

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

Reserved on: 17.11.2023

Pronounced on:08.12.2023

WP(Crl.) No.124/2023

OWAIS SYED KHAN

...Petitioner(s)

Through: - Mr. Wajid Haseeb, Advocate.

Vs.

UT OF J&K & ORS.

...Respondent(s)

Through: - Mr. Sajad Ashraf, GA.

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

JUDGMENT

1) The petitioner has challenged the detention order bearing No.DMS/PSA/26/2022 dated 08.04.2022, issued by District Magistrate, Srinagar-respondent No.3 herein, in terms whereof, *Shri Owais Syed Khan* (hereinafter referred to as the detenu), has been placed under preventive custody and lodged in Central Jail, Jammu Kotbhalwal, for preventing him from acting in any manner prejudicial to security, sovereignty and integrity of the State.

2) The petitioner has contended that there has been delay in execution of the impugned detention order, inasmuch as the impugned order of detention has been passed on 08.04.2022 but the same has been executed on 14.03.2023 i.e. after a period of eleven months, though the petitioner was all along available and he could have been detained in terms of the impugned order. It has been further contended that the procedural safeguards have not been complied with in the instant case

as whole of the material which formed basis of the impugned detention order has not been supplied to the petitioner. That the grounds of detention are non-existent and stale and that the representation filed by the detenu has not been considered by the respondents.

3) The respondents have resisted the petition by filing a reply affidavit thereto, wherein they have disputed the averments made in the petition and insisted that the activities of detenu are highly prejudicial to the maintenance of public order. 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 is contended that the grounds urged by the petitioner are legally misconceived, factually untenable and without any merit. 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 further claimed 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. In support of their contentions, the respondents have placed reliance on various judgments of the Supreme Court. The respondents have produced the detention record to lend support to the stand taken in the counter affidavit.

4) 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 ground there has been delay

in execution of the detention order, inasmuch as the impugned order of detention has been passed on 08.04.2022 but the same has been executed on 14.03.2023 i.e. after a period of eleven months and there has been no explanation for the delay that has occasioned in execution of the impugned detention order.

5) Resort to preventive detention has to be taken only in cases where there is an urgent need to detain a person so as to prevent him from indulging in activities which are prejudicial to the maintenance of public order or security of the State. When there is unsatisfactory and unexplained delay in executing the order of detention, such delay would throw considerable doubt on the genuineness of the subjective satisfaction recorded by the detaining authority. This would lead to a legitimate inference that the detaining authority was not really and genuinely satisfied as regards the necessity for detaining the detainee.

6) The Supreme Court has, in the case of **Manju Ramesh Nahar vs. Union of India and others**, AIR 1999 SC 2622, while considering a similar situation observed as under:

This object can be achieved if the order is immediately executed. If, however, the authorities or those who are responsible for the execution of the order, sleep over the order and do not execute the order against the person against whom it has been issued, it would reflect upon the satisfaction of the detaining authority and would also be exhibitivive of the fact that the immediate necessity of passing that order was wholly artificial or non-existent.

7) In another decision in **SMF Sultan Abdul Kader vs. Jt. Secy, to Govt. of India & Ors.**, (1998) 8 SCC 343, the Supreme Court has held unexplained delay in execution of the order of detention to be fatal.

8) In the instant case, the impugned detention order was issued on 08.04.2022 but the same has been executed on 14.03.2023, i.e. after a period of more than eleven months thereafter, which clearly shows that there was no requirement for immediate detention of the petitioner under preventive detention laws and that there was sufficient time with the respondents to take resort to normal criminal laws, if at all they wanted to proceed against him. There has been no explanation on the part of respondents regarding delay in execution of the impugned detention order. Even the record produced by the respondents does not offer any explanation for delayed execution of the order of detention. In fact, the respondents in their counter affidavit have not offered any explanation whatsoever regarding delayed execution of the order of detention. The same, therefore, renders the impugned detention order unsustainable in law.

9) For the afore-stated reasons, the petition is allowed and the impugned detention order is quashed. The respondents are directed to release the petitioner from the preventive custody forthwith, provided he is not required in connection with any other case.

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

(Sanjay Dhar)
Judge

Srinagar

08.12.2023

“Bhat Altaf, PS”

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