

HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT JAMMU

Case No. :- HCP No. 148/2024

Mohd. Arif

.....Petitioner(s)

Through: Mr. Sanchit Verma, Advocate

Vs

UT of J&K and Ors.

..... Respondent(s)

Through: Mr. P.D Singh, Dy. AG.

Coram: HON'BLE MR. JUSTICE JAVED IQBAL WANI, JUDGE

ORDER(ORAL)
01.05.2025

1. In the instant petition filed by the petitioner, detention order No. 16/DMP/PSA of 2024 dated 26.07.2024 (*for short*, “**impugned order**”) passed by respondent 2 herein (*hereinafter referred to as the*, “**Detaining Authority**” against the petitioner herein under and in terms of the provisions of J&K Public Safety Act, 1978 (*hereinafter referred to as the*, “**Act of 1978**”) has been challenged.

2. The impugned order has been challenged by the petitioner on multiple grounds urged in the petition.

3. **Counter affidavit** to the petition has been filed by the respondents by Respondent No. 2 herein, wherein the petition is being oppose, *inter-alia*, on the premise that in view of the prejudicial activities of the petitioner, his preventive detention came to be ordered in order to deter him from acting or indulging in such prejudicial activity and that the impugned order of detention does not suffer from any malice or any illegality and that all the safeguards enshrined under Article 22 (5) of the Constitution of India as well as the provisions of the Act of 1978 came to be observed and followed by detaining authority.

Heard learned counsel for the parties and perused the record.

4. Learned counsel for the petitioner while making his submissions in line and tune with the case set up in the instant petition and notwithstanding the multiple grounds of challenge urged in the petition, would contend that the detaining authority while detaining the petitioner showed its complete unawareness about the fact that the petitioner had been bailed out in FIR No. 635/2020 earlier, inasmuch as also failed to record the compelling reasons for warranting detention of the petitioner.

Learned counsel for the petitioner would further contend that the respondents even failed to address to the representation submitted by the petitioner having been specifically averred in para 8 of the petition to have been submitted before respondent 1, thus, the said failure of the respondents vitiates the impugned order.

5. On the contrary, the counsel for the respondents would oppose the submissions of the counsel for the petitioner fundamentally on the pleas urged in the counter affidavit and would, thus, pray for dismissal of the instant petition.

6. Insofar as the aforesaid first plea raised by the counsel for the petitioner is concerned, the petitioner has specifically in Para-7 of the petition pleaded that in the FIR referred in the grounds of detention being FIR No. 635/2020, the petitioner had been already enlarged on bail and neither in the grounds or detention order nor in the counter affidavit, the respondents have denied the said plea of the petitioner, thus, leaving no option for the Court except to draw an adverse inference thereof against the respondents in this regard.

Law is settled in series of judgments passed by the Apex Court as well as this Court that unawareness of the detaining authority about the grant of

bail to a detenu prior to detaining a detenue would amount and constitute complete non-application of mind by the detaining authority and would result in vitiating the order of detention. A reference in this regard to the judgment of the Apex Court passed in case titled as “**Anant Sakharam Raut Vr. State of Maharashtra and Anr.**”, reported in *AIR 1987 SC 137* would be relevant herein.

7. Insofar as the aforesaid second plea raised by the counsel for the petitioner is concerned, perusal of the record would reveal that the representation claimed to have been submitted by the petitioner against the impugned order stands addressed to the Respondent 1 herein, however, the respondent No. 1 has chosen not to file any reply to the petition, in that, the counter affidavit stands filed by Respondent 2 herein alone, who has rightly denied the receipt of any such representation. Under these circumstances, non-filing of reply affidavit by Respondent 1 and denial of the plea of the petitioner having submitted representation by the petitioner thereof before him, would leave the inescapable conclusion that the Respondent 1 has failed to advert to the said representation of the petitioner filed against the detention, more so, in view of the failure of the counsel for the respondents to keep the detention record available in compliance to the order passed by this Court on 05.02.2025. Law in connection with the non-consideration of a representation submitted by a detenu against his detention is no more, *res-integra*, as well and stands settled by the Apex Court in case titled as, “**Rahmatullah Vs. State of Bihar and others, reported in 1979 (4) SCC 559**”, wherein, at Para-4, following has been observed:-

“4. The normal rule of law is that when a person commits an offence or a number of offences, he should be prosecuted and

punished in accordance with the normal appropriate criminal law; but if he is sought to be detained under any of the preventive detention laws as may often be necessary to prevent further commission of such offences, then the provisions of Article 22(5) must be complied with. Sub- Article (S) of Article 22 reads:

When any person is detained in pursuance of an order made under any law providing for preventive detention, the authority making the order shall, as soon as may be, communicate to such person the grounds on which the order has been made and shall afford him the earliest opportunity of making a representation against the order."

This Sub-Article provides, inter alia, that the detaining authority shall as soon as may be communicate the grounds of detention and shall afford him the earliest opportunity of making a representation against the order. The opportunity of making a representation is not for nothing. The representation, if any, submitted by the detenu is meant for consideration by the Appropriate Authority without any unreasonable delay, as it involves the liberty of a citizen guaranteed by Article 19 of the Constitution. The non-consideration or an unreasonably belated consideration of the representation tantamounts to non-compliance of Sub-Article (5) of Article 22 of the Constitution."

8. View thus, for what has been observed, considered and analyzed hereinabove, the instant petition succeeds, as a consequence whereof, the impugned order No. 16/DMP/PSA of 2024 dated 26.07.2024 is quashed with a direction to the respondents including the concerned jail authority to release the detenu from preventive detention under the impugned order forthwith, provided the petitioner is not involved in any other case.

9. Petition is, accordingly, **disposed of** along with connected application(s).

(Javed Iqbal Wani)
Judge

JAMMU
01.05.2025
Rahul Sharma