

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

Reserved on: 13 .04.2023
Pronounced on: 09 .05.2023

WP(Crl.) No.285/2022

Atta Mohd Khan

...PETITIONER(S)

Through: - Mr. Kaiser Ali Advocate.

Vs.

UNION TERRITORY OF J&K & ORS.

...RESPONDENT(S)

Through: - Mr. Sajad Ashraf G.A.

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

JUDGMENT

1) By the instant petition, legality and veracity of the detention order dated 13.04.2022, issued by District Magistrate, Kupwara (for brevity "*Detaining Authority*") is challenged. In terms of the said order, *Shri Atta Mohd Khan son of Amanullah Khan resident of Halmatpora Check Kupwara* (for short "*detenu*") has been placed under preventive detention and lodged in Central Jail, Kotbhalwal, Jammu.

2 The petitioner has contended that the Detaining Authority has passed the impugned detention order mechanically without application of mind, inasmuch as the detenu was already admitted to bail in one of the FIRs, mention whereof has been made in the grounds of detention. It has been further contended that the Constitutional and procedural safeguards have not been complied with in the instant case. It has been further urged that the material, which formed basis of the

grounds of detention and the consequent order of detention, has not been provided to the detenu. It has also been contended that, though the petitioner made a representation against the impugned order of detention, yet the same was not considered by the respondents.

3 The respondents, in their counter affidavit, have disputed the averments made in the petition and insisted that the activities of detenue are highly prejudicial to the security of the State. It is pleaded that the impugned detention order has been passed validly and after following all norms and procedural safeguards. It has also been contended that the detention order and grounds of detention were handed over to the detenue and same were read over and explained to him and the whole material relied upon by the detaining authority has been furnished to the detenue. It is averred that the grounds urged by the petitioner are legally misconceived, factually untenable and without any merit. The respondents have produced the detention records in order to buttress the contentions raised in the counter affidavit.

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

5 Although, a number of grounds have been raised by the learned counsel for the detenu, yet during the course of arguments, the main thrust was on the contention that the representation filed by the detenu against his detention has not been considered till date. It is submitted that because of non-consideration of his representation, the detention order slapped upon the detenu is liable to be quashed. Copy of

the representation stated to have been submitted by the detenu to the respondents along with postal receipt has been placed on record with the writ petition.

6 With regard to the submission of representation by the detenu and its non-consideration by the Detaining Authority, there is no averment in the counter affidavit. However, from a perusal of communication dated 28.05.2022 addressed by the District Magistrate, Kupwara to the Financial Commissioner, Home Department, J&K Srinagar which is available in the detention record, it transpires that the District Magistrate, Kupwara had received the representation from the detenu. Another communication addressed by the Deputy Secretary to the Government, Home Department to Special Director General of Police CID, J&K, seeking report on the representation of the detenu, is also available in the detention record.

7 Thus, it is evident that the representation of the detenu has been received by the respondents. However, there is nothing in the detention record or in the counter affidavit filed by the respondents to indicate the fate of this representation. Thus, the contention of the detenu, that his representation has not been considered by the respondents, appears to be well founded.

8 [Article 22\(5\)](#) of the Constitution of India, casts legal obligation on the Government to consider the detenu's representation as early as possible. There should be no slackness, indifference and callous attitude in consideration of the representation of the persons who are detained.

Any unexplained delay would be breach of constitutional imperative and it would render the continued detention of the detenu as illegal. Everyday delay in dealing with the representation has to be explained and the explanation offered must indicate that there was no slackness or indifference.

9 In [Tara Chand vs State of Rajasthan and others](#), 1980 (2) SCC 321, the 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. Again the Supreme Court in the case of [Kundanbhai Dulabhai Sheikh vs. District Magistrate Ahmedabad and others](#), 1996 CrL.J 1981 quashed the detention order only on the ground of delay in disposing of the representation.

10 In view of the above settled proposition of law, I am of the view that non-consideration of the detenu's representation constitutes violation of the constitutional right given to the detenu under [Article 22](#) of the Constitution and it also amounts to failure of the respondents to discharge their statutory functions. Therefore, for this reason alone, the impugned order of detention passed against the detenu is liable to be quashed.

11 Accordingly, the petition is allowed and the impugned order dated 13.04.2022 passed by the District Magistrate, Kupwara is quashed. The detenu is directed to be released from the preventive

custody forthwith, provided he is not required in connection with any other case.

12. Record of detention be returned to the learned counsel for the respondents.

(Sanjay Dhar)
Judge

09.05.2023
Sanjeev

Whether the order is speaking: **Yes**

Whether the order is reportable: **Yes**