

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

**LPA No.286/2024
CM No.6654/2024**

**Reserved on : 19.12.2024
Pronounced on : 30.12.2024**

Sayar Ahmad Shah @ Sayar (Aged 26 years) S/o Abdul Ahad Shah R/o Rathsuna Tehsil Tral, District Pulwama, through his father Abdul Ahad Shah S/o Ghulam Mohi-ud-Din Shah R/o Rathsuna Tehsil Tral, District Pulwama.

...Petitioner(s)/Appellants.

Through: Mr. M. Ayoub Bhat, Advocate.

Vs.

1. Union Territory of Jammu and Kashmir through Principal Secretary, Home Department, J&K Govt. Civil Secretariat, Srinagar/ Jammu.
2. District Magistrate, Pulwama.
3. Senior Superintendent of Police, Awantipora, Pulwama.

....Respondent(s)

Through: Mr. Faheem Nissar Shah, GA.
Ms. Maha Majeed, Assisting Counsel, vice
Mr. Mohsin Qadiri, Sr.AAG.

CORAM:
HON'BLE THE CHIEF JUSTICE
HON'BLE MR. JUSTICE RAJESH SEKHRI, JUDGE

J U D G M E N T

1. The present Letters Patent Appeal has been filed against the judgment and order dated 14.10.2024 (hereinafter for short 'the impugned judgment) passed by the learned Single Judge in case titled *Sayar Ahmad Shah Alias Sayar* being *HCP No. 46/2024* whereby the Habeas Corpus Petition, filed by the appellant herein, was dismissed.

2. Heard learned counsel for the parties and perused the judgment of the learned Single Judge as also the photo copy of the detention records

produced by the respondents. Learned counsel for the appellant-detenu has also filed his written submissions which are taken on record.

3. The impugned judgment is assailed by the appellant/detenu on the grounds that the same has been passed in violation of constitutional mandate guaranteeing fundamental right of liberty and freedom; that the allegations leveled against the detenu in the grounds of detention are vague inasmuch as full details of the persons with whom the detenu was alleged to be associated and providing logistic support have not been provided and that the said persons were killed by the security forces before passing of the detention order; that the detenu has been arrested in FIR No.46/2020 and after a gap of four years the detention order has been passed which is not permissible in law; that the translated copies of the materials relied upon by the detaining authority for detaining the detenu have not been furnished to the detenu; and that the order of rejection rejecting the representation of the detenu has not been conveyed to the detenu.

4. Learned counsel appearing for respondents, vehemently, resist the contentions raised by the learned counsel for the appellant. Learned counsel contended that the impugned judgment does not suffer from any legal infirmity and the detention order has been passed without any malice, inasmuch as all the safeguards provided under the Constitution of India have been followed, while ordering his detention, as such, challenge thrown to the impugned judgment is not sustainable, hence on this score only the instant appeal merits dismissal. It is further contended that the appellant-detenu has been detained with a view to prevent him from indulging in the activities which are prejudicial to the security of the State.

5. The main ground of challenge to the impugned judgment is that the conclusion arrived at by the learned Single Judge that the allegations made in the grounds of detention are neither vague nor lack in material particulars is not correct as the grounds of detention did not disclose the date of death of the brother of the detenu-appellant, namely, Asif Ahmad Sheikh. But while going through the grounds of detention, it is

specifically mentioned that detenu was in touch with his terrorist brother, namely, Imtiyaz Ahmad Shah of banned terrorist organization AGUH.

The further plea of the learned counsel for the appellant-detenu is that said Imtiyaz Ahmad Shah has died on 07.04.2021, therefore, there was no occasion for him to provide him the logistic support and passing of classified information with regard to the movement of security forces/ police in the area. The learned counsel for the appellant while taking such a plea has lost sight of the fact that the impugned detention order came to be passed against the detenu on the basis of FIR No.46/2020 U/Ss 18, 39 ULA (P) Act lodged in the year 2020 when his brother Imtiyaz Ahmad Shah was alive.

Perusal of the grounds of detention further reveal that appellant-detenu was continuously extending support to the terrorists of banned terrorist organization Jash-e-Mohammad and the said allegation does not contain any vagueness in any manner whatsoever, as such, it can't be said that the allegations made in the grounds of detention are vague or lacking in material particulars.

It is apt to mention here that grounds of detention are definite, proximate and free from any ambiguity. Detenu has been informed with sufficient clarity what actually weighed with Detaining Authority while passing the order of detention. Detaining Authority has narrated all the facts and figures that made it to exercise its powers under Section 8 of the J&K Public Safety Act, 1978, and record subjective satisfaction that detenu was required to be placed under preventive detention in order to prevent him from acting in any manner prejudicial to the security of the State.

In such circumstances, it would suffice to say that there had been material before detaining authority to come to the conclusion and hence, it cannot be said that subjective satisfaction of detaining authority was wrongly arrived at or grounds of detention are self-contradictory or vague. The role of detenu has been specifically described in the grounds of detention.

Even otherwise it is settled position of law that this Court in the proceedings under Article 226 of the Constitution has limited scope to

scrutinize whether detention order has been passed on the material placed before it, it cannot go further and examine sufficiency of material. Our this view is fortified by the judgment delivered by the Hon'ble Supreme Court in *State of Gujarat v. Adam Kasam Bhaya : (1981) 4 SCC 216*. This Court does not sit in appeal over the decision of the detaining authority and cannot substitute its own opinion over that of the detaining authority when grounds of detention are precise, pertinent, proximate and relevant as has been held in *State of Punjab v. Sukhpal Singh : (1990) 1 SCC 35*.

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. This view is supported by the judgment of the Hon'ble Supreme Court in *Union of India v. Arvind Shergill : (2000) 7 SCC 601*.

It would be pertinent to mention here that the Supreme Court, in several decisions, has held that even one prejudicial act can be treated as sufficient for forming requisite satisfaction for detaining a person. The power of preventive detention is a precautionary power exercised in reasonable anticipation. It may or may not relate to an offence. It is not a parallel proceeding. It does not overlap with prosecution even if it relies on certain facts for which prosecution may be launched or may have been launched. An order of preventive detention may be, made before or during prosecution. An order of preventive detention may be made with or without prosecution and in anticipation or after discharge or even acquittal. The pendency of prosecution is no bar to an order of preventive detention and an order of preventive detention is also not a bar to prosecution. Discharge or acquittal of a person will not preclude detaining authority from issuing a detention order. In this regard the Constitution Bench of the Supreme Court in case titled *Haradhan Saha v. State of W.B.* reported at *(1975) 3 SCC 198*, while considering various facets concerning preventive detention, has observed thus:

"32. The power of preventive detention is qualitatively different from punitive detention. The power of preventive detention is a precautionary power exercised in reasonable anticipation. It may or may not relate to an offence. It is not a parallel

proceeding. It does not overlap with prosecution even if it relies on certain facts for which prosecution may be launched or may have been launched. An order of preventive detention may be, made before or during prosecution. An order of preventive detention may be made with or without prosecution and in anticipation or after discharge or even acquittal. The pendency of prosecution is no bar to an order of preventive detention. An order of preventive detention is also not a bar to prosecution.

33. Article 14 is inapplicable because preventive detention and prosecution are not synonymous. The purposes are different. The authorities are different. The nature of proceedings is different. In a prosecution an accused is sought to be punished for a past act. In preventive detention, the past act is merely the material for inference about the future course of probable conduct on the part of the detenu.

34. The recent decisions of this Court on this subject are many. The decisions in Borjahan Gorey v. State of W.B., Ashim Kumar Ray v. State of W.B.; Abdul Aziz v. District Magistrate, Burdwan and Debu Mahato v. State of W.B. correctly lay down the principles to be followed as to whether a detention order is valid or not. The decision in Biram Chand v. State of U. P., (1974) 4 SCC 573, which is a Division Bench decision of two learned Judges is contrary to the other Bench decisions consisting in each case of three learned Judges. The principles which can be broadly stated are these. First, merely because a detenu is liable to be tried in a criminal court for the commission of a criminal offence or to be proceeded against for preventing him from committing offences dealt with in Chapter VIII of the Code of Criminal Procedure would not by itself debar the Government from taking action for his detention under the Act. Second, the fact that the Police arrests a person and later on enlarges him on bail and initiates steps to prosecute him under the Code of Criminal Procedure and even lodges a first information report may be no bar against the District Magistrate issuing an order under the preventive detention. Third, where the concerned person is actually in jail custody at the time when an order of detention is passed against him and is not likely to be released for a fair length of time, it may be possible to contend that there could be no satisfaction on the part of the detaining authority as to the likelihood of such a person indulging in activities which would jeopardise the security of the State or the public order. Fourth, the mere circumstance that a detention order is passed during the pendency of the prosecution will not violate the order. Fifth, the order of detention is a precautionary measure. It is based on a reasonable prognosis of the future behaviour of a person based on his past conduct in the light of the surrounding circumstances."

The Supreme Court in case of *Debu Mahato v. State of W.B.* : (1974) 4 SCC 135, has said that while ordinarily-speaking one act may not be sufficient to form requisite satisfaction, there is no such invariable rule and that in a given case “one act may suffice”. That was a case of wagon-breaking and given the nature of the Act, it was held therein that “one act is sufficient”. The same principle was reiterated in the case of *Anil Dely v. State of W.B.* : (1974) 4 SCC 514. It was only a case of theft of railway signal material. Here too “one act was held to be sufficient”. Similarly, in *Israil S K v. District Magistrate of West Dinajpur* : (1975) 3 SCC 292 and *Dharua Kanu v. State of W.B.* : (1975) 3 SCC 527, single act of theft of telegraph copper wires in huge quantity and removal of railway fish-plates respectively, was held sufficient to sustain the order of detention. In *Saraswathi Seshagiri v. State of Kerala* : (1982) 2 SCC 310, a case arising under a single act, viz. attempt to export a huge amount of Indian currency was held sufficient. In short, the principle appears to be this: “Though ordinarily one act may not be held sufficient to sustain an order of detention, one act may sustain an order of detention if the act is of such a nature as to indicate that it is an organised act or a manifestation of organised activity.” The gravity and nature of the act is also relevant. The test is whether the act is such that it gives rise to an inference that the person would continue to indulge in similar prejudicial activity. That is the reason why single acts of wagon-breaking, theft of signal material, theft of telegraph copper wires in huge quantity and removal of railway fish-plates were held sufficient by the Supreme Court. Similarly, where the person tried to export huge amount of Indian currency to a foreign country in a planned and premeditated manner, as in the present case detenu has been apprehended with arms and ammunition, it was held that such single act warrants an inference that he will repeat his activity in future and, therefore, his detention is necessary to prevent him from indulging in such prejudicial activity.

Therefore, there is no occasion for the appellant to plead that the allegations leveled against him in the grounds of detention are vague or are lacking material particulars, therefore, the ground urged in this regard

is rejected and the finding returned by the learned Single Judge with regard to this aspect of the matter is upheld.

6. In so far as the plea regarding passing of the detention order after a gap of four years after lodging the FIR against the appellant-detenu is concerned, the perusal of the grounds of detention reveals that the petitioner was booked in FIR No.46/2020 for offence punishable under Sections 18, 39 ULA(P) Act registered with Police Station Tral. Perusal of the grounds of detention further reveal that after the FIR was lodged, in order to prevent him from indulging in anti-national activities, preventive measures in terms of Sections 107 and 151 of CrPC were taken against the appellant-detenu on 18.10.2021, 21.12.2021, 20.07.2023 and 09.11.2023. But despite of taking the said preventive measures against the appellant-detenu he did not stop to indulge in anti-national activities, therefore, it became imperative upon the detaining authority to detain the detenu under the preventive detention.

In this regard the the Hon'ble Supreme Court in *Haradhan Saha v. State of W.B* (supra) has held that “*An order of preventive detention may be, made before or during prosecution. An order of preventive detention may be made with or without prosecution and in anticipation or after discharge or even acquittal. The pendency of prosecution is no bar to an order of preventive detention. An order of preventive detention is also not a bar to prosecution.*”

In view of the above, the contention of the learned counsel for the appellant that the detention order was passed after a gap of four years after lodging of the FIR, does not sustain the test of law and is, accordingly, rejected.

7. The next contention of the learned counsel for the appellant is that the translated copies of the materials relied upon by the detaining authority for detaining the detenu have not been furnished to the detenu and that order rejecting the representation of the detenu has not been conveyed to the detenu. While going through the finding returned by the learned Single on this issue, it has been held as under:

“6. So far as the first ground is concerned, if we have a look at the detention record, the petitioner has been provided 25 leaves, which include detention order (01leaf), notice of detention (01) leaf, grounds of detention (02 leaves), dossier of detention (04 leaves) and copies of FIR, statements of witnesses and other related documents (17 leaves). In the execution report and the receipt of grounds of detention that bears signature of the petitioner, it is further recorded that the petitioner has been explained the contents of the aforesaid documents in Urdu and Kashmiri language. The affidavit of the executing official in support of the aforesaid assertion is also available in the detention record. Thus, the contention of the petitioner that he has not been furnished whole of the material record forming basis of the grounds of detention and that he has not been provided translated version thereof is without any merit.

.....
8. The petitioner is stated to have made a representation to the detaining authority through his father. A copy of representation dated 10.02.2024 has been placed on record. A perusal of the detention record reveals that the said representation has been considered by the District Magistrate, Pulwama, on 13.02.2024, whereafter the same has been rejected. The information relating to rejection of representation of the petitioner has been conveyed to him in terms of communication No. DCP/PA/24/3130-34 dated 13.02.2024. Thus, the ground urged by the petitioner is without any substance.”

8. While going through the detention records as also the findings returned by the learned Single Judge on the aforesaid issue, there is not an iota of doubt that the materials relied upon while passing the impugned detention order have been provided and explained to the detenu in Urdu and Kashmiri language and the order rejecting the representation of the appellant-detenu has been conveyed to him vide communication dated 13.02.2004. Therefore, we have no hesitation in holding that the finding returned by the learned Single Judge on the issue is legally and factually correct.

9. Keeping in view the aforesaid facts and circumstances of the case, we find no error apparent on the face of the judgment dated 14.20.2024 passed by the learned Single Judge in **HCP No. 46/2024** titled **Sayar Ahmad Shah Alias Sayar v. UT of J&K and others**, as such, the same is upheld and the appeal is dismissed.

10. The appeal is, accordingly, dismissed.

11. Photo copy of the record produced by learned counsel for the respondents is returned in the open court.

(RAJESH SEKHRI)
JUDGE

(TASHI RABSTAN)
CHIEF JUSTICE

Srinagar
30.12.2024
Abdul Qayoom, Secy.

Pronounced by me today on 30th of December, 2024 in terms of
Rule 138(4) of the Jammu and Kashmir High Court Rules, 1999.



(TASHI RABSTAN)
CHIEF JUSTICE