

**HIGH COURT OF JAMMU AND KASHMIR AND LADAKH
AT JAMMU**

HCP No. 142/2024

Reserved on: 24.04.2025
Pronounced on: 05.05.2025.

Sarfaraz Ahmed

..... Petitioner (s)

Through :- Mr. Mehtab Gulzar Advocate

V/s

UT of Jammu and Kashmir and others

.....Respondent(s)

Through :- Ms Monika Kohli Sr. AAG

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

JUDGMENT

1 The petitioner, Sarfaraz Ahmed, son of Mohd Mushtaq, resident of village Gohlad, Tehsil Mendhar, District Poonch (hereinafter referred to as the “detenu”), has challenged detention order No. PITNDPS 37 of 2024 dated 03.09.2024, issued by respondent No.2, Divisional Commissioner, Jammu (hereinafter referred to as the “detaining authority”), whereby he has been taken into preventive custody in order to prevent him from engaging in illicit trafficking in narcotic drugs and psychotropic substances.

2 The impugned order of detention has been challenged by the detenu on the ground that there were no compelling reasons for the detaining authority to pass the said order, as the detenu was already facing trial in two criminal cases in which he had been admitted to bail. It has been submitted that instead of seeking cancellation of bail of the detenu, the detaining authority has resorted to the extraordinary law relating to preventive detention without there

being any compelling circumstances. It has been further contended that whole of the material forming the basis of the grounds of detention has not been furnished to the detenu, as a result whereof, he could not make an effective and suitable representation against the order of detention. It has also been contended that the detaining authority has not applied its mind to the material produced before it while passing the impugned order of detention. Lastly, it has been contended that on 20.09.2024, the detenu had made a representation through his father before respondent No.1, which was delivered to the said respondent on 24.09.2024, but the same has not been considered by the said respondent.

3 The respondents have contested the writ petition by filing counter affidavit of the detaining authority. In the counter affidavit, it has been submitted that the impugned order of detention has been passed by the detaining authority after carefully analyzing the dossier dated 30.08.2024 submitted by SSP Poonch. It has been submitted that the detenu, after getting bail in the first case, again indulged in illicit trafficking of narcotic drugs, as such, his activities were posing a serious threat to the health and welfare of the people. It has been submitted that the ordinary criminal law has failed to deter the detenu from indulging in illicit trafficking of contraband drugs, as such, the detaining authority was compelled to pass the impugned order of detention. The respondents have submitted that all the documents comprising the detention order, grounds of detention, and other material running into (37) leaves were furnished to the detenu and the contents thereof were explained to him in Urdu language and he was also informed about his right to make a representation to the Government as well as to the detaining authority. A copy of the execution report has been placed on record by the respondents. It has

also been submitted that respondent No.2, the detaining authority, did not receive any representation from the detenu. The respondents, in order to lend support to their contentions, have produced the detention record.

4 I have heard learned counsel for the parties and perused the pleadings and 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 detenu against the impugned order of detention has not been considered by the respondents, thereby violating his statutory and constitutional rights. Although respondent No.2, the detaining authority, has, in his counter affidavit denied having received any representation from the detenu, yet, the record produced by the respondents would reveal that a representation dated __.09.2024 of the detenu, through his father, is available in record of the Home Department. It appears that the said representation was addressed to the Commissioner Secretary to the Government, Home Department, J&K, and not to the detaining authority and, perhaps for this reason, the detaining authority has, in his counter affidavit, denied having received any such representation.

6 The record of the Home Department further reveals that vide communication dated 25.09.2024, the Home Department of the Government of Jammu and Kashmir sought comments from the Additional Director General of Police (CID) J&K regarding the aforesaid representation, and in response thereto, ADGP (CID) vide his communication dated 28.10.2024, conveyed his comments to the Home Department. The record further reveals that the Home Department, vide its communication dated 07.11.2024, informed the detaining authority that the representation of the detenu has been considered and found to

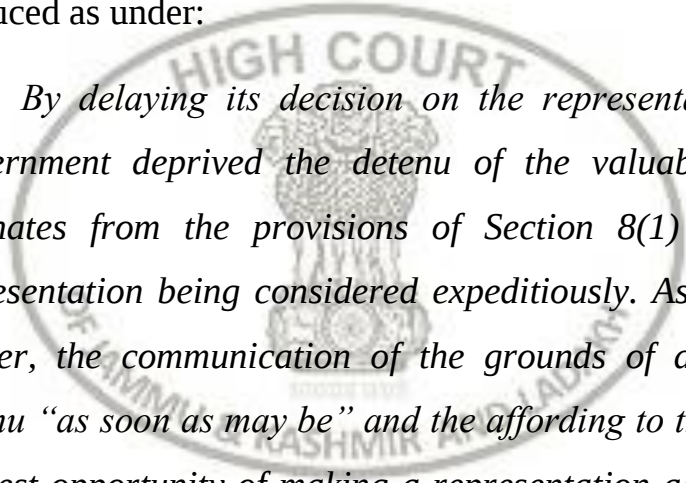
be without any merit. A copy of the said communication has been endorsed to Superintendent, District Jail Poonch, with a request to inform the detenu. The detenu, along his writ petition, has placed on record a copy of the representation and a copy of the tracking report issued by the Postal Authority, which shows that the representation of the detenu was received by the Home Department on 24.09.2024.

7 On the basis of the aforesaid facts that have emerged from the perusal of detention record, it is clear that the representation of the detenu was received by respondent No.1 on 24.09.2024 and the same was rejected only on 07.11.2024 and an intimation in this regard was conveyed to the detaining authority and the Superintendent, District Jail Poonch in terms of communication dated 07.11.2024. It is, thus, clear that the representation of the detenu was considered by the respondents after more than one and a half months. It is also apparent from the record that no intimation regarding rejection of the representation was given to the detenu. The record only shows that intimation regarding rejection of the representation was given to the Superintendent of the concerned Jail and the detaining authority. There is nothing in the record to show that a copy of the communication dated 07.11.2024 was handed over to the detenu. Neither report of any official of the Jail to this effect is available in the detention record, nor have the respondents pleaded so in their counter affidavit. In fact, in their counter affidavit, the respondents have categorically denied having received any representation from the detenu.

8 The question that arises for determination is as to whether consideration of the representation after about one and a half months from the

date of its receipt, and the non-furnishing of intimation regarding its rejection to the detenu, satisfies the requirements of law.

9 The aforesaid question has been answered by the Supreme Court in the case of “**Sarabjeet Singh Mokha Vs. District Magistrate, Jabalpur and others**’ reported in **(2021) 20 Supreme Court Cases 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.”

10. From the foregoing analysis of law on the subject, it is manifest that delaying of decision on the representation of the detenu amounts to infringement of a valuable right which is available to a detenu in terms of provisions contained in Section 3 of the PITNDPS 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 five days, and in exceptional case within a period of 15 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 fifteen 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 Article 22 of the Constitution.

11 In the present case, as already indicated above, the representation of the petitioner has been considered by the government after one and a half months of its receipt. This slackness on the part of respondents to take a decision on the representation of the detenu renders the impugned order of detention illegal.

12 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 detenu. The communication dated 07.11.2024 is an interdepartmental communication between Home Department and Divisional Commissioner, Jammu. 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 detenu is protected under Article 22(5) of the Constitution. It has been further held that failure of the government to communicate rejection of detenu's representation in a time bound manner is sufficient to vitiate the detention order.

13 In view of the aforesaid position of law, the impugned order of detention cannot sustain in law because of the reason that respondents have failed to communicate the rejection of his representation to the detenu.

14 For the foregoing reasons, the impugned order of detention is quashed and the writ petition is allowed. The respondents are directed to set the detenu at liberty, if not required in any other case. The record produced be returned to the concerned forthwith.

(SANJAY DHAR)
JUDGE

Jammu
05.05.2025
Sanjeev

WHETHER ORDER IS REPORTABLE: YES