

**IN THE HIGH COURT OF JAMMU & KASHMIR AND
LADAKHAT SRINAGAR**

Reserved on: 20.02.2025

Pronounced on: 24.03.2025

HCP No. 183/2024

ROUF AHMAD DAR

...PETITIONER(S)

Through: - Mr. Asif Wani, Advocate.

vs.

UT OF J&K & ORS.

...RESPONDENT(S)

Through: - Mr. Syed Musaib, Advocate.

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

JUDGMENT

1) The petitioner has challenged detention order No.04/DMA/PSA/DET/2024 dated 28.02.2024, issued by District Magistrate, Anantnag (for brevity "*detaining authority*") has been challenged. In terms of the aforesaid order, ***Rouf Ahmad Mir*** (for short "*detenue*") has been placed under preventive detention in order to prevent him from acting in any manner prejudicial to the security of the State/UT.

2) The petitioner has contended that the Detaining Authority has passed the impugned detention order without application of mind 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. It has also been contended that the representation filed by the petitioner against the impugned order of detention has not been considered.

3) The respondents have resisted the petition by filing a reply affidavit, wherein they have contended that the activities of detainee 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 detainee and the same were read over and explained to him. That the grounds urged by the petitioner are legally misconceived, factually untenable and without any merit. It has been further contended that the detainee was informed that he can make a representation to the government as well as to the detaining authority against his detention. It is further claimed in the reply affidavit that all statutory requirements and constitutional guarantees have been fulfilled and complied with by the detaining authority. That the order has been issued validly and legally. The respondents besides other, have placed reliance on the judgment of the Supreme Court in **Hardhan Saha v. State of W.B (1975) 3 SCC 198**. The respondents have also produced the detention record to lend support to the stand taken in the counter affidavit.

4) I have heard learned counsel for the 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 detainee was not furnished the translated version of the material which formed the basis of the grounds of detention to enable him to make an effective representation against his detention*

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

6) So far as the first ground of challenge is concerned, a perusal of the record produced by the learned counsel for the respondents reveals that the detainee is a semi-literate person. Thus, he would not be in a position to understand the contents of the grounds of detention. The record also suggests that the translated copies of grounds of detention have not been supplied to the detainee. Therefore, right of making an effective representation against the detention order has been rendered nugatory in this case, resulting in infringement of Constitutional right of the petitioner guaranteed under Article 22(5) of the Constitution.

7) The service of the grounds of detention on the detainee is a very precious constitutional right and the object behind the same is to enable the detainee to file an effective representation. It will be an empty formality to supply the grounds of detention to the detainee unless he is

in a position to understand the same. In my aforesaid view I am fortified by the judgments rendered by the Supreme Court in the case of ***Chaju Ram vs. The State of Jammu & Kashmir***, AIR 1971 SC 263 and ***Smt. Raziya Umar Bakshi Vs. Union of India***, AIR 1980 SC1751.

8) The detention record produced by the learned counsel for the respondents contains a copy of Execution Report, perusal of which shows that the grounds of detention have been read over and explained to the detinue by one ASI Ghulam Qadir of P/S Bijbehara. It is the case of the respondents that the said executing official has read over and explained the grounds of detention to the detinue. For supporting this contention, it was incumbent on the respondents to place on record a duly sworn affidavit of the said official, but no such affidavit is available in the detention record. To eradicate all the doubts, it was incumbent on the part of the person, who did the exercise of handing over the documents and conveying the contents thereof to the detinue, to file an affidavit in order to attach a semblance of fairness to his actions. Support, in this behalf, can be taken from the law laid down by the Supreme Court in the cases of ***State Legal Aid Committee, J&K Vs. State of J&K & others***, AIR 2005 SC 1270, ***Lallubhai Jogibhai Patel vs. Union Of India & Ors***, AIR 1981 SC 728 and the law laid down by this Court in the case of ***Mohammad Shaban Chopan Vs. State and another***, 2003 (II) S.L.J 455.

9) Next it has been contended by learned counsel for the petitioner that the representation filed by the petitioner against the impugned order of detention has not been considered by the respondents thereby violating his statutory and constitutional.

10) A perusal of the detention record reveals that the representation of the petitioner dated 07.05.2024 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, Anantnag in terms of communication No.Home/PB-V/95/2024/7423786 dated 28.08.2024. In the said communication, the respondents have admitted receipt of the 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 third week of May, 2024, which is clear from communication dated 20.05.2024, addressed by the District Magistrate, Anantnag to the Principal Secretary to Government, Home Department, that forms part of the detention record. The question that arises for determination is, as to whether consideration of representation after a period of more than three months from the date of receipt of the same satisfies the requirement of law.

11) 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.”

12) 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 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.

13) In the present case, the respondents have received the representation of the petitioner in the third week of May, 2024 but the same has been decided by them on 28.08.2024. This slackness on the part of respondents to take a decision on the representation of the petitioner renders the impugned order of detention illegal.

14) 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 28.08.2024 is an inter-departmental communication between Home Department and District Magistrate, Anantnag. It is not forthcoming 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 detainee is protected under Article 22(5). It has been further held that failure of the government to communicate rejection of detainee's

representation in a time bound manner is sufficient to vitiate the detention order.

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

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

(Sanjay Dhar)
Judge

SRINAGAR
24.03.2025
"Bhat Altaf-Secy"

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

