

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

Case: LPA No. 234/2024
In HCP No. 46/2024
CM No. 6548/2024

Sheraz Ahmed Mir alias Bedi age 35 years ...Petitioner(s)/Appellant(s)
S/o Mohd Arshad Mir through his brother
namely Aftab Ahmed Mir age 27 years S/o
Mohd Arshad Mir R/o Village Sandote
Tehsil Balakote District Poonch.

Through: Mr. M.R. Quresh, Advocate with
Mr. H.R. Qureshi, Advocate.

V/s

01. Union Territory of Jammu and Kashmir, through Commissioner/Secretary to Government Home Department Civil Sect. Jammu/Srinagar. Respondent(s)
02. The District Magistrate Poonch.
03. The Senior Superintendent of Police, Poonch.
04. The Superintendent of District Jail Poonch

Through: Mr. Pawan Dev Singh, Dy. AG.

**CORAM: HON'BLE MR. JUSTICE ATUL SREEDHARAN, JUDGE
HON'BLE MR. JUSTICE RAJESH SEKHRI, JUDGE**

**ORDER(ORAL)
17.02.2025**

(Atul Sreedharan-J)

01. The present appeal has been filed by the appellant who is aggrieved by the Order dated 31.10.2024 passed by the learned Single Bench whereby it was pleased to dismiss the writ of *Habeas Corpus* filed by the appellant herein, challenging his detention Order dated 09.03.2024, passed by respondent No. 2, the District Magistrate, Poonch, whereby the appellant was taken into preventive detention initially for a period of three months which was extended subsequently thrice for a period of three months each on the grounds that the appellant being an alleged threat to public order.

02. Learned counsel for the appellant while arguing the case on behalf of his client has submitted that the learned Single Judge has erred as he has not taken into consideration the fact that the cases that have been taken into account by the Detaining Authority are stale commencing from the year 2012 till 2023 while the Order of detention has been passed on 09.03.2024.

03. Learned counsel for the appellant further submits that the learned Single Bench had failed to appreciate that two of the cases considered for detaining the appellant were ones in which the appellant was already acquitted, one, after a trial on merits and the other, on compounding the case. He has further argued that all these offences could have been tried by the Regular Criminal Courts and all the cases still pending against the appellant are all triable by the Court of the JMIC.

04. *Per contra*, learned counsel for the respondents submits that the arguments put forth by the learned counsel for the appellant are irrelevant while considering a case under the Public Safety Act (PSA). He further submits that the Courts have to look into whether the detention Order is under challenge, whether the procedure prescribed in the Public Safety Act (PSA) has been followed assiduously and whether the appellant was given reasonable opportunity of representing his case for release.

05. Learned counsel for the respondents has also argued that instead of preferring the representations, the appellant has directly approached the Court under Article 226 challenging his detention without resorting to an alternative remedy.

06. Heard the learned counsel for the parties, and perused the record of the case.

07. The findings of the learned Single Bench are in Paragraph Nos. 14 and 15 of the order under challenge. Learned Single Bench has taken into account that the order of detention has been challenged mainly on two grounds which are that the

detaining authority had failed to make any mention with regard to the outcome of pendency of all the cases mentioned in the detention order and have been made a ground for passing the said order of detention.

08. The second ground which has been referred to by the learned Single Bench is that out of the seven FIRs relied upon by the Detention Authority, the appellant was acquitted in two cases, whereas, in two cases the trial has been stayed by this Court invoking inherent jurisdiction under Section 482 Cr.P.C and that in other cases he is still continuing to face trial and that none of them have concluded.

09. Learned Single Bench has held, and rightly so, that it is not incumbent upon the Detaining Authority to record everything with regard to the progress of the case such as grant of bail, framing of charges and stage of trial or conclusion.

10. We are in agreement with the learned Single Bench as far as the various stages relating to the progress of the trial is concerned but where the trial is concluded and an order of acquittal has been recorded, the application of mind on the part of the Detaining Authority would require the same to be considered. After considering it, if the detaining Authority still considers that the acquittal notwithstanding the detention under the provisions of the PSA of the appellant was essential, the reasons for that must be given by the Detaining Authority.

11. In such a situation, this Court may appreciate the fact that the acquittal of the appellant notwithstanding, the Detaining Authority has given reasons why the detention of the appellant was necessary which may be germane in the facts and circumstances of the case. Failure to do so by completely ignoring the fact that an acquittal has been recorded in one of the cases being considered for the purpose of detention, in the view of this Court, would be a case of non-application of mind.

12. Learned Single Judge has further held that there was no procedural infirmity in the order of detention or in the grounds of detention and that the appellant has been given all the documents which have been relied upon by the Detaining

Authority, in order to file his representation. The record placed before the learned Single Bench was examined and a finding has been recorded by the learned Single Bench that there is acknowledgement by the appellant who was a graduate that he has received (63) leaves including copy of detention warrant, grounds of detention, notice of detention and other relevant records (58 leaves) from the Executing Officer and that he was also informed about his right to make a representation to the Government. Under the circumstances, the learned Single Judge was of the view that if there is no violation of procedural requirements of the act and that principle of natural justice have been followed, the Court ought not to go beyond it with regard to the necessity of detention of the appellant.

13. The detention order has been perused by this Court. The order of detention dated 09.03.2024 records the subjective satisfaction of the District Magistrate where he records that he is satisfied that if the appellant is not taken into preventive detention he may again indulge in “*subversive activities*” which are a threat to public order. The cavalier use of the phrase “*subversive activities*” in the detention order goes to reflect that the said order was never even read by the District Magistrate before the same was signed. Subversive activities are actions that challenge the authority of the State directly and where the victim is not an individual but the State itself which purportedly faces the ire of the individual. Subversive activities are activities directly challenging national security and national integrity. They are not related to public order. Thus, the detention order itself reflects that there has been non-application of mind in the preparation and execution of the detention order.

14. The grounds of detention reflect that there are seven FIRs which have been referred to by the detaining Authority. Undisputedly, the first case was of the year 2012, then after the cases of 2016, 2019, 2020, 2021, 2022 and 2023. Thus, for 2019-23, there has been one case every year against the appellant. It is relevant to

mention here that the appellant has been acquitted in two cases one is FIR No. 507/2012, in which he was acquitted by the trial Court and the other is FIR No. 273/2022, in which he was also acquitted by the trial Court. The remaining cases have not ended in a conviction or in acquittal and are pending before the trial court or have been stayed by this Court. This is the undisputed status of the cases against the appellant. As stated earlier hereinabove, the grounds of detention do not even seem to justify the necessity of considering cases of 2012 and 2022 in which the appellant has already been acquitted. The cases that continue against him are of 2016, 2019 and 2020 to 2023. All these cases are triable by the Court of Judicial Magistrate, 1st Class, except for the FIR No. 105/2021 which involves an element of threat and that too threatening a public servant and disobey a lawful order passed by public servant, the rest of the cases are either interpersonal offences or offence against public morality (Excise Act Cases). The offences against public morality are of the year 2019-2020, these cases are still pending before the Court of Judicial Magistrate 1st Class.

15. That the aspect of the public being, scared or being terrorized by the appellant has not been spelt out clearly. The second paragraph in the second page of the grounds of detention also reflects that there was no application of mind as the detaining authority has recorded *“Considering the gravity of his actions, it is recommended that he be subjected to preventive detention under the relevant provisions of the law in the interest of detaining public safety and order”*. This clearly reflects that these lines are extracted as it is, from the dossier prepared by the Police which in the course of copy and paste, have been inserted into the grounds of detention which should otherwise have read that the District Magistrate was satisfied with regard to the requirement of detaining the appellant.

16. An order of detention and the grounds of detention have to be perfect in their content and construct. It cannot be argued that these are typographical errors, the

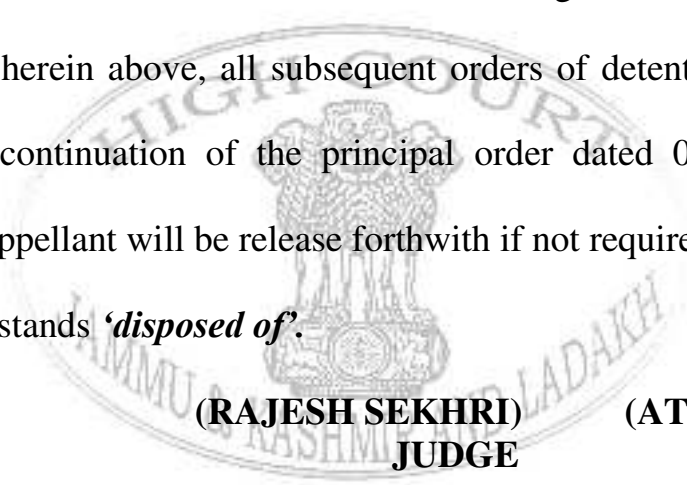
errors that go to reflect non-application of mind on the part of the detaining authority also reflect the detaining authority has been abdicated its duty to carefully peruse the grounds of detention and the detention order, before signing the order. For, by that signature, he puts to sword, the personal liberty of an individual.

17. Thus, this Court is of the view that the grounds of detention do not reflect that it was imperative to take the appellant into preventive detention for the sake of preservation of public order as the cases that have been considered are stale and if the necessity of detaining the appellant on the basis of those cases was essential, then the order of detention or the grounds of detention should have reflected why such a course of action was not resorted to earlier by the detaining authority.

18. Under the circumstances, the appeal succeeds and the order of detention dated 09.03.2024, stands quashed.

19. However, on the basis of what have been argued, discussed and considered by this Court herein above, all subsequent orders of detention which are nothing more than a continuation of the principal order dated 09.03.2024 also stands quashed, the appellant will be release forthwith if not required in any other case.

20. Appeal stands *‘disposed of’*.



(RAJESH SEKHRI)
JUDGE

(ATUL SREEDHARAN)
JUDGE

Jammu
17.02.2025
AKHILESH

Whether the Order is speaking?
Whether the Order is reportable?

Yes
No