

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

**Reserved on :10.10.2024
Pronounced on: 19.11.2024**

**Case No. :- HCP No. 47/2024
CM No. 1866/2024**

Mangal Singh, Aged 39 years,
S/o Sh. Jogeshwar Singh,
R/o Smailpur,
Tehsil Marh, District Jammu
Through his wife Anu Radha, Aged
35 years, W/o Sh. Mangal Singh,
R/o Smailpur,
Tehsil Marh, District Jammu

..... Petitioner(s)

Through: Mr. P.S.Pawar, Advocate.

Vs

1. The Union Territory of Jammu and Kashmir through Commissioner/Secretary (Home) Civil Sectt., Jammu/Srinagar.
2. Financial Commissioner (ACS) Home Department, Civil Secretariat, Jammu/Srinagar.
3. The District Magistrate, Jammu.
4. The Senior Superintendent of Police, Jammu.
5. The Superintendent of Police, Central Jail Kot-Bhalwal, Jammu.

..... Respondent(s)

Through: Mr. Rajesh Thappa, AAG.

Coram: HON'BLE MR. JUSTICE MOHD. YOUSUF WANI, JUDGE

JUDGMENT

1. Impugned in the instant petition, filed under the provisions of Article 226 of the Constitution of India, is the order of Detention bearing No. PSA 05 of 2024 dated 30.01.2024 passed by the respondent No.3 i.e. District

Magistrate, Jammu (hereinafter referred to as the “Detaining Authority”, for short), where-under the writ petitioner, namely, Mangal Singh S/o Sh. Jogeshwar Singh R/o Smailpur, Tehsil Marh, District Jammu (hereinafter referred to as the “detenu”, for short) stands ordered to be detained in the Central Jail, Kot Bhalwal, Jammu, in exercise of the powers vested with the detaining authority under Section (8) (1) (a) of the Jammu and Kashmir Public Safety Act, 1978 (hereinafter referred to as the “PSA”, for short) with a view to prevent the detenu from acting in any manner prejudicial to the maintenance of the public order.

2. The impugned detention order has been assailed in this petition on the grounds *inter alia* that same suffers from illegality, incorrectness and arbitrariness as being devoid of application of mind; that the detenu is alleged to have been involved in a series of case FIR numbers but the fact is that the allegations in all those case FIRs are baseless and he has been already acquitted in most of the said case FIR numbers which fact has not been mentioned in the grounds of detention basing the impugned order; that the detaining authority has not mentioned as to how the normal criminal law has failed to deal with the detenu; that the grounds of detention are the ditto of the police dossier and the detaining authority has not applied its independent mind and made an evaluation before ordering the detention of the petitioner/detenu; that the detenu has not been supplied with the entire detention record which has prevented him from making an effective representation in time; that the detaining authority has not complied with the procedural requirements as mandated under the

Article 22 of the Constitution by not furnishing him with the entire set of detention record and by not informing him at an earliest that he has a liberty to make a representation to the detaining authority or to the government; that the petitioner is the only bread earner of his family and his illegal detention has left his family beggared and destituted and that there is no proximity of time between the last FIR bearing No. 103 of 2020 of Police Station, Domana and the need for passing of the impugned order.

3. The respondents through their counter affidavit filed by respondent No.3 have resisted the instant petition on the grounds that none of the fundamental, constitutional, statutory or any other legal rights of the petitioner stands violated/infringed by them and, as such, no cause of action stands accrued to the detenu for maintaining the present writ petition. That the subjective satisfaction drawn by the detaining authority before the detention of the petitioner cannot be questioned on the ground of insufficiency of the incriminating material against the detenu. That the observance of the procedural safeguards by the detaining authority leaves little scope for the detenu to assail the impugned order. That the detention of the petitioner was ordered keeping in view his continued criminal activities which were prejudicial to the maintenance of the public order. That the impugned order does not suffer from any malice or legal infirmity and, as such, the challenge thrown to it is totally misdirected and misconceived. That the writ petition raises pure disputed question of facts, which cannot be adjudicated upon in a writ petition. That the writ

petitioner has not availed the alternate remedy by filing the representation against his detention despite communication of the said right to him. That the detaining authority has observed all the procedural safeguards enshrined in Article 22 (5) of the Constitution of India as well as in provisions of Jammu and Kashmir Public Safety Act while ordering the preventive detention. That the liberty of the detenu is subservient to the welfare, safety and interest of the society at large. That the detenu is involved in a series of criminal cases and his preventive detention was necessitated to prevent him from acting continuously prejudicial to the interests of the Society. That the entire set of detention record was furnished to the detenu at the time of execution of the warrant of detention who was also at the same time informed regarding his right to make a representation to the detaining authority or the government. That the detention order was passed after the subjective satisfaction and application of mind by the detaining authority.

4. I have heard learned counsel for the parties, who reiterated their respective stands taken in the petition and the counter affidavit.
5. I have perused the record of the instant petition.
6. The detention record produced by the learned Additional Advocate General has also been gone through.
7. Keeping in view the aforementioned perusal and consideration of the rival arguments advanced on both the sides, in the light of the law on the subject, this Court is of the opinion that the impugned detention order suffers from illegality, incorrectness and arbitrariness.

8. A plain reading of the impugned detention order dated 30.01.2024 reveals that same has been passed in a casual and reckless manner because there is no mention in the same as to on what grounds or basis the same is passed.
9. Secondly the grounds of detention, which have also been given the shape of a detention order in addition to the main order, appear to be the ditto and replica of the police dossier submitted to the detaining authority by respondent No.4 vide his No. CRB/Dossier/2024/14/DPOJ dated 29.01.2024.
10. The petitioner has placed on record sufficient proof by way of copies of final orders to the effect that most of the criminal cases pertaining to the FIRs alleged against him had already been closed with his acquittal. The said fact has not been mentioned either in the dossier or in the grounds of detention. The perusal of the detention record reveals that the petitioner had furnished the proof to that effect to the detaining authority and the government along with the representation made on his behalf by her wife as the copies of such final orders of the criminal cases depicting the acquittal of the petitioner in the same are placed on the detention record. The perusal of the detention record also reveals that the representation made by the wife of the petitioner was not considered at an earliest as mandated by the Constitution and the consideration of the same at a belated stage appears to be actuated by malafides and tantamounts to the breach of the Constitutional mandate.

11. The detaining authority has failed to mention in the grounds of detention as to how the normal criminal law has failed to deal with the petitioner/accused.
12. Further there appears to be no proximity or live link between the last alleged incident leading to the registration of case FIR No. 103/2020 under Sections 447, 379, 427, 34 IPC of Police Station, Domana and passing of the detention order dated 30.01.2024.
13. The learned detaining authority while repeating the police dossier in his grounds of detention has not even bothered to transform the word “subject” occurring repeatedly in the dossier into the word “you” in his grounds of detention.
14. **The State is not allowed to invoke the provisions of the PSA for their convenience without exhausting the remedy under the normal criminal law. It is the stand of the government that the petitioner/accused was repeatedly engaged in the commission of criminal acts and he had become a source of harassment for the entire society. It is needless to mention that the normal criminal law takes note of the situations where an offender repeatedly commits crime to the prejudice of the law and order situation. The Hon’ble Apex Court and all the High Courts have already laid down in catena of authoritative judgments that the criminal courts shall consider a variety of circumstances while considering a bail application which shall *inter alia* include a circumstance as regards the conduct of the accused in repeating the commission of the crime. It was the**

obligation of the State through prosecution branch to bring to the notice of the criminal courts where the cases against the petitioner/detenu were/are pending that he is a habitual offender. Had the same been done, the competent courts ought to have taken a note of the same. The bail petition of an accused can be considered by a competent criminal court for dismissal if it is proved that he is a habitual offender and a threat to the social order.

15. In the facts and circumstances of the case, this Court is of the opinion that the impugned detention order has been passed by the detaining authority without proper application of mind. The detaining authority appears to have followed the dossier of the police concerned in verbatim. There also appears to be no proximate or live link between the last case FIR bearing No. 103/2020 and the impugned detention order dated 30.01.2024. The government also appears to have chosen to invoke the provisions of PSA rather to contest the criminal cases against the detenu. Further the representation filed on behalf of the petitioner also appears to have been considered and rejected at a belated stage in the month of August, 2024 when he had already undergone the major portion of his detention. The impugned order, as such, cannot sustain under law.
16. In its opinion, this Court is fortified with the law laid down by the Hon'ble Apex Court and the other authoritative High Courts including this Court being reproduced hereunder:-

The Hon'ble Apex Court in case titled “Jai Singh and ors. Vs. State of J&K”, AIR 1985 SC 764 decided on

24.01.1985 has laid down the law. The relevant portion whereof is reproduced as under:

“First taking up the case of Jai Singh, the first of the petitioners before us, a perusal of the grounds of detention shows that it is a **verbatim reproduction** of the dossier submitted by the Senior Superintendent of Police, Udhampur, to the District Magistrate requesting that a detention order may kindly be issued. At the top of the dossier, the name is mentioned as Sardar Jai Singh, father’s name is mentioned as Sardar Ram Singh and the address is given as village Bharakh, Tehsil Reasi. Thereafter it is recited “The subject is an important member of

Thereafter follow various allegations against Jai Singh, paragraph by paragraph. In the grounds of detention, all that the District Magistrate has done is to change the first three words “the subject is” into “you Jai Singh, S/o Ram Singh, resident of village Bharakh, Tehsil Reasi”. Thereafter word for word the police dossier is repeated and the word “he” wherever it occurs referring to Jai Singh in the dossier is changed into “you” in the grounds of detention. We are afraid it is difficult to find greater proof of non-application of mind. The liberty of a subject is a serious matter and is not to be trifled with in this casual, indifferent and routine manner.”

The Hon’ble Apex Court also *inter alia* laid down in case titled “**Rameshwar Shaw Vs. District Magistrate, Burdwan and another**”, AIR 1964 SC, 334 as under:

“In deciding the question as to whether it is necessary to detain a person, the authority has to be satisfied that the said person if not detained may act in a prejudicial manner and this conclusion can be reasonably reached by the authority generally in light of evidence about past prejudicial activities of the said person. When evidence is placed, the Detaining Authority has to examine the said evidence and decide whether it is necessary to detain the said person in order to prevent him from acting in a prejudicial manner. Thus, it was held that the past conduct or antecedent history of a person can be taken into account in making the detention order and it is largely from prior events showing tendencies or inclinations of a man that an inference could be drawn whether he is likely even in the future to act in a manner prejudicial to the maintenance of public order.

Further the past conduct or history of the person on which the authority purports to act should ordinarily be proximate in point of time and should have the rational connection with the conclusion that the detention of the person is necessary, that it would be irrational to take into account the conduct of a person which took the place years before the date of detention”.

In Rajammal v. State of Tamil Nadu and others, 1999(1) SCC 417, it has been held as follows:

“It is a constitutional obligation of the Government to consider the representation forwarded by the detenu without any delay. Though no period is prescribed by Article 22 of the Constitution for the decision to be taken on the representation, the words "as soon as may be" in clause (5) of Article 22 convey the message that the representation should be considered and disposed of at the earliest.”

In K. M. Abdulla Kunhi v. Unio of India (1991) 1 SCC 476, it has been held as follows:

“.... it is settled law that there should not be supine indifference, slackness or callous attitude in considering the representation. Any unexplained delay in the disposal of the representation would be breach of the constitutional imperative and it would render the continued detention impermissible and illegal.”

In Shalini Soni Vs. Union of India (1980) 4 SCC 544: 1981 SCC (Ori) 38, the Hon’ble Apex Court has laid down as under:-

“The Article 22 (5) has two facets : (1) communication of the grounds on which the order of detention has been made; (2) opportunity of making a representation against the order of detention. Communication of the grounds pre-supposes the formulation of the grounds and formulation of the grounds requires and ensures the application of the mind of the detaining authority to the facts and materials before it, that is to say to pertinent and proximate matters in regard to each individual case and excludes the elements of arbitrariness and automatism (if one may be permitted to use the word to describe a mechanical reaction without a conscious application of the mind). It is an unwritten rule of the law, constitutional and administrative, that whenever a decision making function is entrusted to the subjective

satisfaction of a statutory functionary, there is an implicit obligation to apply his mind to pertinent and proximate matters only eschewing the irrelevant and the remote. Where there is further an express statutory obligation to communicate not merely the decision but the grounds on which the decision is founded. It is a necessary corollary that the grounds communicated, that is, the grounds so made known, should be seen to pertain to pertinent and proximate matters and should comprise all the constituent facts and materials that went in to make up the mind of the statutory functionary and not merely the inferential conclusions. Now, the decision to detain a person depends on the subjective satisfaction of the detaining authority. The Constitution and the statute cast a duty on the detaining authority to communicate the grounds of detention to the detenu. From what we have said above, it follows that the grounds communicated to the detenu must reveal the whole of the factual material considered by the detaining authority and not merely the inferences of fact arrived at by the detaining authority. The matter may also be looked at from the point of view of the second facet of Article 22(5). An opportunity to make a representation against the order of detention necessarily implies that the detenu is informed of all that has been taken into account against him in arriving at the decision to detain him. It means that the detenu is to be informed not merely, as we said, of the inferences of fact but of all the factual material which have led to the inferences of fact. If the detenu is not to be so informed the opportunity so solemnly guaranteed by the Constitution becomes reduced to an exercise in futility. Whatever angle from which the question is looked at, it is dear that "grounds" in Article 22(5) do not mean mere factual inferences but mean factual inferences plus factual material which led to such factual inferences. The 'grounds' must be self-sufficient and self-explanatory. In our view copies of documents to which reference is made in the 'grounds' must be supplied to the detenu as part of the 'grounds'."

17. This Court in cases titled **“Naba Lone Vs. District Magistrate, 1988 SLJ 300”** and **“Mohd. Farooq through Mohd. Yousuf Vs. UT of J&K and others, WP (Crl) No. 17/2023”**, decided on 03.09.2024 has laid down the law to the effect, “the grounds of detention supplied to the detenu is a copy of dossier, which was placed before the District

Magistrate for his subjective satisfaction in order to detain the detenu. This shows total non-application of mind on the part of the Detaining Authority as he has **dittoed** the Police directions without applying his mind to the facts of the case.”

18. **The preventive detentions need to be passed with great care and caution keeping in mind that a citizens most valuable and inherent human right is being curtailed. The arrests in general and the preventive detentions in particular are an exception to the most cherished fundamental right guaranteed under Article 21 of the Constitution of India. The preventive detentions are made on the basis of subjective satisfaction of the detaining authority in relation to an apprehended conduct of the detenu by considering his past activities without being backed by an immediate complaint as in the case of the registration of the FIR and, as such, is a valuable trust in the hands of the trustees. The provisions of Clauses (1) and (2) of Article 22 of our Constitution are not applicable in the case of preventive detentions. So, the provisions of Clause (5) of the Article 22 of our Constitution, with just exception as mentioned in Clause (6), together with the relevant provisions of the Section 8 of PSA requiring for application of mind, subjective satisfaction, inevitability of the detention order, proper and prompt communication of the grounds of detention and the information of liberty to make a representation against the detention order, are the imperative and**

inevitable conditions rather mandatory requirements for passing of a detention order.

19. **The petitioner has already suffered the detention of more than 9 months and the last extension in his detention ordered by the Government vide Order No. Home/PB-V/1528 of 2024 dated 24.07.2024 has expired on 30.10.2024.**
20. For the foregoing discussion, there seems to be merit in the instant petition, which is allowed. The impugned Detention Order bearing No. PSA 05 of 2024 dated 30.01.2024 passed by the respondent No.3 i.e. District Magistrate, Jammu is quashed with the direction to the respondents to release the petitioner/detenu forthwith from his preventive detention in this case.
21. The detention record is directed to be returned back to the office of learned Additional Advocate General against proper acknowledgement.
22. Disposed off.

(Mohd. Yousuf Wani)
Judge

JAMMU :
19.11.2024
Pawan Chopra

- i) Whether the Judgment is speaking: Yes
ii) Whether the Judgment is reportable: Yes