



2024:JKLHC/JMU:2413  
Sr. No. 05

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

Case:- HCP No. 54/2024

Rahees Hayat alias Ayaz, Age 38 years  
S/o Mohd. Rafiq  
R/o Chak Banala  
Tehsil Mendhar, District Poonch  
At present lodged in District Jail Poonch.  
Through his Wife  
Shasta Begum W/o Rahees Hayat  
R/o Village Banda, Tehsil Mendhar  
District Poonch.

.....Appellant(s)/Petitioner(s)

Through: Mr. Prince Khanna, Advocate

**Vs**

1. Union Territory of Jammu & Kashmir  
Through Commissioner/Secretary (Home)  
Civil Secretariat, Jammu/ Srinagar.
2. The District Magistrate, Poonch.
3. The Senior Superintendent of Police, Poonch.
4. The Superintendent District Jail Poonch.

..... Respondent(s)

Through: Mr. P. D. Singh, Dy. AG

**Coram: HON'BLE MR. JUSTICE RAHUL BHARTI, JUDGE**

**ORDER**  
**03.09.2024**

01. Heard learned counsel for the parties.
02. The petitioner, acting through his wife Shasta Begum, has petitioned this Court with the present writ petition instituted on 18.04.2024 invoking writ jurisdiction of this Court under article 226 of the Constitution of India for quashment of his preventive detention effected in terms of an Order No. 01/DMP/PSA of 2023 dated 09.02.2023 passed by the respondent No. 2 – District



Magistrate, Poonch thereby subjecting the petitioner to undergo preventive detention custody under the Jammu & Kashmir Public Safety Act, 1978 for a period which came to be later prescribed for two years. The petitioner came to be detained on 09.02.2023.

03. Till date, the respondents i.e. UT of Jammu & Kashmir along with the District Magistrate, Poonch have not come forward with submission of response/reply to the writ petition and this default is at their own risk and cost which cannot hold back this Court from adjudicating the writ petition on its own merits when it comes to a matter of involvement of fundamental right to personal liberty and that is how this Court is proceeding to dispose of this petition on its own merits, notwithstanding non filing of reply/response to the writ petition.

04. The respondent No. 3-Sr. Superintendent of Police (SSP), Poonch, vide letter No.CS/PSA/2023/1026 dated 07.02.2023, came to serve a dossier to the respondent No. 2 – District Magistrate, Poonch thereby seeking preventive detention of the petitioner under section 8 of the Jammu & Kashmir Public Safety Act, 1978 casting the activities of the petitioner to be prejudicial to the Security of the State.

05. In response to Sr. Superintendent of Police (SSP), Poonch's said dossier, the respondent No. 2– District Magistrate, Poonch came forward with formulation of grounds of detention so as to draw out a subjective satisfaction for subjecting the petitioner to suffer preventive detention custody on account of his alleged activities



being prejudicial to the Security of the State and Sovereignty of India. Accordingly, an Order No. 01/DMP/PSA of 2023 dated 09.02.2023 came to be passed by the respondent No. 2 – District Magistrate, Poonch which came to be executed thereby getting the petitioner under preventive detention custody which has now lasted for more than one and half year of its run with four odd months left for its completion.

06. A habeas corpus writ petition cannot be allowed to suffer self-abortion because of its pendency outlasting the prescribed period of detention as that would be simply telling an aggrieved petitioner as a detenué that it is not by operation the rule of law that he has regained his personal liberty but just by an efflux of time and that would always be a very sad statement on a case in so far as approach of a constitutional court towards adjudication of writ of habeas corpus is concerned.

07. In this regard, this Court is bearing in mind the edict of the Hon'ble Supreme Court of India imprinted in the case of ***"Rupesh Kantilal Savla Vs State of Gujarat," (2000)9 SCC 201*** by reference to the fact that the High Court of Gujarat was taking an unusually long period in disposing of the detention matter and that that there was no rule prescribing period within which an application for habeas corpus to be disposed of. The Hon'ble Supreme Court of India came up with a mandate that ***"even if there is no rule, it would be meet and proper for every High Court to dispose of the habeas corpus petition as expeditiously as possible."*** Thus, bearing in mind the solemn words of the



Hon'ble Supreme Court of India, this Court is also lending itself to dispose of the present habeas corpus petition bearing no more waiting for the ritual of reply/counter affidavit to be filed to the writ petition by the respondents.

08. Now, coming to the present case, a perusal of the grounds of detention would show that what weighed in the mind of the respondent No. 2-District Magistrate, Poonch is the purported involvement of the petitioner in FIR No.177/2006 for commission of offences under section 302/307/120-B Ranbir Penal Code read with section 7/25/26/27 Indian Arms Act, 1959 registered by the Police Station Mendhar for which the petitioner came to be subjected to criminal trial resulting in his conviction at the trial stage and consequent acquittal by virtue of judgment dated 27.09.2013 in criminal appeal No.14/2012 passed by the Division Bench of this Court.

09. In addition to the aforesaid criminal case related to FIR No. 177/2006, the respondent No. 2 - District Magistrate, Poonch also came to read the petitioner's involvement in FIR No. 62/2007 under section 7/25 Arms Act, 1959 read with section 4/5 Explosives Act, 1884 registered by the Police Station Channi Himmat Jammu in which also the petitioner came to be subjected to criminal trial which is still pending adjudication, in which the petitioner is said to have been let on bail pending trial of the case.

10. The petitioner also came to be subjected to preventive proceedings under 107/110/151 of the Code of Criminal Procedure



(Cr. P.C.), 1973 on two occasions by the Police Station Mendhar and those two proceedings have also been referred in the grounds of detention by the respondent No. 2 – District Magistrate, Poonch for justifying passing of the detention order against the petitioner.

11. The very fact that the respondent No. 2–District Magistrate, Poonch has referred to the petitioner’s involvement in two criminal cases of 2006 & 2007 ex-facie show that these two by all stretch of reference are too remote to be a live basis to consider a case of preventive detention of a person and are stale references to have any nexus with the grounds of detention forming basis for subjecting the petitioner to preventive detention custody and, therefore, those two references self-rule out thereby leaving only two stray preventive proceedings under section 107/110/151 Code of Criminal Procedure, 1973 for the respondent No. 2-District Magistrate, Poonch to form subjecting satisfaction that the petitioner deserved to be deprived of his personal liberty otherwise a guaranteed fundamental right under article 21 of the Constitution of India.

12. In the case of **“Sama Aruna Vs State of Telangana and others,” reported in (2018)12 SCC 150** against a detention order dated 23.11.2016 passed by the Commissioner of Police Rachakonda Commissionerate, Rangareddy District, Telangana, the detenu, through his wife, had preferred a writ petition challenging preventive detention which came to be dismissed and the matter reached before the Hon’ble Supreme Court of India in an appeal. The order of preventive detention was based upon the grounds of detention which came to be referred to six criminal cases against



the detenu, four on which of 2007, one of 2013 and other of 2014. The detention came to be questioned on the grounds of detention being stale. The Hon'ble Supreme Court of India came to consider the relevance of 9 to 14 years' old incidents resulting in FIRs through a grossly belated order of detention. In paras 16 & 17, the Hon'ble Supreme Court of India came up with the following reference:-

**“16.** Obviously, therefore, the power to detain, under the Act of 1986, can be exercised only for preventing a person from engaging in, or pursuing or taking some action which adversely affects or is likely to affect adversely the maintenance of public order; or for preventing him from making preparations for engaging in such activities. There is little doubt that the conduct or activities of the detenu in the past must be taken into account for coming to the conclusion that he is going to engage in or make preparations for engaging in such activities, for many such persons follow a pattern of criminal activities. But the question is how far back? There is no doubt that only activities so far back can be considered as furnish a cause for preventive detention in the present. That is, only those activities so far back in the past which lead to the conclusion that he is likely to engage in or prepare to engage in such activities in the immediate future can be taken into account. In ***Golam Hussain alias Gama v. Commissioner of Police, Calcutta and Ors. (1974)4 SCC 530***, this Court observed as follows:

“5. No authority, acting rationally, can be satisfied, subjectively or otherwise, of future mischief merely because long ago the detenu had done something evil. To Rule otherwise is to sanction a simulacrum of a statutory requirement. But no mechanical test by counting the months of the interval is sound. It all depends on the nature of the acts relied on, grave and determined or less serious and corrigible, on the length of the gap, short or long, on the reason for the delay in taking preventive action, like information of participation being available only in the course of an investigation. We have to investigate whether the causal connection has been broken in the circumstances of each case.

Suffice it to say that in any case, incidents which are said to have taken place nine to fourteen years earlier, cannot form the basis for being satisfied in the present that the detenu is going to engage in, or make preparation for engaging in such activities.



17. We are, therefore, satisfied that the aforesaid detention order was passed on grounds which are stale and which could not have been considered as relevant for arriving at the subjective satisfaction that the detenu must be detained. The detention order must be based on a reasonable prognosis of the future behavior of a person based on his past conduct in light of the surrounding circumstances. The live and proximate link that must exist between the past conduct of a person and the imperative need to detain him must be taken to have been snapped in this case. **A detention order which is founded on stale incidents, must be regarded as an order of punishment for a crime, passed without a trial, though purporting to be an order of preventive detention. The essential concept of preventive detention is that the detention of a person is not to punish him for something he has done but to prevent him from doing it. See *G. Reddeiah v. Government of Andhra Pradesh and Anr.* (2012) 2 SCC 389, and *P.U. Iqbal v. Union of India and Ors.* (1992) 1 SCC 434.”**

13. In the case of **“Khaja Bilal Ahmed Vs State of Telangana and others,”** (2020) 13 SCC 632 the Hon’ble Supreme Court of India again came up dealing with the case of preventive detention based upon stale grounds. In this case, the Hon’ble Supreme Court of India makes reference to its judgment in the case of ***Sama Aruna Vs State of Telangana and others*** (*supra*). In para 23, the Hon’ble Supreme Court of India has stated its position as under:-

“.....The satisfaction to be arrived at by the detaining authority must not be based on irrelevant or invalid grounds. It must be arrived at on the basis of relevant material; material which is not stale and has a live link with the satisfaction of the detaining authority. The order of detention may refer to the previous criminal antecedents only if they have a direct nexus or link with the immediate need to detain an individual. If the previous criminal activities of the appellant could indicate his tendency or inclination to act in a manner prejudicial to the maintenance of public order, then it may have a bearing on the subjective satisfaction of the detaining authority. However, in the absence of a clear indication



of a causal connection, a mere reference to the pending criminal cases cannot account for the requirements of Section 3. It is not open to the detaining authority to simply refer to stale incidents and hold them as the basis of an order of detention. Such stale material will have no bearing on the probability of the detenu engaging in prejudicial activities in the future.”

14. A perusal of the grounds of detention would show that the respondent No. 2 – District Magistrate, Poonch minus reference to said two stale criminal cases, has least factual input as to whether by reference to said two preventive proceedings under Section 107/110/151 Code of Criminal Procedure, 1973, the petitioner was ever first called upon to execute any bond, along with or without surety, or not and still the respondent No. 2 – District Magistrate, Poonch reckoned the two referred preventive proceedings good enough for subjecting the petitioner to preventive detention custody. This is nothing but a trampling of fundamental right to personal liberty of a citizen just on mere whims and fancies of the District Police and at the District Magistrate’s end. Therefore, the preventive detention of the petitioner is held to be seriously flawed and deserves to be set aside.

15. Accordingly, this Court sets aside the Order No. 01/DMP/PSA of 2023 dated 09.02.2023 read with consequent Govt. Orders approving and confirming the preventive detention of the petitioner to be illegal and are, accordingly, **quashed**.

16. The petitioner is directed to be released to his personal liberty by the Superintendent of the concerned jail and to be ensured by the District Magistrate, Poonch that the petitioner is set free to his personal liberty from the Jail in which he has been





detained unless and until the petitioner's custody is required in some other case pending or under investigation.

17. ***Disposed of.***

(RAHUL BHARTI)  
JUDGE

JAMMU  
03.09.2024  
Muneesh

Whether the order is speaking : **Yes**

Whether the order is reportable : **Yes**

