

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

LPA No. 191/2023

Reserved on: 04.06.2024
Pronounced on: 03.07.2024

**Yawar Ahmad Malik (Aged 25 years)
S/o Abdul Aziz Malik
R/o Wedow Mishipora Qaimoh, District
Kulgam
Through his Father, Abdul Aziz Malik,
(Aged 60 Years) S/o Ghulam Mohammad
Malik R/o Wdow Mishipora, Qaimoh
District Kulgam**

..... Appellant(s)

Through: *Mr. Asif Ahmad Dar, Adv. vice Mr. G. N. Shaheen, Advocate*

V/s

- 1. Union Territory of J&K through
Principal Secretary to Government,
Home Department, Civil Secretariat,
Srinagar/ Jammu.**
- 2. District Magistrate, Kulgam**

.....Respondent(s)

Through: *Mr. Mubeen Wani, Dy. AG with
Ms. Nowbahar Khan, Advocate*

CORAM:

**HON'BLE THE CHIEF JUSTICE.
HON'BLE MS. JUSTICE MOKSHA KHAJURIA KAZMI, JUDGE.**

JUDGMENT

Per Moksha: J

I. The instant Letters Patent Appeal has been filed on behalf of the detinue against the Judgment dated **29.08.2023** passed in **WP (Crl.) No. 405/2022** titled, "**Yawar Ahmad Malik Vs. UT of J&K and Ors**", whereby, the learned Writ Court has dismissed the writ petition seeking quashing of the detinue's detention order bearing No. 44/DMK/PSA/2022 dated 25.06.2022, passed under the Jammu and Kashmir Public Safety Act,

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1978.

2. The brief facts of the case giving rise to the passing of the detention order and filing of the present appeal are stated as follows:

3. The appellant-petitioner filed a writ petition before the learned writ Court which was registered as **WP(Crl) No. 405/2022** challenging the detention of his son, Yawar Ahmad Malik, ordered by the District Magistrate, Kulgam, in exercise of the powers under **Section 8** of the **J&K Public Safety Act, 1978 (JK PSA)**, in terms of his detention order No. 44/DMK/PSA/2022 dated 25.06.2022. The said order is shown to have been passed by the detaining authority with a view to prevent the detenue from acting in any manner prejudicial to the security of the State.

4. The detention order so passed by the detaining authority was challenged in the Writ Petition by the appellant-detenue, mainly, on the following grounds:

- (i) *Firstly, it has been submitted that the allegations/ grounds of detention are vague, mere assertions of the detaining authority and non-existent and no prudent man can make an effective representation against these allegations. The petitioner further submits that the FIR mentioned in the grounds of detention have no nexus with the detenue and has been fabricated by the Police in order to justify his detention.*
- (ii) *Secondly, that the detaining authority has shown the wavering mind by labelling the detenue as Over Ground Worker (OGW) and also as a member of banned terrorist organization Lashker-e- Toiba (LeT) when there is no evidence on the basis of which he had been so labelled.*
- (iii) *Thirdly, the detaining authority has not prepared the grounds of detention by itself, which is pre-requisite for him before passing any detention order. The grounds of detention are replica of the Police dossier and clearly depicts the non-application of mind by the detaining authority.*
- (iv) *Fourthly, the petitioner/ detenue was not provided copies of connected material viz FIR, statement of witnesses, dossier, seizure memo and other connected documents on the basis of which detention order was passed, which deprived the detenue from making a meaningful and effective representation to the concerned authority.*
- (v) *Fifthly, it has been submitted that the detenue was arrested on*

03.06.2022 by Police Station, Qaimoh Kulgam and was allegedly involved in case FIR No. 54/2018 under Section 147, 148, 149, 336 RPC, and in view of offences alleged therein, there was no likelihood of him getting out of custody on bail in near future, as the offence alleged against detinue was non bailable offence and neither the detinue had applied for bail, hence there was no occasion for the respondent No. 2 to pass the impugned order, when the detinue was already in custody.

- (vi) *Sixthly, the last alleged activity against the detinue is of year 2018 and the detention order has been passed in the year 2022 on the basis of the past alleged activity as such there is delay of more than four years in passing the detention order and the detaining authority has not tendered any reasonable explanation for the same. The delayed execution has lost the proximate link between the detention order and the object sought to be achieved by passing the detention order.*

5. The learned Writ Court, vide its judgment impugned in this appeal, dismissed the writ petition, the operative portion of which is reproduced as under:

“10. Lastly, it has been contended that the petitioner was already booked in a substantive offence, as such, there was no need to pass the impugned order of detention. If we have a look at the grounds of detention it is indicated therein that the petitioner was booked in FIR No. 54 of 2018 for offences under Section 147, 148, 149, 336 RPC of Police Station Qaimoh. According to learned counsel for the petitioner there was no possibility of the petitioner getting bail in this case. The argument of learned counsel for the petitioner is without any merit, for the reasons that all the aforementioned offences are bailable in nature. Therefore, it cannot be stated that there was no possibility of the petitioner getting bail in these offences. In fact, the petitioner was not in custody when the impugned order of detention was passed. Thus the detaining authority was well within its jurisdiction to pass the impugned order of detention once it found that the activities of the petitioner are prejudicial to the security of the State.

11. For the foregoing reasons, I do not find any merit in this petition. The same is, accordingly, dismissed.”—

6. The appellant by way of the present appeal has challenged the impugned judgment of the Writ Court on the following grounds that:

- a. That the Hon'ble Single Bench has not considered the grounds of challenge pleaded in the petition by the appellant. Not even single ground has been considered while passing the judgment.*
- b. That the law produced by the petitioner/appellant herein in support of grounds of challenge has totally been ignored by the Hon'ble Single Bench while delivering the impugned judgment.*

- c. *That the Hon'ble Single Judge has not returned the finding with respect of the breach of constitutional and legal safe guards, available to the detenu, by the detaining authority/ respondents while passing the detention order against the appellant (detenu).*
- d. *The aspect that detenu has been deprived of his constitutional and legal right of filing a representation against his detention before the competent authority as he has not been provided the material in the shape of FIR, statement of witnesses, dossier and other material which has been referred and relied upon by the detaining authority while passing the order of detention, has also been ignored by the Hon'ble Single Bench.*
- e. *That the respondents have nowhere properly or effectively refuted or replied the grounds of challenge pleaded in the writ petition by the appellant before the writ Court, yet the Hon'ble Single Bench did not consider the grounds challenging the validity, legality and constitutionality of the order of detention which is apparent and quite visible in the impugned judgment.*

7. Learned counsel for the appellant, submitted that detenu was not provided the relevant material viz. copy of FIR, Statement of witnesses recorded by the Investigating Agency, dossier and other material perused by the detaining authority and on the basis of which, the detaining authority had attained its subjective satisfaction with respect to detention of the detenu under the provisions of the Public Safety Act with a view to prevent the detenu from acting in any manner prejudicial to the security of State.

8. Learned counsel appearing for the appellant/detenu further submits that the action of the respondents in not providing the entire material has prevented the detenu from making an effective representation to the detaining authority and the Government against his detention, and was, thus, deprived of his most precious right of making the representation, guaranteed to him by the Constitution. The learned counsel further averred that because of such a failure, the detention of the detenu is rendered illegal; therefore, the detention order is liable to be quashed.

9. It is contended by learned Counsel appearing for the detenu, that the detaining authority has shown wavering mind by labelling detenu as Over-Ground Worker (OWG) as also a member of banned Terrorist Organization (LeT), when the detenu is neither an Over- Ground Worker nor a member

of the said banned organization and there is no evidence available to the detaining authority to substantiate such allegation. Learned counsel further submits that the detaining authority has failed to show compelling reasons for such detention. Moreover, no subjective satisfaction has been recorded by the detaining authority in the grounds of detention before issuance of the impugned order.

10. To support his submission, the Learned counsel for the appellant in support of his submissions, relied upon the following decisions: -

- a. AIR 1989 SC 2265 titled Abdul Razak Abdul Wahab Sheikh Vs. S. N. Sinha, Commissioner of Police.*
- b. SCC 2000 (7) 463 titled State of Maharashtra & Others Vs. Santosh Shanker Acharia.*
- c. 2022 Livelaw SC 358 titled Mallada K. Sri Ram Vs. State of Telangana*
- d. AIR 1999 SC 618 titled Powanammal Vs. State of Tamil Nadu and Anr;*
- e. AIR 2009 SC 2184 titled Thahira Haris Vs. Govt. of Karnataka and Ors.*
- f. 2022 Livelaw 813 SC titled Sushanta Kumar Banik Vs. State of Tripura and Ors.*
- g. HCP No. 109/2023 titled Arif Aijaz Shehri Vs. UT decided on 01.04.2024.*

11. *Per contra*, Mr. Mubeen Wani, Learned Deputy Advocate General appearing on behalf of respondents, resisted the appeal and submitted that the activities of the detenu were found prejudicial to the security of the State and it was on this count that the police recommended the preventive detention of the detenu. He further submits that the contents of the warrant and the grounds of detention were read over and explained to the detenu in the language understood by him and in lieu thereof the detenu had put his signature on the execution report. Additionally, the detenu was informed about his right to submit representation against his detention if the detenu so desires.

12. Learned Deputy Advocate General appearing for the Respondents further submits that all the statutory requirements and constitutional guarantees have been fulfilled and complied with by the detaining authority, indisputably keeping in mind the very object of law of preventive

detention being not punitive, but only preventive. Additionally, he submits that the grounds of detention are precise, proximate, pertinent and relevant and that there is no vagueness or staleness in the grounds of detention coupled with definite indications. The grounds of the detention show the complete picture of the activities of the detenu, which on the face of it are highly prejudicial to the security of the State.

13. In support of his submissions, the learned counsel appearing for the respondents has relied upon following decisions:-

- a) *Hardhan Saha Vs State of West Bengal (1975) 3 SCC 198;*
- b) *Debu Mahato Vs State (1974) AIR SC 816*
- c) *Ashok Kumar Vs. Delhi Administration & others AIR 1982 SC 1143*
- d) *Judgment dated 30.12.2023, passed by the Hon'ble High Court (J&K) in LPA No. 185/2022 titled Shabir Ahmad Najar versus UT of J&K and Another."*

14. Heard learned counsel for the parties at length and we have also gone through the detention record produced before us by the learned Counsel for the respondents.

15. The record reveals that the detenu vide detention order No. **44/DMK/PSA/2022** dated **25.06.2022** was detained by the Respondent No 2- District Magistrate, Kulgam, after drawing his satisfaction which was based on the dossier placed before him by the Senior Superintendent of Police (SSP)- Kulgam dated **11.06.2022**, that there were sufficient grounds to prevent the detenu from acting in any manner prejudicial to the security of the State.

16. The specific mention made in the grounds of detention with reference to targeting minority community and disturbing the communal harmony within the UT of J&K at the cost of peace and tranquility cannot be belied or overlooked just for an assertion made against it.

17. Upon perusal of the impugned Judgment, it transpires that the submissions made by the learned Counsel for the Appellant, as regards the submissions made before the learned Single Judge having not been dealt with, appear to be unfounded as the learned Single Judge has quite sufficiently dealt with and

answered the submissions made before it.

18. Furthermore, the record reveals quite explicitly that the appellant had been an over ground worker indulging in activities prejudicial to the Security of the State, therefore, the submission of the learned counsel for the appellant that the grounds of detention are vague and without any material, has no substance. The preventive detention is aimed at to serve a deterrent for an individual indulging in activities which are in conflict and have the potential of disturbing the peace as also prejudice the Security of the State. The detaining authority has ample powers to detain such individual under preventive detention after deriving satisfaction about his activities being prejudicial to the Security of the State. The exercise of such power in the instant case does not appear to be a misuse but a pragmatic and reasonable use of power. This is vital aspect and cannot be compromised. Since the detenu is alleged to have indulged in activities prejudicial to the Security of the State, substantiated by the records, therefore, he does not need any concession. The Hon'ble Apex Court in case titled *Vijay Kumar Vs. State of Jammu and Kashmir and Ors.*, reported in *AIR 1982 SC 1023* held as under:-

“Section 8 of the Act prescribes grounds for detention, one such ground being to prevent any person from 'acting in any manner prejudicial to the security of the State. The impugned order of detention recites that the detenu is detained with a view to preventing him from 'acting in any manner prejudicial to the security of the State.' The expression 'acting in any manner prejudicial to the security of the State' has been defined in Section 8(3) of the Act to mean making preparations for using, or attempting to use, or using or instigating, inciting, provoking or otherwise abetting the use of force, to overthrow or overawe the Government established by the law in the State. The detenu contended before the High Court that accepting all the activities attributed to the detenu in the grounds of detention at their face value, the alleged prejudicial activity would not fall within the ambit of the expression 'acting in any manner prejudicial to the security of the State.' The definition of the expression as hereinbefore extracted indicates that the person accused of 'acting in any manner prejudicial to the security of the State' must be shown to be making preparations for using, or attempting to use, or using or instigating, inciting or provoking or otherwise abetting the use of force, and the

intention or motive for the activity must be to overthrow or overawe the Government established by law in the State. The learned judge of the High Court following an earlier Division Bench judgment of the same High Court in Rharatilal v. State, 1981 K.L.H. 71 negated this contention observing that where the Government accusation against the detenu is that he had been indulging in supplying information for Pakistan Army Intelligence and was passing on vital information pertaining to the Army department etc. to that Agency, such activities were likely to assist Pakistan in any armed aggression against the State and were a threat to the security of the State. This view needs examination but as the argument was not pressed before us, we refrain from examining the same.”

19. The Judgment cited by the learned counsel for the appellant delivered by the Single Bench of this Court in case titled Arif Aijaz Shahri Vs. UT of J&K and Ors., to demonstrate that there has been non-application of mind on the part of the detaining authority insofar as the alleged activities of the detenu have been reflected to be prejudicial to the Security of the State and not the Union Territory of J&K. The learned counsel submits that after the application of J&K Re-Organization Act of 2019, the J&K no more remained a State but was converted into two Union Territories, therefore, the detaining authority ought to have applied its mind and detained the detenu for the acts prejudicial to the Security of the Union Territory of J&K.

20. Article 12 of the Indian Constitution States that,

“Definition: In this part, unless the context otherwise requires, the State includes the Government and Parliament of India and the Government and the Legislature of each of the States and all local or other authorities within the territory of India or under the control of the Government of India.”

There is no doubt that the definition of State as contained in [Section 3 (58) of General Clauses Act, 1897] includes Union Territory. The term, “all local or other authorities within the territory of India or under the control of the Government of India” comprises States and Union Territories. The term State includes the Government of each State that is the State Executive and legislature of each State that is the State legislatures. It is pertinent to mention that it includes Union

Territories as well.

21. We do not subscribe to the view taken by the learned Single Bench in the case supra and we, accordingly, held that the Judgment rendered by the Single Bench is not applicable to the instant case.

22. The submission made by the learned counsel for the appellant in respect of the subjective satisfaction of the detaining authority is not accepted for the reason that the same is the prerogative of the detaining authority, who arrives to such satisfaction on the basis of material made available to it. This Court in case titled Shabir Ahmad Najar Vs. UT of J&K and Anr., bearing LPA No. 185/2022, decided on 30.12.2023, has held in paragraph No. 29 as under:-

29. Under the circumstances, if the detaining authority comes to subjective satisfaction that because of his involvement with the aforesaid banned terrorist organization, Hizb-ul-Mujahedeen (HM), which is based on the aforesaid FIR case, this Court cannot at this stage, in these proceedings examine the correctness or sufficiency of the materials which formed the basis for passing the detention order. There appears to be a material basis for arriving at the subjective satisfaction if the Detaining Authority that the Detenue requires to be in preventive detention because of his proximate prejudicial activities which pose a threat to the security of State and accordingly, required to be detained under Public Safety Act (PSA).

23. Perusal of the detention record reveals that the detention period of the detenue has expired on 25.06.2024. The preventive detention challenged in the instant appeal has, as such, outlived its life.

24. It is pertinent to mention here that the Supreme Court, in numerous decisions, has held that even one prejudicial act can be treated as sufficient for forming requisite satisfaction for detaining a person.

25. It is settled law that this Court in proceedings under Article 226 of the Constitution has limited scope to scrutinizing whether detention order has been passed on material placed before it, it cannot go further and examine sufficiency of material. This Court does not sit in appeal over decision of detaining authority and cannot substitute its own opinion over that of detaining authority when grounds of detention are precise, pertinent, proximate and relevant. This Court can only examine grounds disclosed by the Government in order to see whether they are relevant to the object

which the legislation has in view, that is, to prevent detenu from engaging in activities prejudicial to security of the State or maintenance of public order. In this regard I am fortified by law laid down by the by the Supreme Court in *Ashutosh Lahiry v. State of Delhi and anr. (1953) AIR SC 451*; *State of Gujarat v. Adam Kasam Bhaya (1981) 4 SCC 216*; *State of Punjab v. Sukhpal Singh (1990) 1 SCC 35*; *Union of India v. Arvind Shergill (2000) 7 SCC 601*; *Pebam Ningol Mikoi Devi v. State of Manipura, (2010) 9 SCC*; and *Subramanian v. State of T.N. (2012) 4 SCC699*.

26. From the above discussion coupled with the law as taken note of hereinbefore, this Court is of the view that the grounds of detention formulated by the detaining authority and the record supplied by the respondents does not suffer from and legal infirmity. The detention order appears to be on sound logic for the reason that the detaining authority, before passing the order, has applied its mind to draw subjective satisfaction to order preventive detention of the detenu by curtailing his liberty.

27. For the foregoing reasons and observations made hereinabove, this appeal is *dismissed* and the impugned Judgment dated **29.08.2023** passed by the learned Single Bench is upheld being without any perversity and legal infirmity.

28. The instant Letters Patent Appeal is *dismissed* in the manner as indicated above.

29. Registry is directed to return the detention record to Mr. Mubeen Wani, learned Deputy Advocate General appearing for the respondents against proper receipt.

(Moksha Khajuria Kazmi)
Judge

(N. Kotiswar Singh)
Chief Justice

Srinagar

03.07.2024

“Mohammad Yasin Dar”

Whether the Judgment is reportable: Yes/No.

Whether the Judgment is speaking: Yes/No

