

Jammu & Kashmir High Court

Navjot Singh Alias Bablu vs Ut Of Jammu And Kashmir And Others on 30 September, 2022

HIGH COURT OF JAMMU & KASHMIR AND LADAKH  
AT JAMMU

WP(Cr1) No.11/2022

Reserved on :21.09.2022

Pronounced on: 30. 09.2022.

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Navjot Singh alias Bablu

..... petitioner (s)

Through :- Mr. K.S.Johal Sr. Advocate with  
Mr. Supreet Johal Advocate

V/s

UT of Jammu and Kashmir and others

.....Respondent(s)

Through :-

Mr. Pawan Dev Singh Dy.AG

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

#### JUDGEMENT

1 By the medium of instant petition, the petitioner has thrown challenge to detention order No.13 of 2021 dated 15.11.2021 issued by the District Magistrate, Jammu (for short 'the Detaining Authority'). In terms of the said order, Navjot Singh alias Bablu S/o S. Amar Singh R/O Indira Nagar, Tehsil R.S.Pura, District Jammu (for short 'detenu') has been placed under preventive detention and lodged in Central Jail Kot Bhalwal, Jammu. 2 It has been contended by the detenu that the Detaining Authority has passed the impugned detention order mechanically, without application of mind, inasmuch as, the detenu has already been booked for substantive offences and there was no compelling circumstance for the Detaining Authority to pass the impugned order of detention. It has been further contended that the procedural safeguards have not been complied with in the instant case, inasmuch as, the impugned order of detention and the grounds of detention have not been read over and explained to the detenu in the language which he understands. It is also contended that the grounds of detention are verbatim copy of police dossier which exhibits non-application of mind on the part of the Detaining Authority. It is also submitted that all the documents on the basis of which grounds of detention have been formulated, have not been furnished to the detenu. The petitioner has contended that the dossier, that formed the basis of grounds of detention, was sent to the Detaining Authority on 09.07.2021 and after a delay of more than four months, the impugned order of detention came to be passed, whereafter it took another five months for the Detaining Authority to execute the order of detention. According to the detenu,

the delay in execution of the detention order is a sufficient ground for quashing the said order. It is submitted that the fact, that the detenu was already enlarged on bail at the time of passing of the impugned order of detention, does not find mention in the grounds of detention which clearly exhibits lack of application of mind on the part of the Detaining Authority. Lastly, it has been contended that the impugned order of detention is based upon stale incidents having no proximate and live link with the necessity of passing the impugned order of detention.

3 The respondents have opposed the petition by filing a counter affidavit thereto. In their counter affidavit, it has been contended that all the constitutional and statutory safeguards were adhered to by the Detaining Authority while passing the impugned order of detention. It is submitted that the entire material was furnished to the detenu and he was also informed about his right to make representation against the order of detention. It has been submitted that the detenu is notorious, habitual hardcore criminal, desperate character, drug peddler and a history sheeter. He is involved in as many as seven FIRs registered with Police Station, Miran Sahib Jammu. According to the respondents, that, having regard to the past conduct of the detenu, there was every apprehension that he would disturb peace of the society if he is not taken into preventive custody. It has been further contended that the Detaining Authority, after going through the report of the sponsoring agency as also the material submitted before it, has applied his mind and passed the impugned order of detention. The respondents have also produced the record of detention to lend support to their contentions.

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

5 Learned counsel for the petitioners, while seeking quashment of the impugned order of detention, projected various grounds, but his main thrust, during the course of arguments, was on the following grounds:

(i). That there has been non-application of mind on the part of the Detaining Authority, inasmuch as, the detenu had already been admitted to bail in all the FIRs, reference whereof, is made in the grounds of detention, but, this fact has not been mentioned in the grounds of detention; and,

(i) That there has been a delay of more than four months in passing the impugned order of detention after the receipt of report of the sponsoring agency and a further delay of five months in executing the impugned order of detention regarding which there is no explanation from the respondents.

6 The first contention, that has been raised by learned Senior Counsel, appearing for the detenu, is that the impugned order of detention suffers from non-application of mind on the part of the Detaining Authority, inasmuch as, the grounds of detention do not bear any reference to the fact that the detenu had been admitted to bail in all the FIRs, mention whereof, is made in the grounds of detention.

7 A perusal of the grounds of detention reveals that it bears reference to FIR No. 59/2013 for offence under Sections 307/147/148 RPC AND 4/25 Arms Act of Police Station, Miran Sahib, FIR No.62/2015 for offences under Sections 452/427/34 RPC and 4/25 Arms Act of Police Station, Miran Sahib, FIR No.65/2012 for offences under Sections 382/420/147/506/323 RPC of Police Station, Miran Sahib, FIR No. 76/2019 for offences under Sections 8/21/22/27-A/29 NDPS Act of Police Station Miran Sahib, FIR No. 77/2021 for offences under Section 3/25 Arms Act of Police Station Miran Sahib, FIR No. 137/2015 for offences under Sections 8/21/22/29 NDPS Act of Police Station Miran Sahib and FIR No.171/2015 for offences under Sections 307/341/323/34 RPC of Police Station, Miran Sahib. According to the detenu, he has been bailed out in all these FIRs and this fact has not been taken note of by the Detaining Authority at the time of passing of the impugned order of detention. The detention record bears testimony to the fact that, at the time of execution of warrant of detention, the detenu was not in custody which substantiates his claim that he was on bail in all the aforesaid FIRs. 8 The non-mentioning of the aforesaid important fact in the grounds of detention exhibits non-application of mind on the part of the Detaining Authority. This clearly shows that the Detaining Authority has not meticulously examined the record while passing the impugned order of detention which renders the same unsustainable in law. I am supported in my aforesaid view by the judgment of the Supreme Court rendered in the case of Anant Sakharam Raut v. State of Maharashtra, 1987 SC 137. 9 It has been next contended by learned Senior Counsel appearing for the petitioner that, in the instant case, there has been delay of about five months in executing the impugned order of detention and in this regard, respondents have not offered any explanation, much less plausible explanation in their reply affidavit.

10. As already noted, the impugned order has been passed on 15.11.2021, whereas the detention order has been executed on 26.04.2022 i.e more than five months after passing of the impugned order of detention. In their reply affidavit, the respondents have not stated anything as to why the warrant of detention could not be executed on the petitioner during the aforesaid period. It is not the case of the respondents that the petitioner was absconding or that he was concealing himself to avoid the execution of warrant of detention. In these circumstances, it appears that there is an ominous inaction on the part of the Detaining Authority to have the detention order executed between 15.11.2021 to 26.04.2022. The detention record shows that SSP Jammu had forwarded the warrant of detention to the Executing Officer on 16.11.2021 itself, but why it could not be executed up to 26.04.2022 has remained a mystery. If the subjective satisfaction of the Detaining Authority to detain the detenu was really genuine and pressing, the respondents would not have followed a policy of inactivity for more than five months and this inaction on their part during the said period throws a cloud on the genuineness of the subjective satisfaction of the Detaining Authority of clamping a detention order on the detenu.

11 A Division Bench of this Court in the case of Ghulam Rasool Shah vs State of J&K and another, 2000 Cri.LJ 2548 has held that delay in execution of warrant of detention without any plausible explanation is bound to defeat and even subvert the very safeguards contained in Section 13 of the Jammu and Kashmir Public Safety Act, 1978. The Court went on to hold that when delay caused in execution of an order of detention leads to delaying of communication of grounds of detention and disables a detenu from making representation at earliest opportunity, there is infraction of mandatory provisions of Section 13 of the said Act, rendering order of detention liable to be

quashed. Placing reliance on the aforesaid ratio, the impugned order of detention in the instant case becomes unsustainable in law. 12 For what has been discussed hereinbefore, it is clear that the impugned order of detention is not sustainable in law and, accordingly, the petition is allowed and the impugned detention order is quashed. The respondents are directed to release the detenu from the preventive detention forthwith, provided he is not required in connection with any other case. 13 The detention record be returned back to the learned counsel for the respondents.

(SANJAY DHAR) JUDGE JAMMU

30. .09.2022 Sanjeev Whether order is speaking:Yes Whether order is reportable:Yes/No