

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

HCP No. 60/2024

Reserved on: 07.11.2024
Pronounced on: 21 .11.2024

Sahil Choudhary alias Shallu **...PETITIONER(S)**

Through: - Mr. Jagpaul Singh Advocate.

Vs.

Union Territory of J&K & and ors. **...RESPONDENT(S)**

Through: - Mr. Rajesh Kumar Thappa G.A.

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

JUDGMENT

1 The petitioner (hereinafter referred to as the 'detenu') has challenged order No. 10/PSA of 2024 dated 07.04.2024 issued by respondent No.2, District Magistrate, Samba ('the detaining authority' for short) whereby he has been taken into preventive custody with a view to prevent him from acting, in any manner, prejudicial to the public order.

2 The impugned order of detention has been challenged by the petitioner on the ground that the same has been issued by the detaining authority in an arbitrary and *mala fide* manner. It has been contended that there is absolute non-application of mind on the part of the detaining authority in passing the impugned detention order, inasmuch as, the detaining authority, respondent No.2 has failed to record its subjective satisfaction that the activities of the detenu are

prejudicial to the maintenance of public order. It has been further contended that whole of the material forming basis of grounds of detention has not been furnished to the detenu which has hampered him from making an effective representation against the impugned order of detention. It has also been contended that the detenu was not informed by the detaining authority, respondent No.2 about his right to make representation before it and, on this ground alone, the impugned order of detention is vitiated. It has also been contended that the detaining authority, while formulating the grounds of detention, has used expressions “public order” and “public peace and tranquillity” interchangeably, which exhibits non-application of mind on the part of the detaining authority. It has been further contended that the representation of the detenu against the impugned order of detention has been considered by the respondents belatedly.

3 Respondent No.2, the detaining authority has filed its counter affidavit in opposition to the writ petition. In the counter affidavit, it has been contended that the detenu has no respect for law of the land which is clearly reflected from the fact that a series of criminal cases stands registered against him, as a result of which, the detenu has become a threat to the life and liberty of the people at large. Thus, according to the respondents, the activities of the detenu are prejudicial and detrimental to the maintenance of public order in the area. It has been submitted that all the procedural safeguards have been adhered to in the present case and whole of the material, forming basis of grounds

of detention, has been furnished to the detenu which has been read over and explained to him in the language which he understands. It has also been contended that the petitioner was informed about his right to make a representation against the impugned order of detention before the detaining authority, as well as to the Government. In order to lend support to their contentions, the respondents have produced the detention record

4 I have heard learned counsel for the parties and perused the pleadings and the record produced by the respondents.

5 Although, learned counsel for the detenu has raised many grounds for assailing the impugned order of detention, yet, during the course of arguments, he has laid much emphasis on the contention that the representation of the petitioner against the impugned order of detention has been considered by the respondents belatedly thereby violating his statutory and constitutional rights. It has been contended that on this ground alone, the impugned order of detention deserves to be quashed.

6 In the above context, the detenu has placed on record a copy of representation dated 22.04.2022 (Annexure-III to the writ petition). He has also placed on record postal receipt dated 22.04.2024 which indicates that a representation has been sent to Commissioner/Secretary to the Government, Home Department.

7 The record produced by the respondents reveals that the aforesaid representation has been received by the Home Department of the Government. It appears that vide communication dated 25.04.2024, comments in respect of representation of the detenu were sought by the Home Department from ADGP, CID J&K, Jammu, who, vide his communication dated 28.08.2024 conveyed its comments to the Home Department. The record further reveals that, vide communication dated 05.09.2024, the Home Department of the Government has conveyed to the District Magistrate, Samba that representation of the detenu has been found to be without merit. The detenu has filed rejoinder affidavit and along with the said affidavit, he has placed on record a copy of communication dated 05.09.2024 (supra) which has been endorsed to him as well, meaning thereby that information about rejection of his representation has been conveyed to the detenu on 05.09.2024.

8 The question that arises for determination is, as to whether consideration of representation after more than 04 months from the date of receipt of the same satisfies the requirement of law. This issue has been discussed and deliberated upon by the Supreme Court in the case of **Sarabjeet Singh Mokha vs District Magistrate, Jabalpur, (2021) 20 SCC 98**. It would be apt to refer to the observations of the Supreme Court in para 47 of the judgment, which are reproduced as under:

“47. By delaying its decision on the representation, the State Government deprived the detenu of the valuable right which emanates from the provisions of [Section 8\(1\)](#) of

having the representation being considered expeditiously. As we have noted earlier, the communication of the grounds of detention to the detenu “as soon as may be” and the affording to the detenu of the earliest opportunity of making a representation against the order of detention to the appropriate government are intended to ensure that the representation of the detenu is considered by the appropriate government with a sense of immediacy. The State Government failed to do so. The making of a reference to the Advisory Board could not have furnished any justification for the State Government to not deal with the representation independently at the earliest. The delay by the State Government in disposing of the representation and by the Central and State Government in communicating such rejection, strikes at the heart of the procedural rights and guarantees granted to the detenu. It is necessary to understand that the law provides for such procedural safeguards to balance the wide powers granted to the executive under the NSA. The State Government cannot expect this Court to uphold its powers of subjective satisfaction to detain a person, while violating the procedural guarantees of the detenu that are fundamental to the laws of preventive detention enshrined in the Constitution”.

9 From the foregoing analysis of law on the subject, it is manifest that delaying of decision on the representation of the detainee amounts to an infringement of a valuable right which is available to a detainee in terms of provisions contained in Section 13 of the Jammu & Kashmir Public Safety Act, which makes it obligatory on the detaining authority to communicate to the detainee the grounds on which the order of detention has been made within a maximum period of ten days from the date of detention and to afford him the earliest opportunity of making representation against the order of detention. The purpose of furnishing the grounds of detention within a maximum period of ten days is to

enable a detainee to make a representation against the order of detention at the earliest opportunity. Thus, a duty is cast upon the detaining authority or the government to consider the said representation at the earliest opportunity. Failure to decide the representation of a detainee within a reasonable time in an expeditious manner strikes at the valuable right of a detainee emanating from the provisions of Section 13 of the Jammu & Kashmir Public Safety Act.

10 In the present case, the respondents have received representation dated 22.04.2024 addressed to the Home Department on or before 25.04.2024 as, on the said date, the Home Department has sought comments from the CID, meaning thereby that as on 25.04.2024, the representation of the detenu had reached the Government. It is only on 28.08.2024 that that CID furnished its comments to the Home Department and on 05.09.2024, the representation of the detenu was rejected by the Government and information in this regard was endorsed to the detenu. Thus, it is clear that the respondents have not decided the representation of the detenu for more than four months after its receipt. This slackness on the part of the respondents to take a decision on the representation of the detenu renders the impugned order illegal, as it violates his right guaranteed to him under Article 22(5) of the Constitution.

11 For the foregoing reasons, the impugned order of detention becomes unsustainable in law and deserves to be quashed. The writ petition is, accordingly, allowed and the impugned order of detention is

quashed. The detenu is directed to be released from the preventive custody forthwith, provided he is not required in any other case.

12 . The record, as produced, be returned to the learned counsel for the respondents.

(Sanjay Dhar)
Judge

Jammu
21.11.2024
"Sanjeev"

Whether the order is speaking: **Yes**
Whether the order is reportable: **Yes**

