

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

Reserved on: 27.02.2025
Pronounced on: 06.03.2025

HCP No. 120/2024

**Shafiq Hussain Shah @ Shabu, aged 47 years
S/O Kalander Hussain Shah,
R/O Village Qasba,
Tehsil Haveli, District Poonch
through his next friend i.e., son Irfad Ali Shah.**

...Petitioner(s)

Through: Mr. Ashish Sharma, Advocate with
Mr. Ajit Verma, Advocate
Ms. Damini Singh Chouhan, Advocate.

Vs

- 1. UT of Jammu & Kashmir through
Principal Secretary Home Department,
Civil Secretariat, Jammu/Srinagar.**
- 2. District Magistrate, Poonch.**
- 3. Senior Superintendent of Police, Poonch.**
- 4. Station House Officer, Police Station, Poonch.**
- 5. Superintendent, District Jail, Poonch.**

Respondent(s)

Through: Mr. Pawan Dev Singh, Dy. AG

CORAM: HON'BLE MR. JUSTICE M A CHOWDHARY, JUDGE

JUDGMENT

01. Through the medium of this Habeas Corpus Petition, the petitioner-Shafiq Hussain Shah @ Shabu (hereinafter called '**detenue**') seeks quashment of Order No. 7/DMP/PSA of 2024 dated 23.04.2024 (hereinafter called

‘detention order’) passed by the respondent No. 2-District Magistrate, Poonch (hereinafter called **‘detaining authority’)** whereby and whereunder in terms of Section 8 of the Public Safety Act, 1978 (for short, PSA Act), he had been ordered to be detained in order to prevent him from acting in any manner prejudicial to the public order.

- 02.** The detainee has pleaded that the grounds of detention are verbatim repeat of dossier of respondent No. 3 and the detaining authority without due application of mind has passed the impugned detention order; that the detainee has been acquitted in all the cases mentioned in the impugned detention order and the detaining authority has not taken into consideration this aspect of the matter while passing the impugned detention order; that so far as adverse reports dated 01.12.2023 and 20.12.2023 of Police Station, Poonch and preventive action under section 107/117 CrPC are concerned, the detainee is not aware of the same as he was never summoned by the said police station ever or by the Tehsildar concerned; that the detainee is an illiterate person and is not able to read or understand English and the detaining authority has not furnished to the detainee the translated version of the material and also the complete documents depriving him to make an effective

representation; that when the family members of the detainee went to the concerned Police Station to enquire about his son, he was informed that the detainee has been detained under Public Safety Act.

03. The detainee has pleaded in the grounds of his petition that the detainee has not been afforded opportunity to make effective representation due to incomplete detention order along with incomplete dossier provided by the detaining authority, that too, in English language, which has not been made understandable to the detainee in the language known to him.

04. Pursuant to notice, the respondent No. 2-District Magistrate, Poonch in his counter affidavit has stated that after carefully examining the dossier and the relevant records attached with it, the detainee has rightly been detained under PSA; that at the time of execution of detention order, the Executing Officer has provided the complete set of dossier along with detention order, grounds of detention (total 87 leaves) and explained the detention order in the language i.e., Urdu which the detainee understands fully; and lastly that the impugned detention order has been issued after fulfilling all the statutory requirements and all constitutional guarantees have been complied with.

- 05.** Learned counsel for the detainee, reiterating the submissions made in the petition, has argued that the detainee had been detained illegally by the detaining authority, without application of mind and based only on the dossier prepared by the police; that the detaining authority has not supplied the relevant material to the detainee on the basis of which grounds of detention have been formulated depriving him to make an effective representation; that the contents of the grounds of detention has not been explained to the detainee in the language which he understood fully. It was finally prayed that the impugned detention order be quashed and the detainee be ordered to be released forthwith from custody.
- 06.** Learned counsel for the respondents, ex adverso, argued that the detaining authority, after carefully examining the dossier and the relevant records attached with it, found imperative to detain the detainee under the J&K Public Safety Act as the detainee after being acquitted in the cases mentioned in the grounds of detention was again involved in the criminal activities; that the detainee has been provided the complete set of dossier along with detention order, grounds of detention and explained the detention order in Urdu language which he understood fully; that the detainee was also informed about his right

to make representation before the Government as well as before the detaining authority and lastly he has argued that the impugned detention order be upheld and the petition filed by the detainee being devoid of any merit and substance, be rejected.

- 07.** Heard learned counsel for the parties, perused the detention record and considered.
- 08.** The detention order has been based on fifteen cases, all registered at Police Station, Poonch, in a period of two decades, from the year 1999 to 2019. Besides involvement of the detainee in a huge number of criminal cases, preventive measures under sections 107/117 CrPC dated 04.04.2024 was taken by the Police Station, Poonch under apprehension of commission of some serious cognizable offence. Apart from this, adverse reports dated 01.12.2023 and 20.12.2023 have also been recorded by Police Station, Poonch.
- 09.** The detaining authority, keeping in view the aforestated continuous and repeated involvement of the detainee in criminal cases, on the recommendation of the concerned police, ordered preventive detention, which is a subject matter of this petition.

- 10.** The impugned detention order has been challenged mainly on the grounds, firstly that the detention order has been passed on the basis of the allegations contained in the dossier and the same has been passed without application of mind; secondly that the detainee has already been acquitted in all the cases mentioned in the grounds of detention, thirdly that the detainee has not been afforded opportunity to make effective representation due to incomplete detention order along with incomplete dossier, fourthly that the detention order has not been explained to the detainee in his language which he understood and lastly that the detaining authority has not been specified the authority before whom the representation could be made.
- 11.** So far as first ground of challenge that the detention order has been passed on the basis of the allegations contained in the dossier and the same has been passed without application of mind is concerned, it is established the detaining authority has passed the detention order after due application of mind keeping in view the fact that the detainee has evolved into a hardcore criminal and involved in crimes like abduction, assault, domestic violence, extortion, theft etc and is enlisted as History sheetee of category-A in the records of Police Station,

Poonch. Keeping in view the frequent, consistent and relentless engagement of the detenue in criminal activities, a subjective satisfaction has been drawn by the detaining authority to detain the detenue under Public Safety Act.

- 12.** So far as second ground of challenge that the detaining authority has not considered this aspect of the matter while passing the detention order that the detenue has already been acquitted in all the cases mentioned in the grounds of detention, the detaining authority has mentioned in the grounds of detention that the detenue on being admitted to bail in those cases in reference has repeatedly been involved in the criminal activities in regard to which preventive measures under sections 107/117 CrPC dated 04.04.2024 was taken by the Police Station, Poonch under apprehension of commission of some serious cognizable offence. Apart from this, adverse reports dated 01.12.2023 and 20.12.2023 have also been registered by Police Station, Poonch, which shows that the detaining authority has passed the order, after application of mind to the record, for preventive detention in terms of J&K Public Safety Act.

- 13.** So far as other grounds of challenge that detenue has not been afforded opportunity to make effective

representation due to non-supply of relevant material, that the detention order has not been explained to the detinue in the Urdu language which he fully understood and lastly that the detaining authority has not been specified the authority before whom the representation could be made are concerned, it transpires from the perusal of the Execution Report annexed with the counter affidavit filed by the detaining authority, that all the relevant material comprising of 87 leaves were handed over to the detinue to make an effective representation; that all the relevant material were read over and explained to the detinue in Urdu language and that the detinue was also informed that he can make representation to the Government as well as detaining authority against, his detention order. As such, detention order cannot be said to have invalidated on these grounds. As a result, petition is found to be devoid of any merit and is liable to be dismissed.

- 14.** Preventive detention is neither reformatory nor curative but a preventive action, avowed object of which being to prevent the anti-social and subversive elements from imperiling the welfare of the country or the security of the nation and from disturbing the public tranquility or from indulging in criminal activities such as abduction,

assault, domestic violence, extortion, theft, interference in public duties etc and such a detention is devised to afford protection to society and the object is not to punish a man for having done something but to intercept before he does it and to prevent him from doing so.

15. The judgments referred and relied upon, in support of the contentions raised by the learned counsel for the detinue, for different facts of those cases, have no relevance to the case on hand.

16. As a sequel to the aforementioned discussion and observations made hereinabove, impugned detention order is upheld and the petition alongwith connected application(s), is hereby rejected/dismissed. Detention records received from Mr. Pawan Dev Singh, Dy. AG is ordered to be returned to him against proper receipt.

17. ***Disposed of*** as dismissed.

(M A CHOWDHARY)
JUDGE

JAMMU
06.03.2025
Naresh/Secy

Whether order is speaking: Yes
Whether order is reportable: Yes