

HIGH COURT OF JAMMU & KASHMIR AND LADAKH AT SRINAGAR

WP(Crl) No. 208 /2022

Reserved On : 03.11.2022

Pronounced On: 30.11.2022

Tawseef Ahmad Dar.

.....Petitioner(s)

Through: Mr. Shah Ashiq Hussain, Advocate

Union Territory of J&K and Anr.

Versus

.....Respondent(s)

Through: Mr. Sajad Ashraf, GA

CORAM: HON'BLE MS. JUSTICE MOKSHA KHAJURIA KAZMI, JUDGE

JUDGEMENT

1. Through the medium of instant writ petition, quashment of Order No. DMS/PSA/132/2021 dated 28.02.2022, passed by the respondent No. 2-District Magistrate, Srinagar (hereinafter called 'Detaining Authority') in exercise of powers under Section 8 of the Jammu & Kashmir Public Safety Act, 1978, in terms whereof the husband of the petitioner namely, *Tawseef Ahmad Dar S/O Farooq Ahmad Dar R/O Maisuma, District, Srinagar* (for short 'detenue') was ordered to be detained and lodged in Central Jail Srinagar, has been sought. The petitioner seeks release of the detenue forthwith from the custody and also a compensation of Rs. 10.00, Lacs for illegal detention of the detenue.
2. Though the detention order has been challenged on several grounds, but the main ground taken by the petitioner is that the representation filed against the detention order has not been considered by the respondents till date. It is submitted that because of non-consideration of the representation, the

detention order is liable to be quashed. Copy of the representation is annexed with the writ petition as annexure-III.

3. The respondents in their counter have defended the order of detention, stating therein that the detaining authority after being satisfied on the basis of the material available including the dossier submitted by Senior Superintendent of Police, Srinagar, that it is necessary to prevent the detainee from acting in any manner prejudicial to the 'maintenance of security of the State' the detainee was placed under preventive detention. It is stated that the detention of the detainee has been ordered strictly in accordance with the provisions of J&K Public Safety Act, 1978 (for short 'the Act') and the procedural safeguards prescribed under the provisions of the Act have strictly been followed and the rights guaranteed to the detainee under the Constitution are protected.
4. It is further stated that activities of the detainee are highly prejudicial to the security of the Union Territory of J&K and, therefore, there was no option left to the detaining authority, but to order detention of the detainee under the Act. It is also urged that the grounds of detention sufficiently connect the detainee with the activities which are highly prejudicial to the security of the UT of J&K, as such, the detention of the detainee is legal.
5. With regard to the allegation of non-consideration of the detainee's representation, it is stated by the respondents that the detainee was informed about his right to make a representation to the detaining authority or the Government. However, no whisper has been made in the counter affidavit whether the representation has been made or not by the detainee.
6. Heard learned counsel for the parties and perused the available material including the detention record.

7. It has been contended that representation has been filed by the wife of the detenue before the detaining authority, copy whereof is annexed as Annexure-III to the writ petition but despite lapse of more than six months, the representation has not been considered by the detaining authority.
8. From the perusal of the detention record, produced by Mr. Sajad Ashraf, Government Advocate, nothing reveals in respect of the receipt or disposal of the representation. It is thus, evident that representation filed by the detenue through his wife, i.e, petitioner herein in the month of April. 2022, has not been considered by the respondents so far.
9. Admittedly, the copy of representation dated 26.04.2022, has been filed against the detention order of the detenue which has not been considered by the respondents till date.
10. The respondents were under bounden duty to dispose of the representation filed by the petitioner within a reasonable dispatch and convey the outcome of the same to the petitioner at an earliest. In the instant case, the respondents have slept over the matter and have not decided the representation of the petitioner as on date.
11. Article 22(5) of the Constitution of India, casts legal obligation on the Government to consider the detenu's representation as early as possible. It is the bounden duty of the Detaining Authority or the Government, as the case may be, to consider the representation of the detenue and pass appropriate orders thereon. There should be no slackness and callous attitude in considering the representation of the persons who are detained. Any unexplained delay would be breach of constitutional safeguards and would render the detention of the detenu as illegal. Each day's delay in dealing

with the representation has to be explained and the explanation offered must be reasonably indicating that there was no slackness or callousness.

12. In *Tara Chand vs State of Rajasthan & Ors., 1980 (2) SCC 321*, Hon'ble Supreme Court has held that any inordinate and unexplained delay on the part of the Government in considering the representation renders the very detention illegal. The Supreme Court in another case *Rahmatullah vs State of Bihar, AIR 1981 SC 2069* has held that clause (5) of Article 22 by necessary implication guarantees the constitutional right to a proper consideration of the representation. The obligation of the Government to afford to the detenu an opportunity to make representation is distinct from the Government's obligation to refer the case of the detenu along with representation to the Advisory Board to enable it to form its opinion and send a report to the Government. Therefore, it is implicit in clauses (4) and (5) of Article 22 of the Constitution of India that the Government, while discharging its duty to consider the representation, cannot depend upon the views of the Board on such representation. It has to consider the representation on its own without being influenced by any such view of the Board. The Supreme Court in the case of *Kundanbhai Dulabhai Sheikh vs. District Magistrate Ahmedabad & Ors. 1996 CrL.L.J 1981* quashed the detention order only on the ground of delay in disposing of the representation.
13. Having gone through the observations of the Supreme Court in the aforesaid cases, this Court is of the considered view that the said decisions with all its forces is applicable to the instant case. Therefore, the detention order is liable to be quashed.

14. In view of the settled proposition of law (*Supra*), the non-consideration of the detenu's representation constitutes violation of the constitutional right, guaranteed under Article 22 of the Constitution. This also depicts the failure of the Government to discharge its function. Therefore, for this reason alone, the petition deserves to be allowed.
15. Accordingly, the writ petition is allowed and the impugned detention Order No. DMS/PSA/132/2021 dated 28.02.2022 is quashed. The Jail Superintendent concerned is directed to release the detainee namely, *Tawseef Ahmad Dar @ Babloo Dancer S/O Farooq Ahmad Dar R/O Maisuma, District, Srinagar* forthwith, if his detention is not required in connection with any other criminal case(s).
15. **Disposed of.**
16. Registry to return the record to learned counsel for the respondents forthwith.

SRINAGAR

30.11.2022

Abdul Rashid, PS

(MOKSHA KHAJURIA KAZMI)

JUDGE

Whether the order is reportable Yes/No

Whether the order is speaking Yes/No