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IN THE HIGH COURT OF JAMMU & KASHMIR AND LADAKH AT JAMMU
(Through Virtual Mode)

Pronounced on: 24.09.2025.

HCP No. 4/2025

Maryama Begum Th. Mohd. Mushtaq
…Petitioner.

Through: Mr. Mohd. Aamir Awan, Advocate.

Vs.

UT of J&K and Ors.
...Respondent(s)

Through: Mr. Sumeet Bhatia, GA.

CORAM:

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

JUDGMENT

1. Impugned in the instant petition, filed on behalf of the petitioner/detenu under the provisions of Article226 of the Constitution of India, is the order of detention bearing No. 09-PSA-2024 dated 29.11.2024, issued by the respondent No. 2 i.e. District Magistrate, Udhampur (hereinafter referred to as the 'detaining authority' for short), in exercise of its powers vested under Section 8(1) of the Jammu & Kashmir Public Safety Act, 1978 (hereinafter referred to as the 'PSA' for short), whereby the petitioner-detenue was ordered to be detained and lodged in District Jail, Amphalla Jammu, for a period to be specified by the Government with a view to prevent her from acting in any manner prejudicial to the security of the State.

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2. The impugned detention order has been assailed in this petition on the grounds, *inter alia*, that same suffers from patent illegality, for being outcome of a casual exercise, bereft of application of mind on the part of the learned detaining authority; that there is no supporting material basing the allegations against the petitioner-detenue leading to the issuance of the impugned order; that bald allegations have been leveled against the petitioner without any supporting material or specific allegation; that the grounds of detention are vague, based on mere suspicion; that the learned detaining authority has acted on the police dossier treating the same as factual, without there being any specific supporting allegation in terms of date, time and incident; that the copies of the detention record i.e. impugned order, grounds of detention, police dossier and the documents relied upon, were not furnished to the petitioner-detenue immediately upon her arrest in execution of the detention warrant and she was not also made to understand the allegations against her as per the detention record in the language understandable by her being an uneducated lady; that she was prevented from making an effective representation to the detaining authority or to the Government in time as she never knew and understood the allegations against her; that the grounds of detention constitute the replica of the police dossier revealing thereby the non-application of mind on the part of the detaining authority; that the rights of the petitioner-detenue, under the provisions of Article 22(5)

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of the Constitution of India and Section 13 of PSA have not been complied with by the detaining authority, and as per the spirit and logic of the said provisions and that the petitioner-detenue was never involved in any criminal case, meaning thereby that the allegations against her are bald and vague.

3. The learned detaining authority has resisted the petition through its counter affidavit on the grounds that the detention order impugned in the petition does not suffer from any illegality or perversity as having been issued strictly in accordance with law, on proper application of mind. That there was sufficient record in the form of police dossier and the copies of documents enclosed therewith, to *prima facie*believe that the petitioner-detenue has been indulging in activities prejudicial to the interest of the security of the State, owing to which fact her detention, as a preventive measure, became imperative. That respondent No. 3 vide his dossier dated 12.11.2024reported that there is strong apprehension that the petitioner has affiliations with terrorist organizations as her husband namely. Mohd. Shafeeq is believed to have joined a militant group raising significant concerns.

That petitioner's residence located at Karoor Nallah, Village Loudhra, is a secluded dhok situated deep within a forest area where she visits frequently during the summer months for livestock grazing, utilizing the said opportunity to engage in clandestine terrorist activities due to her husband's involvement. That her

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growing influence and active collaboration with terrorist organizations poses a serious threat to the security of the State. That multiple inputs have been received from intelligence agencies that she shares critical intelligence, including details about local infrastructure, security forces movements during counter insurgency operations and other sensitive information which has compromised the success of numerous operations conducted by the Basantgarh Police Station in the recent past. That petitioner is suspected of providing logistic support to anti-national elements, thereby facilitating the potential for terrorist attacks.

That the activity of the petitioner necessitates immediate and heightened vigilance coupled with decisive action to neutralize herinfluence and dismantle her associated network. That further between 27.09.2024 to 03.11.2024, Law Enforcement Agencies conduced multiple cordon and search operations within the area. That those operations despite their scale, failed to apprehend the suspected terrorists. That petitioner is suspected of being the source of the leaks resulting in the escape of the terrorists from capture. That the petitioner has been officially classified as an 'Over-Ground Worker' within the record of Basantgarh Police Station. That multiple source including 'Daily Diary Report' statements from local Chowkidars and Numberdars, Beat Book records maintained by Police Station Basantgarh and intelligence agency inputs consistently indicate the petitioner's intent to incite insurgency.

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That the conduct of the petitioner poses a significant threat toregional harmony and the security of the State, particularly within the District Udhampur. That in the recent months, Law Enforcement Agencies have conducted intensive search operations within the upper reaches ofBasantgarh and its neighbouring areas targeting foreign terrorists who have illegally infiltrated from Pakistan Occupied Kashmir. That those operations have been undertaken in response to critical intelligence indicating the presence of heavily armed militants posing a significant security threat. Tragically on 28.04.2024 Village Defence Guard, Mohd Shareefwas killed in the line of duty during an engagement with these terrorists. That furthermore a subsequent encounter in August resulted in death of Central Reserve Police Force (CRPF) Inspector highlighting the perilous nature of these ongoing counter-terrorism efforts. That investigations have further revealed that petitioner, a resident of high altitude forest area, known for frequent terrorist activities and being the spouse of a known terrorist, is suspected of providing logistic support and intelligence inputs to the foreign terrorists.

That the petitioner has been observed to be engaging in suspicious activities in the vicinity of ongoing search and seizure operations, raising critical concerns regarding her potential involvement in obstructing law enforcement efforts. That copies of the detention record including notice of detention, grounds of detention, dossier of detention and other documents, on the basis of

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which the petitioner has been detained under PSA, were forwarded to Sr. Superintendent of Police, Udhampur, for being furnished to the petitioner-detenue at the time of execution of the warrant with the further direction that the contents of the said documents should be explained and made understandable by the petitioner in her own local language. That the provisions of Article 22(5) of the Constitution of India and other relevant provisions of PSA have been fully complied with by furnishing the detention record to the petitioner with liberty to make representation in respect of her detention to the Government.

That the detention order was approved by the Government within stipulated period and after being confirmed by the learned Advisory Board, the period of detention to hold good in the first instance was prescribed by the Government. That an order of preventive detention can be made with or without prosecution as the object of the same is to prevent a person from acting in anymanner prejudicial to the security of the State. That the petitioner has been detained as a precautionary measure based on reasonable prognosis of her future behavior. That adequacy of material on which the answering respondent has drawn satisfaction for invoking the provisions of Public Safety Act is not open to judicial review. That the grounds of detention and other relevant materials thereof were fully examined and considered properly by the Government. That it is settled legal position that where individual's liberty comes into

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conflict with the interest of the security of the State or maintenance of public order, then the liberty of the individual must give way to the larger public interests.

4. I have heard learned counsel for the parties.

5. Learned counsel for the petitioner while reiterating his stand already taken in the memo of petition has submitted that the impugned detention order suffers from patent illegality as being outcome of non-application of mind on the part of the detaining authority. That the impugned detention order has been passed on mere suspicion without any specific allegation against the petitioner. That the representation of the petitioner has been rendered meaningless for want of any specific allegation against her in terms of time, date and incident. That the grounds of detention appear to be the ditto of the police dossier, thus pointing towards the non-application of mind on the part of the detaining authority. That the copies of the detention record were not furnished to the petitioner-detenue at the time of her arrest in execution of the PSA warrant but were furnished to her brother-in-law on his demand when, after some days, he was permitted to see her in District Jail, Amphalla Jammu. That there is no question of making the contents of the detention record understandable to the petitionerin her own local language, being an uneducated lady. The learned counsel in support of his arguments placed reliance on the judgment of this Court passed in LPA No. 19/2024 titled ***"Showkat Ali S/O Mishar Din @ Mishru***

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vs. UT of Jammu and Kashmir and Ors"decided on 26.07.2024, in which it has been laid down that the detention order passed on the bald allegations, bereft of any supporting materials is illegal and cannot sustain. It was, *inter alia*, held in the said judgment that in the absence of any specific allegation against the detenue, the latter is not in a position to tender his/her explanation and to make meaningful representation thereto. That such a detention order violates the fundamental rights of the detenue guaranteed under Articles 21 and 22(5) of the Constitution of India.

The learned counsel in support of his arguments also placed reliance on another authoritative judgment of the Hon'ble Supreme Court of India titled ***"Devi Lal Mahto vs. State of Bihar and Anr 1982 AIR (SC) 1548"***,in which it has been held that inordinate delay in addressing the representation of a detenue vitiates the detention order.

6. Per contra, the learned UT counsel Mr. Sumeet Bhatia, ld. GA, submitted that the detention order passed by the respondent No. 2 against the petitioner does not suffer from any illegality, as having been passed strictly in accordance with the relevant provisions of the PSA. He submitted that compelling circumstances were made out, in view of the activities of the petitioner, for her preventive detention with a view to keep her away from acting in any manner prejudicial to the security of the State. He contended that as per the grounds of detention basing the impugned order, the petitioner-detenue was

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engaged in unlawful activities. providing clandestine logistic support to the terrorists by leaking the information leading to the escape of terrorists during so many planned cordons andraids of the security forces. That petitioner's husband has already crossed LOC and has gone to *Pakistan Occupied Kashmir, where he is engaged in unlawful activities.*

That having regard to her place of residence being in a high altitude forest area, she, on the pretext of grazing animals, used to provide support to the terrorists. The learned counsel submitted that preventive detention as opposed to criminal prosecution is made on the reasonable apprehension of an individual regarding his involvement in activities prejudicial to the security of the State or maintenance of public order. That a preventive detention can be passed even without or with the prosecution. The learned Government Advocate in support of his contentions placed reliance on the judgments of the Hon'ble Supreme Court cited as***"Haradhan Saha vs. State of West Bengal and Ashok Kumar vs. Delhi Administration and Ors. AIR 1982 SC 1143"***.

7. Perused the record of the instant petition. Also perused the detention record produced by the learned Govt. Advocate.

8. Keeping in view the perusal of the record and the consideration of the rival arguments of the learned counsel for the parties, in the light of the law on the subject, this Court is of the

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opinion that the impugned detention order suffers from illegality. As rightly contended by the learned counsel for the petitioner-detenue, the allegations against the petitioner regarding her involvement in unlawful activities appear to be bald as the grounds of detention are not based on any supporting substance/documents.

9. The learned detaining authority in his grounds of detention has not referred to any specific allegation against the petitioner, in terms of any incident/occurrence. The grounds of detention, which are nothing but a replica of the police dossier, reveal the suspicion of the Government regarding the commission of unlawful activities by the detenue. The learned Detaining Authority has not referred to any criminal case having been ever registered against the petitioner regarding her alleged commission of unlawful activities. Daily Diary Reports, copies whereof are enclosed with the grounds of detention, do not reveal any specific physical act of the detenue. The daily diary reports pertain to the duty discharged by the police personnel. Secondly the grounds of detention apparently look to be the replica of the police dossier meaning thereby that the impugned detention order has been passed without application of mind on the part of the learned detaining authority. It is needful to mention that even in his reply affidavit, the learned detaining authority has, at Paras 1 to 4, reproduced the police dossier in the same phraseology.

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10. The report of the Executing Officer regarding execution of PSA warrant and the receipt of the detention record on the part of the detenue is cyclostyled.

11. The learned counsel for the petitioner during his arguments, inter alia, submitted that the copies of the detention record were not furnished to the detenue at the time of her arrest in the Police Station Basantgarh Udhampur but, same came to be furnished to her brother-in-law when he came to see her after few days of her detention in the District Jail, Amphalla, Jammu.

12. This Court is in agreement with the contention of the learned counsel for the petitioner that in case where there is no specific allegation against the detenue in terms of incident and the time and place thereof, there can be no meaningful explanation made to such allegations.

13. This court, in the facts and circumstances of the case, is of the opinion that in the absence of any specific allegation against the detenue in terms of any act or occurrence, it cannot at all be considered whether there was a live-link or proximity between the said alleged act and the need for passing of the detention order.

14. This Court is fully conscious of the fact that security of the State is of paramount consideration and the liberty of an individual can be curtailed strictly in accordance with the law in the interest of

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the security of the State. It is also accepted position of law that the object of preventive detention is to prevent an individual from acting in any manner prejudicial to the interests of the security of the State or of public orderand not to punish him but at all, there should be some material or data constituting specific allegation(s), before passing a detention order.

15. The petitioner being a lady is reported to be facing detention under the impugned detention order since last about 10 months.

16. For the foregoing discussion, there seems to be merit in the instant petition, which is allowed. The impugned detention order bearing no. 09-PSA-2024 dated 29.11.2024 passed by the respondent No. 2 i.e. District Magistrate, Udhampur, is quashed with the direction to the respondents to release the petitioner-detenue forthwith from her detention in the case in hand.

17. Detention record is ordered to be returned to the ld. GA.

(MOHD YOUSUF WANI)
JUDGE

SRINAGAR:
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"Shahid Manzoor"

Whether the judgement is speaking Yes
Whether approved for law reporting Yes

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