

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

Reserved on: 11.12.2024

Pronounced on: 27.12.2024

WP(Crl) No.62/2023

ZAHOOR AHMAD BHAT

...PETITIONER(S)

Through: - Mr. B. A. Tak, Advocate.

Vs.

U T OF J&K & ANR.

...RESPONDENT(S)

Through: - Mr. Syed Musaib, Dy. AG.

CORAM: HON'BLE MR. JUSTICE SANJAY DHAR, JUDGE

JUDGMENT

1) Through the medium of instant petition, the petitioner has challenged veracity and legality of the detention order bearing No.26-DMK/PSA of 2022 dated 28.06.2022, passed by District Magistrate, Kupwara ("the detaining authority"). In terms of the impugned detention order, Zahoor Ahmad Bhat S/o Late Ghulam Qadir Bhat R/o Mirpora Trehgam District Kupwara ("the detenue") has been placed under preventive custody with a view to prevent him from acting in any manner prejudicial to the security of the state. The order is, purportedly, passed by the detaining authority in exercise of the powers conferred under Section 8 of the J&K Public Safety Act, 1978 ("the Act of 1978").

2) The petitioner has contended that the impugned order has been issued without application of mind as the

allegations mentioned in the grounds of detention have no nexus with the detenue and that the same have been fabricated by the police in order to justify its illegal action of detaining the detenue. It has been contended that the grounds of detention are vague, non-existent on which no prudent man can make a representation against such allegations. It has been further contended that the safeguards provided under law have not been complied with in the instant case, inasmuch as whole of the material which formed basis of the impugned detention order has not been supplied to the petitioner. It has been further contended that the representation filed by the detenue against his detention has not been considered.

3) The respondents have resisted the petition by filing their reply affidavit, wherein they have contended that the activities of the detenue are highly prejudicial to the security of the State. It has been contended that the detention of the petitioner was necessitated because of his involvement in very serious offences against the State as mentioned in the FIRs registered against him. It is pleaded that whole of the material relied upon by the detaining authority has been furnished to the detenue and the same was read over and explained to him and that the detenue was informed that he can make a representation to the government as well as to

the detaining authority against his detention. It is further contented in the reply affidavit that all statutory requirements and constitutional guarantees have been fulfilled and complied with by the detaining authority and that the impugned order has been issued validly and legally. The respondents have produced the detention record to lend support to the stand taken in the counter affidavit.

4) I have heard learned counsel for parties and perused the record.

5) The impugned order has been assailed by the petitioner, *inter alia*, on the following grounds:

- (I) That previously the detinue was placed under preventive detention in the year 2021 pursuant to detention order dated 15.03.2021, which expired in the year 2022 and without there being any fresh material or grounds, the impugned detention order has been passed by the detaining authority on the same grounds which formed basis of the earlier detention order,
- (II) That there has been delay in execution of the detention order, inasmuch as the impugned order of detention has been passed on 28.06.2022 but the same has been executed on 21.01.2023 i.e. after a period of about six months. There is no explanation for the delay that has occasioned in execution of the impugned detention order;

6) So far as the first ground urged by learned counsel for the petitioner is concerned, the petitioner has placed on record a copy of the detention order No.08-DMK/PSA of 2021 dated 15.03.2021 along with copy of the grounds of detention on the basis of which said detention order was

passed. A perusal of the grounds of detention which are subject matter of instant petition and the grounds of detention which were subject matter of earlier detention order reveals that they are identical and, in fact, more or less Xerox copies of each other. The grounds of detention which have formed the basis of the impugned detention order reveal that only vague reference to alleged fresh activities of the detainee have been made which lack material details.

7) The Supreme Court in the case of **Chhagan Bhagwan Kahar Vs. N. L. Kalna and others, (1989) 2 SCC 318**, while dealing with similar question, has observed as under:

“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.

8) Again, in the case of **Jahangir Khan Fazal Khan Pathan Vs. The Police Commissioner, Ahmadabad and another, (1989) 3 SCC 590**, the Supreme Court has held as under:

“.....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.”

9) From the aforesaid enunciation of law on the subject, it is clear that unless there are fresh grounds of detention, a person cannot be put under preventive detention on the basis of the grounds of detention which have formed basis of an earlier detention order that has either expired or has been quashed by a Court. The ratio laid down by the Supreme Court in the afore cited two cases squarely applies to the facts of the instant case and, therefore, the impugned order of detention cannot be sustained in the eyes of law.

10) Regarding the delay in execution of the detention order, the legal position is well settled that resort to preventive detention has to be taken only in cases where there is an urgent need to detain a person so as to prevent him from indulging in activities which are prejudicial to the maintenance of public order or security of the State. When there is unsatisfactory and unexplained delay in executing the order of detention, such delay would throw considerable doubt on the genuineness of the subjective satisfaction recorded by the detaining authority. This would lead to a legitimate inference that the detaining authority was not really and genuinely satisfied as regards the necessity for detaining the detainee.

11) The Supreme Court has, in the case of **Manju Ramesh Nahar vs. Union of India and others**, AIR 1999 SC 2622, while considering a similar situation observed as under:

This object can be achieved if the order is immediately executed. If, however, the authorities or those who are responsible for the execution of the order, sleep over the order and do not execute the order against the person against whom it has been issued, it would reflect upon the satisfaction of the detaining authority and would also be exhibitivive of the fact that the immediate necessity of passing that order was wholly artificial or non-existent.

12) In the instant case, the impugned detention order was issued on 28.06.2023 but the same has been executed on 21.01.2023, i.e. after a period of about six months. There is no explanation on the part of respondents regarding delay in execution of the impugned detention order. Even the record produced by the respondents does not offer any explanation for delayed execution of the order of detention. In fact, even in their counter affidavit the respondents have not offered any explanation whatsoever regarding delayed execution of the order of detention.

13) The petitioner has placed on record copies of minutes of proceedings conducted in various criminal cases, in which he is facing trial. A perusal thereof shows that he has all along been attending the court on the dates of hearing fixed therein. Thus, it is not a case where the detenue was not available for execution of the warrant of detention. Therefore, there was no justification for delayed execution of the

warrant of detention. The fact that the impugned detention order has not been executed by the respondents for about seven months shows that there was no urgency for taking resort to preventive detention of the petitioner. There was sufficient time with the respondents to take resort to normal criminal laws, if at all they wanted to proceed against the petitioner. The unexplained delay in execution of the warrant of detention upon the petitioner renders the subjective satisfaction of the detaining authority doubtful. Consequently, the impugned order of detention has been rendered unsustainable in law.

14) For the foregoing reasons, this petition is allowed. The impugned order of detention is quashed. Direction is issued to the respondents to release the detenue from the preventive custody forthwith, provided he is not required in connection with any other case.

(Sanjay Dhar)
Judge

Srinagar
27.12.2024
"Bhat Altaf-Secy"

<i>Whether the order is speaking:</i>	<i>Yes/No</i>
<i>Whether the order is reportable:</i>	<i>Yes/No</i>