

S. No. 01

HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT SRINAGAR
(Through Virtual Mode)

Pronounced on: 24.05.2024

WP(Crl) No. 436/2022

- 1. Ghulam Mohi-ud-Din Lone, age 37 years**
S/o Assadullah Lone
R/o Androosa Khrew Pampore
District Pulwama
Through his mother Mehtaba, age 70 years
W/o Assadullah Lone
R/o Androosa Khrew Pampore
District Pulwama.

.....Petitioner (s)

Through: Ms. Rifat Khalida, Advocate
V/s

- 1. Union Territory of J&K through**
Principal Secretary to Govt., Home Department
Civil Sectt. Srinagar/Jammu.
- 2. District Magistrate Pulwama.**
- 3. Sr. Superintendent of Police District**
Awantipora Pulwama.
- 4. Superintendent Central Jail**
Kote Balwal Jail Jammu.

..... Respondent(s)

Through: Mr. Zahid Qyas Noor, GA

Coram:

Hon'ble Mr. Justice Puneet Gupta, Judge.

JUDGMENT

- 1. The District Magistrate, Pulwama by Order No.50/DMP/PSA/22**
dated 20.06.2022 has placed Ghulam Mohi-ud-din Lone S/o
Assadullah Lone R/o Androosa Khrew Pampore under the preventive
detention with a view to prevent him from acting in any manner

prejudicial to the security of the State. The petitioner has been lodged in Central Jail, Kot Bhalwal, Jammu. It is this order of the respondent no.2 that the wife of the petitioner is aggrieved of and seeks quashment of the same on the following grounds:

- i) That the detaining authority has recorded its satisfaction only on the basis of police dossier and the documents relied by the detaining authority have not been provided to the petitioner.
 - ii) That the grounds of detention are verbatim reproduction of the police dossier.
 - iii) That the petitioner is not well conversant with the English language and translated copies of the documents were not provided to the petitioner.
 - iv) That the earlier also detention order was passed and this Court vide judgment dated 27.04.2022 quashed the detention order but the District Magistrate without any rhyme or reason on 20.06.2022 again detained the petitioner again under PSA.
2. The counter affidavit has been filed by the respondents stating therein that the detenu came to be detained under the provisions of the Act of PSA, 1978 validly and legally by virtue of detention order bearing No. 50/DMP/PSA/22 dated- 20-06-2022 issued by District Magistrate Pulwama. All statutory requirements and constitutional guarantees have been fulfilled and complied with by the Detaining

Authority. Grounds of detention, order of detention, as well as entire material relied upon by the detaining authority came to be furnished to the detenu well within statutory period provided under section 13 of the Act. In compliance to District Magistrate's detention order, the warrant was accordingly executed on 21/06/2022 by Inspector Waseem Gull No.296/Pau, PID No EXK-109237 of DPL Awantipora and detenu was handed over to Superintendent District Jail Kot-Bhalwal for lodgment. The contents of the detention order/warrant and the grounds of detention were read over and explained to the detenu in the language which he fully understood and in lieu whereof, the detenu/petitioner subscribed his signatures on the Execution report/order. The detenu was also well informed about his right of making of representation to the detaining authority or to Government against his detention. The detenu despite having received the aforesaid entire material has not so far chosen to make any representation against his detention. The prayer is for dismissal of the petition.

3. Photocopy of the record is provided by learned counsel for the respondents.
4. Learned counsel for the petitioner has submitted that there is no correlation between the alleged activities of the petitioner and the detention order passed by the detaining authority. No specific ground

is mentioned for detaining the petitioner in the impugned order and, thus, it prevented the petitioner from making effective representation before the Advisory Board/Government.

5. Per contra, learned counsel for the respondents submits that there was sufficient material for the detaining authority to pass fresh order of detention though the earlier one was quashed by this Court vide judgment dated 27.04.2022. The petitioner being OGW of banned terrorist Organization “Lashker-e-Toiba/Residance Front, was providing logistic support to the militants and thereby was indulging in the anti-national activities and was threat to the security of the State. The petitioner was provided all the relevant material but he did not choose to file representation.
6. Heard learned counsel for the parties and perused the record.
7. The grounds mentioned in the detention order in question were related in the earlier detention order passed by the respondents which was quashed by the Court vide order dated 27.04.2022. In addition to the same, the respondents in the now impugned order of detention have mentioned certain other grounds for passing detention order. It is stated that even after the earlier detention order was quashed vide this Court order dated 27.04.2022 the petitioner has not stopped from nefarious designs to pollute the juvenile young men of the area towards terrorists and further that the petitioner is trying to be

informant of terrorists. A very cursory perusal of the grounds mentioned in the detention order speak of the same being vague and bereft of any relevant detail. What sort of specific activity has been carried out by the petitioner after his release from the jail on 30.04.2022 till the detention order was passed on 20.06.2022 is conspicuous by its absence.

8. It is trite proposition of law that once an earlier order of detention stands nullified by the order of the Court, the earlier grounds mentioned in the detention order cannot be the reason for passing fresh order of detention.

9. In *Chhagan Bhagwan Kaharv. N. L. Kalna and others*[AIR 1989 SC 1234]the Supreme Court held:

“12. It emerges from the above authoritative judicial pronouncements that even if the order of detention comes to an end either by revocation or by expiry of the period of detention, there must be fresh facts for passing a subsequent order. A fortiori when a detention order is quashed by the Court issuing a high prerogative writ like habeas corpus or certiorari, the grounds of the said order should not be taken into consideration either as a whole or in part even along with the fresh grounds of detention for drawing the requisite subjective satisfaction to pass a fresh order because once the Court strikes down an earlier order by issuing rule, it nullifies the entire order.

10. In *Jahangir Khan Fazal Khan Pathan v. The Police Commissioner, Ahmedabad and another* [AIR 1989 SC 1812], the Supreme Court held:

“.....It is, therefore, clear that an order of detention cannot be made after considering the previous grounds of detention when the same had been quashed by the Court, and if such previous grounds of detention are taken into consideration while forming the subjective satisfaction by the detaining authority in making a detention order, the order of detention will be vitiated. It is of no consequence if the further fresh facts disclosed in the grounds of the impugned detention order have been considered.”

11.The subjective satisfaction recorded by the detaining authority though cannot be critically examined by this Court as it does not function as appellate court yet the Court is not barred from looking into the grounds of the detention and prima facie satisfy itself as to whether grounds had any co-relation with the purpose for which the detention order has been passed. The court has no qualms in holding that the grounds of detention in the impugned order do not validate the reason for passing of the detention order in question.

12.The learned counsel appearing for the respondents has cited AIR 1972 Supreme Court 2256 and AIR 2000 SC 2925 in support of his contention that the grounds of detention relate to the past activities of the detenu and that the Court is not to substitute its judgment for satisfaction of detaining authority as if sitting in appeal on order passed by the detaining authority.

13.There can be no dispute with what has been held by the Hon'ble Supreme Court in those judgments. However, the facts and circumstances of the case determine the fate of the case. The Court is

also in agreement with the contention of the counsel for the petitioner that the vague grounds in the detention order deprived the petitioner of making statutory representation before the Advisory Board and the government. The right of representation is statutory right and fundamental in character of which the petitioner has been deprived of due to ambiguous and vague nature of allegations leveled in the detention order.

14. The court is of the considered view that the detention order is not passed in accordance with law and is required to be quashed for the aforesaid reasons. The impugned order of detention is accordingly quashed. The petitioner is directed to be released from the custody provided he is not required in any other case.

**(Puneet Gupta)
Judge**

Jammu

24.05.2024

Shammi

Whether the order is speaking:	Yes
Whether the order is reportable:	Yes