

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

WP(Crl) No. 490/2022

Reserved On: **11.12.2023**
Pronounced on: **26 .12.2023.**

Muzamil Mohammad Wagay, (Aged: 24 years)
S/o Ghulam Mohammad Wagay
R/o Hawoorah Qaimoh & District: Kulgam
Through his father
Ghulam Mohammad Wagay, Aged 56 years.
F/o Muzamil Mohammad Wagay
R/o Hawoorah Qaimoh & District Kulgam

..... Petitioner(s)

Through: Mr. G.N. Shaheen, Advocate.

V/s

- 1. Union Territory of Jammu & Kashmir,
Through Principal Secretary, Home
Department, J&K Govt., Civil Sectt.
Srinagar/Jammu.**
- 2. District Magistrate, Kulgam.**

.....Respondent(s)

Through: Mr. Mubeen Wani, Dy. AG.

CORAM:

HON'BLE MR. JUSTICE SANJEEV KUMAR, JUDGE.

JUDGMENT

01. The petitioner is aggrieved and has called in question his order of detention bearing No. 55/DMK/PSA/22, dated 25th June, 2022, passed by District Magistrate Kulgam [“the Detaining Authority”], under Section 8(a) of the Jammu and Kashmir Public Safety Act, 1978, [“the Act”], whereby the petitioner has been detained in preventive custody with a view to prevent him from acting in any manner prejudicial to security, sovereignty and integrity of the State.

02. Impugned order is passed by the Detaining Authority primarily on the following grounds:

- (a) That the detainee is an Over Ground Worker (OGW) working for various active militants of district Kulgam. The detainee has been providing food, shelter and other logistics to these militants to perpetrate acts of terrorism.
- (b) That on 10th July, 2018, Police Station Qaimoh, registered an FIR No. 37/2018 under Section 13, 18, 19, 38, 39 ULA(P) Act, against Ishfaq Ahmad Bhat and others for providing transport facilities to some active militants in the area to commit illegal acts. During the course of investigation it came to be established that the petitioner was also involved in the commission of crime.
- (c) That the petitioner who is an Over Ground Worker of terrorist outfit LeT is involved in assisting the outfit LeT in waging war against the Union Territory of Jammu and Kashmir by targeting innocent members of minority communities, non locals, security personnel and other innocent people.

03. Impugned order is assailed by the petitioner inter alia on the following grounds:

- (i) That the allegations levelled against the petitioner which are also part of the FIR No. 37/2018

registered in Police Station Qaimoh, are stale and there is no proximate live link between the activities attributed to the petitioner and passing of detention order for preventing the petitioner from committing activities prejudicial to the security of the Union Territory.

(ii) That the Detaining Authority has not furnished the material relied upon in the detention order so as to enable the petitioner to make effective representation.

(iii) That the Detaining Authority was not aware or was not made aware by the Police, that the petitioner was arrested in FIR No. 37/2018 and was admitted to bail by the Competent Court of jurisdiction on 16th February, 2019.

(iv) That the impugned order passed by the Detaining Authority without being placed before it the requisite material suffers from non application of mind.

04. The writ petition is contested by the respondents. In the reply affidavit filed by the Detaining Authority, it is submitted that detention order has been passed by the Detaining Authority on the basis of its subjective satisfaction arrived at on the basis of material placed before it and such subjective satisfaction cannot be made subject matter of judicial review as is held by the Hon'ble Supreme Court in case titled "*Haradhan Saha Vs. State of West Bengal*", 1975 (3SCC) 198.

05. It is also pleaded in the reply affidavit that, as per the information supplied by the District Police in the shape of dossier, the petitioner was found involved in terrorist activities. He was working as Over Ground Worker and providing material and logistic support to the militant Cadre of LeT a proscribed organisation active in the district of Kulgam. With a view to substantiate the assertion that all safeguards provided under the Act were scrupulously followed, the Detaining Authority through its counsel also produced the relevant detention record for perusal.

06. Having heard learned counsel for the parties and perused the material on record, it is true that in the grounds of detention the Detaining Authority has taken note of serious allegations raised by the district police against the petitioner. The allegations include the petitioner working as Over Ground Worker of proscribed Let militant organisation to whom the petitioner is providing food, transportation and other logistics. The LeT which is active in the district of Kulgam is carrying out targeted killings of members of minority communities, non locals and innocent citizens. With regard to these allegations FIR No. 37/2018 is registered in the Police Station Qaimoh, against various militants.

07. As is stated in the grounds of detention, the police of Police Station Qaimoh, found the involvement of the petitioner also in the aforesaid FIR during investigation. There is no whisper in the grounds of detention or in the Dossier supplied by the district police to the Detaining Authority, that the petitioner was ever arrested in the aforesaid FIR and if arrested whether he was released on bail or not.

08. The grounds of detention are quite silent on this aspect, whereas the petitioner has specifically pleaded that not only was he arrested in the

aforesaid FIR, but was later released on bail by the Competent Court of jurisdiction. This important aspect of the matter is not brought to the notice of the Detaining Authority by the police. It is because of this reason the Detaining Authority shows its complete lack of awareness about the arrest of the petitioner in the FIR and his subsequent release on bail by the Competent Court of jurisdiction.

09. It is thus evident that the Detaining Authority was deprived of the relevant material which the Detaining Authority ought to have considered to form its subjective satisfaction. In these circumstances, it would not be inappropriate to say that the subjective satisfaction arrived at by the Detaining Authority with regard to the detention of the petitioner is vitiated by non application of mind.

10. That apart, all allegations on the basis of which the petitioner has been detained pertain to the year 2018, in respect of which FIR No. 37/2018, came to be registered in Police Station Qaimoh. There is no fresh occurrence or allegations levelled by the Detaining Authority against the petitioner after the year 2019. In that view of the matter, the learned counsel for the petitioner is correct in his submission that a proximate live link between the activities attributed to the petitioner and the necessity of passing of detention order against him is missing. The grounds of detention are stale and remote and, therefore, could not have been made the basis of detention of the petitioner.

11. From the perusal of the record produced by Mr. Mubeen Wani, learned Dy. AG, it transpires that on the self same allegations the petitioner was earlier detained by the Detaining Authority under the Act vide order No.

08/DMK/PSA/2019 dated 28th February, 2019, which order of detention was approved by the Government vide Government No. Home/PB-V/295 of 2019 dated 7th March, 2019. This order was, however, later on revoked by the Government vide Government order No. Home/PB-V/1574 of 2022 dated 6th July, 2022, after issuance of fresh order of detention on 25th June, 2022. It is thus evident that the order impugned was issued by the Detaining Authority during the subsistence of the earlier order of the detention dated 28th February, 2019, which was revoked by the Government on 6th July, 2022. It seems that the earlier order of detention, though passed by the Detaining Authority in the year 2019, yet the same could not be executed on the ground that the petitioner was absconding.

12. Be that as it may, the Detaining Authority which passed the impugned order of detention ought to have been made aware of the issuance of the earlier detention order, so that it could drive subjective satisfaction after taking into consideration all relevant materials including the issuance of earlier order of detention and the reasons for its non execution for pretty long time.

13. Viewed from any angle, the impugned order of detention is vitiated for total non application of mind by the Detaining Authority. Either the relevant material was not placed before the Detaining Authority or the same was not considered by it, before arriving at subjective satisfaction that the detention of the petitioner under the Act was imperative to prevent the petitioner from acting in any manner prejudicial to the security of the state.

14. For all these reasons, I find merit in this petition and the same is, accordingly, **allowed**. The impugned order of detention dated

25th June, 2022, passed by the Detaining Authority is quashed. The respondents are directed to release the detenue forthwith from the preventive custody provided he is not required in any other case.

(SANJEEV KUMAR)
JUDGE

SRINAGAR:

26.12.2023

“Mir Arif”

- i. *Whether the judgment is reportable?* *Yes/No*
- ii. *Whether the judgment is speaking?* *Yes/No*

