State. It is pleaded that whole of the material relied upon by the detaining authority has been furnished to the detainee and the same was read over and explained to him and that the detainee was informed that he can make a representation to the government as well as to the detaining authority against his detention. It is further contented in the reply affidavit that all statutory requirements and constitutional guarantees have been fulfilled and complied with by the detaining authority and that the impugned order has been issued validly and legally. The respondents have produced the detention record to lend support to the stand taken in the counter affidavit.

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

5) Learned counsel for the petitioner, while seeking quashment of the impugned order, projected various grounds but his main thrust during the course of arguments was on the following grounds:

- (I) That there has been delay in execution of the detention order, inasmuch as the impugned order of detention has

been passed on 30.08.2022 but the same has been executed on 01.09.2023 i.e. after a period of more than one year. There is no explanation for the delay that has occasioned in execution of the impugned detention order;

- (II) That the detainee has not been provided the whole of the material, which prevented him from making an effective representation against his detention.

6) Regarding first ground, the legal position is well settled that resort to preventive detention has to be taken only in cases where there is an urgent need to detain a person so as to prevent him from indulging in activities which are prejudicial to the maintenance of public order or security of the State. When there is unsatisfactory and unexplained delay in executing the order of detention, such delay would throw considerable doubt on the genuineness of the subjective satisfaction recorded by the detaining authority. This would lead to a legitimate inference that the detaining authority was not really and genuinely satisfied as regards the necessity for detaining the detainee.

7) The Supreme Court has, in the case of **Manju Ramesh Nahar vs. Union of India and others**, AIR 1999 SC 2622, while considering a similar situation observed as under:

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.

8) In another decision in **SMF Sultan Abdul Kader vs. Jt. Secy, to Govt. of India & Ors.**, (1998) 8 SCC 343, the Supreme Court has held unexplained delay in execution of the order of detention to be fatal.

9) In the instant case, the impugned detention order was issued on 30.08.2022 but the same has been executed on 01.09.2023, i.e. after a period of more than one year. There is no explanation on the part of respondents regarding delay in execution of the impugned detention order. Even the record produced by the respondents does not offer any explanation for delayed execution of the order of detention. In fact, even in their counter affidavit the respondents have not offered any explanation whatsoever regarding delayed execution of the order of detention.

10) In the grounds of detention, it is mentioned that the petitioner was already in custody at the time of passing of the impugned order. Thus, it is not a case where the detainee was not available for execution of the warrant of detention. Therefore, there was no justification for delayed execution of the warrant of detention. The fact that the impugned detention order has not been executed by the respondents for about seven months shows that there was no urgency for taking resort to preventive detention of the petitioner. There was sufficient time with the respondents to take resort to normal criminal laws, if at all they wanted to proceed against the petitioner. The unexplained delay in execution of the warrant of detention upon the petitioner renders the subjective satisfaction of the detaining authority doubtful. Consequently, the impugned order of detention has been rendered unsustainable in law.

11) So far as the next ground of challenge is concerned, a perusal of the detention record produced by learned counsel for the respondents

reveals that the material is stated to have been received by the petitioner on 01.09.2023. Report of the Executing Officer in this regard forms part of the detention record, a perusal whereof reveals that it bears the signature of the petitioner and according to it, copy of detention order **(01 leaf)**, notice of detention **(01 leaf)**, grounds of detention **(03 leaves)**, dossier of detention **(Nil)**, copies of FIR, statements of witnesses and other related relevant documents **(01 leaf)**, total **06 leaves**, have been supplied to him.

12) If we have a look at the grounds of detention, it bears reference to FIR No.08/2022 of P/S Chanapora. It was incumbent upon the respondents to furnish not only the copy of the FIR but also the statements of witnesses recorded during investigation of the said FIR and other material on the basis of which petitioner's involvement in the FIR is shown, which has not been done. All this material would run in dozens of pages and it is impossible that all this material would be covered in only one leaf. Even the copy of the dossier of detention has not been supplied to the petitioner.

13) Thus, contention of the petitioner that whole of the material relied upon by the detaining authority, while framing the grounds of detention, has not been supplied to him, appears to be well-founded. Obviously, the petitioner has been hampered by non-supply of these vital documents in making an effective representation before the Advisory Board, as a result whereof his case has been considered by the Advisory Board in the absence of his representation, as is clear from the detention record. Thus,

vital safeguards against arbitrary use of law of preventive detention have been observed in breach by the respondents in this case rendering the impugned order of detention unsustainable in law.

14) It needs no emphasis that the detinue cannot be expected to make an effective and purposeful representation which is his constitutional right guaranteed under Article 22(5) of the Constitution of India, unless and until the material, on which the detention is based, is supplied to the detinue. The failure on the part of detaining authority to supply the material renders the detention order illegal and unsustainable in law. While holding so, I am fortified by the judgments rendered in **Sophia Ghulam Mohd. Bham V. State of Maharashtra and others (AIR 1999 SC 3051)** and, **Thahira Haris Etc. Etc. V. Government of Karnataka & Ors. (AIR 2009 SC 2184)**.

15) For the foregoing reasons, the petition is allowed and the impugned order of detention is quashed. The detinue is directed to be released from the preventive custody forthwith provided he is not required in connection with any other case.

16) The detention record be returned to the learned counsel for the respondents.

(Sanjay Dhar)
Judge

SRINAGAR
20.12.2024
“Bhat Altaf-Secy”

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