

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

Reserved on: 04.12.2024

Pronounced on: 13.12.2024

**WP(Crl) No.45/2023**

**ABDUL HAMEED DAR**

...Petitioner(s)

Through: -Mr. B. A. Tak, Advocate

Vs.

**UT OF J&K & ANOTHER**

...Respondent(s)

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

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

**JUDGMENT**

1) Through the medium of present petition, the petitioner has assailed detention order bearing No.35/DMB/PSA of 2022 dated 30.12.2022, issued by District Magistrate, Bandipora (for brevity "detaining authority"). In terms of the aforesaid order, *Abdul Hameed Dar S/o Late Abdul Aziz Dar resident of S. K. Bala Tehsil Hajin District Bandipora* (for short "detenue") has been placed under preventive detention and lodged in Central Jail, Kothbalwal, Jammu.

2) The petitioner has contended that the Detaining Authority has passed the impugned detention order mechanically without application of mind, inasmuch 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 procedural safeguards have not been complied with in the instant case, inasmuch as the translated version of the material that formed basis of the impugned detention order has not been supplied to the petitioner.

3) The respondents have resisted the petition by filing their reply affidavit, wherein they have contended that the activities of the detenu are highly prejudicial to the security of the State. It is pleaded that the detention order and grounds of detention along with the material relied upon by the detaining authority were handed over to the detenu and the same were read over and explained to him. It has been further contended that the detenu was informed that he can make a representation to the government as well as to the detaining authority against his detention. It is also averred in the reply affidavit that all statutory requirements and constitutional guarantees have been fulfilled and complied with by the detaining authority and that the 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 the allegations made in the grounds of detention are vague, on the basis of which no prudent person can be expected to make an effective representation.*

(ii) *That representation of the petitioner against the impugned order of detention has not been considered by the respondents thereby violating his statutory and constitutional rights.*

6) On perusal of the detention record produced by learned counsel for the respondents, the ground projected regarding vagueness of the averments made in the grounds of detention, appears to be forceful. In the grounds of detention, there is no mention of the particulars of the places and the identity of the terrorists, to whom the petitioner was allegedly providing logistic support. The particulars of the period when the detinue is alleged to have provided logistic support to the terrorists are also not mentioned in the grounds of detention. Thus, the grounds, being vague and lacking in material particulars, the detinue could not have made an effective representation against his detention. Therefore, there has been violation of constitutional guarantees envisaged under Article 22(5) of the Constitution. The detention order, as such, is illegal and unsustainable. In my aforesaid view, I am fortified by the judgments of the Supreme Court in the case e of **Jahangirkhan Fazal Khan Pathan vs. Police Commissioner, Ahmadabad, (1989) 3 SCC 590, Abdul Razak Nanekhan Pathan v. Police Commissioner, Ahmadabad, AIR 1989 SC 2265, Mohd. Yousuf Rather vs. State of J&K & Ors, 1979 4 SCC 370, and Piyush Kantilal Mehta vs. The Commissioner of Police, Ahmedabad City and Ors. 1989 (1) Crimes 176 (SC).**

7) The next ground projected by learned counsel for the petitioner is that the that representation of the petitioner against the impugned order

of detention has not been considered by the respondents thereby violating his statutory and constitutional rights.

8) In the above context, the petitioner has placed on record a copy of the representation dated 03.02.2013 along with his writ petition (Annexure-IV). He has also placed on record postal receipt dated 03.02.2023, which indicates that the representation has been sent to the Commissioner/Secretary to Government, Home Department.

9) The record produced by the respondents reveals that the representation of the petitioner has been rejected by the government and an intimation in this regard has been communicated by Deputy Secretary to Government, Home Department, to the District Magistrate, Bandipora in terms of letter No.Home/PB-V/1021/2022 (7097538) dated 05.04.2023. In the said letter, the respondents have admitted the receipt of representation of the petitioner. Thus, it is admitted by the respondents that they have received the representation of the petitioner against the impugned order of detention. The representation has been received by the respondents probably in the first week of February, 2023, which is clear from communication dated 08.02.2023, that forms part of the detention record. The question that arises for determination is, as to whether consideration of representation after about two months from the date of receipt of the same satisfies the requirement of law.

10) The aforesaid question has been answered by the Supreme Court in the case of **“Sarabjeet Singh Mokha vs. District Magistrate, Jabalpur and others” (2021) 20 SCC 98**. It would be apt to refer to

observations made by 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 not to 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 Governments 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.”*

11) From the foregoing analysis of law on the subject, it is manifest that delaying of decision on the representation of the detenu amounts to an infringement of a valuable right which is available to a detenu 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 detenu 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 detenu 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 detenu within a reasonable time in an expeditious manner strikes at the valuable right of a detenu emanating from the provisions of Section 13 of the Jammu & Kashmir Public Safety Act.

12) In the present case, the respondents have received the representation of the petitioner which was posted to them on 03.02.2023. The representation has been received by the respondents in the first week of February, 2023 but the same has been decided by them only in April, 2023. This slackness on the part of respondents to take a decision on the representation of the petitioner renders the impugned order of detention illegal.

13) Apart from the above, in the present case, the respondents have not placed on record anything to show that the order of rejection of representation was conveyed to the petitioner. The communication dated 05.04.2023 is an inter-departmental communication between Home Department and District Magistrate, Bandipora. It is not coming forth from the record produced by the respondents as to whether the result of the representation has been conveyed to the petitioner. The Supreme Court in **Sarabjeet Singh Mokha's** case (supra) while dealing with the

effect of failure to communicate the result of the representation has held that failure in timely communication of the rejection of the representation is a relevant factor for determining the delay that the detinue is protected under Article 22(5). It has been further held that failure of the government to communicate rejection of detinue's representation in a time bound manner is sufficient to vitiate the detention order.

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

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

**(Sanjay Dhar)**  
**Judge**

SRINAGAR

13.12.2024

"Bhat Altaf-Secy"

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