

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

Reserved on: 27.03.2025
Pronounced on: 15.04.2025

HCP No. 159/2024
CM No. 7628/2024

Abdul Sattar, aged 52 years
S/O Late Sh. Jamal Din
R/O Village Ponara Soni
Tehsil Basantgarh District Udhampur
through his son Muneer Ahmed.

...Petitioner(s)

Through: Mr. R.K.S Thakur, Advocate.

Vs

- 1. Union Territory of Jammu & Kashmir
through Commissioner/Secretary
Department of Home
Civil Secretariat, Jammu.**
- 2. District Magistrate, Udhampur**
- 3. Senior Superintendent of Police, Udhampur.**
- 4. Superintendent, Central Jail, Jammu.**

Respondent(s)

Through: Mr. Sumeet Bhatia, GA.

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

JUDGMENT

01. Through the medium of this Habeas Corpus Petition, the petitioner-Abdul Sattar (hereinafter called '**detenue**') seeks quashment of Order No. 08-PSA of 2024 dated 23.11.2024 (hereinafter called '**detention order**') passed by the respondent No. 2-District Magistrate, Udhampur

(hereinafter called '**detaining authority**') whereby and whereunder in terms of Section 8 of the Jammu and Kashmir Public Safety Act (for short, PSA), he had been ordered to be detained under preventive detention.

02. It has been pleaded that the respondent No. 3-Senior Superintendent of Police, Udhampur in his dossier has mentioned that FIR No. 09/2022 came to be registered against the detainee under section 379 IPC, 26(e) (f) & (g) Indian Forest Act and in the said FIR, the detainee has already been enlarged on bail and trial in the said FIR is pending; that the detainee was called in the Police Station, Basantgarh on 26.11.2024 and he was arrested; that thereafter the detainee was taken and lodged in Central Jail, Jammu, where he was provided the letter No. DMU/JC/1270 dated 23.11.2024, whereby he has been informed that his detention has been ordered.

03. It has been further pleaded in the grounds of his petition that the allegations leveled in the FIR No. 09/2002 registered under Section 379 IPC and Section 26 of the Forest Act registered by Police Station, Basantgarh are false and incorrect and in the said FIR, the detainee has been enlarged on bail; that FIR No. 09/2022 was registered on 26.02.2022 and the order of detention has been made on 23.11.2024 i.e., after two years and 9

months; that the respondents No. 2 and 3, in the grounds of detention and dossier, have stated that in the said FIR No. 09/2022, the challan has been presented and the detenue has been granted bail in the said case, as such, the said FIR cannot be made basis for the purpose of passing the order of detention, more so the copy of the said challan has not been provided to the detenue nor the same has been made part of the record; that preventive action under Section 126 of BNSS have been claimed to have taken against the detenue, yet no record pertaining to said action has been provided to the detenue, infringing the fundamental rights of the detenue with regard to non-supply of record, therefore, documents on the basis of which detention order was passed have not been provided to the detenue, rendering him unable to make effective representation; that the detention order has not been explained to the detenue in the language he understood; that the grounds of detention are nothing but reproduction of allegations made by respondent No. 3 in the dossier

- 04.** Pursuant to notice, the respondents have not filed counter affidavit, despite several opportunities.
- 05.** Learned counsel for the detenue, reiterating the submissions made in the petition, has argued that the

detenue had been detained illegally by the detaining authority without application of mind and based only on the dossier prepared by the police; that the FIR No. 09/2022 was registered on 26.02.2022 and the order of detention has been passed on 23.11.2024 i.e. after two years and nine months, as such, the order of detention cannot be based on stale FIR; that there is no fresh incident mentioned in the dossier; that in the dossier, there is a mention of preventive action under section 126 BNSS but the said Section is attracted only when an Executive Magistrate receives information that any person was likely to commit breach of peace or disturb the public tranquility etc and he was of the opinion that there was sufficient ground for proceeding, he might require such person to show cause why he should not be ordered to execute a bond or bail bond for keeping peace or such period, not exceeding one year as he thinks fit but in the instant case, no such procedure has been adhered to, under Section 126 of BNSS, rendering the detention order bad; that in the grounds of detention, it is stated that the detenue has remained involved in harbouring and providing logistic support to the terrorists and is also OGW in the record of Police Station, Basantgarh but no record, whatsoever, has been provided to the learned Executive Magistrate showing that the

detenue has remained involved in harbouring and providing logistic support to the terrorists and is also OGW in the record of Police Station; that although preventive action under section 126 of BNSS have been taken against the detenue yet no record pertaining to said action has been provided to the detenue rendering him unable to file effective representation; that there is no mention of fresh incident in the grounds of detention; that the detention order has not been explained to the detenue in the language he understood; that the grounds of detention are nothing but reproduction of allegations made by respondent No. 3 in the dossier. Lastly, he has argued that the detention order be quashed.

- 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 detenue under the Public Safety Act; that on the basis of intelligence inputs, the detaining authority deemed it appropriate to detain the detenue under the Public Safety Act; that all the relevant material has been supplied to the detenue. Lastly he has argued that the impugned detention order be upheld and the petition filed by the detenue, being devoid of any merit and substance, be rejected.

- 07.** Heard learned counsel for the parties, perused the detention record and considered.
- 08.** The impugned detention order has been challenged mainly on the grounds, firstly that that the detention order in question was based on stale reference of FIR of the year 2022, secondly that no action has been taken under section 126 of BNSS by the Executive Magistrate; thirdly material with regard to proceedings under Section 126 BNSS with regard to the involvement of the detainee in harbouring and providing logistic support to the terrorists has not been provided to the detainee for making an effective representation.
- 09.** So far as the first ground of challenge that the detention order in question was based on stale reference of FIR of 2022 is concerned, the detaining authority ought to have considered this aspect of the matter while passing the impugned detention order inasmuch as the detainee's involvement has been shown in the said FIR, which ex facie shows that this FIR, by all stretch of reference, is too remote to be a live link to consider a case of preventive detention of a person and is stale reference to have any nexus with the grounds of detention forming basis for subjecting the detainee to preventive detention custody.

10. In the case of **“Sama Aruna Vs State of Telangana and others,” reported in (2018)12 SCC 150** against a detention order dated 23.11.2016 passed by the Commissioner of Police Rachakonda Commissionerate, Rangareddy District, Telangana, the detenu, through his wife, had preferred a writ petition challenging preventive detention which came to be dismissed and the matter reached before the Hon’ble Supreme Court of India in an appeal. The order of preventive detention was based upon the grounds of detention which came to be referred to six criminal cases against the detenu, four of which of the year 2007, one of 2013 and other of 2014. The detention came to be questioned on the grounds of detention being stale. The Hon’ble Supreme Court of India came to consider the relevance of 9 to 14 years’ old incidents resulting in FIRs through a grossly belated order of detention. In paras 16 & 17, the Hon’ble Supreme Court of India came up with the following reference:-

“16. Obviously, therefore, the power to detain, under the Act of 1986, can be exercised only for preventing a person from engaging in, or pursuing or taking some action which adversely affects or is likely to affect adversely the maintenance of public order; or for preventing him from making preparations for engaging in such activities. There is little doubt that the conduct or activities of the detenu in the past must be taken into account for coming to the conclusion that he is going to engage in or make preparations for engaging in such activities, for many such persons follow a pattern of criminal activities. But the question is how far back? There is no doubt that only activities so far back can be

considered as furnish a cause for preventive detention in the present. That is, only those activities so far back in the past which lead to the conclusion that he is likely to engage in or prepare to engage in such activities in the immediate future can be taken into account. In *Golam Hussain alias Gama v. Commissioner of Police, Calcutta and Ors. (1974)4 SCC 530*, this Court observed as follows:

“5. No authority, acting rationally, can be satisfied, subjectively or otherwise, of future mischief merely because long ago the detenu had done something evil To Rule otherwise is to sanction a simulacrum of a statutory requirement. But no mechanical test by counting the months of the interval is sound. It all depends on the nature of the acts relied on, grave and determined or less serious and corrigible, on the length of the gap, short or long, on the reason for the delay in taking preventive action, like information of participation being available only in the course of an investigation. We have to investigate whether the causal connection has been broken in the circumstances of each case.

Suffice it to say that in any case, incidents which are said to have taken place nine to fourteen years earlier, cannot form the basis for being satisfied in the present that the detenu is going to engage in, or make preparation for engaging in such activities.

17. We are, therefore, satisfied that the aforesaid detention order was passed on grounds which are stale and which could not have been considered as relevant for arriving at the subjective satisfaction that the detenu must be detained. The detention order must be based on a reasonable prognosis of the future behavior of a person based on his past conduct in light of the surrounding circumstances. The live and proximate link that must exist between the past conduct of a person and the imperative need to detain him must be taken to have been snapped in this case. ***A detention order which is founded on stale incidents, must be regarded as an order of punishment for a crime, passed without a trial, though purporting to be an order of preventive detention. The essential concept of preventive detention is that the detention of a person is not to punish him for something he has done but to prevent him from doing it. See G. Reddeiah v. Government of Andhra Pradesh and Anr. (2012) 2 SCC 389, and P.U. Iqbal v. Union of India and Ors. (1992) 1 SCC 434.***

11. In the case of ***“Khaja Bilal Ahmed Vs State of Telangana and others,” (2020) 13 SCC 632*** the Hon’ble Supreme Court of India again came up dealing with the case of

preventive detention based upon stale grounds. In this case, the Hon'ble Supreme Court of India makes reference to its judgment in the case of **Sama Aruna Vs State of Telangana and others** (*supra*). In para 23, the Hon'ble Supreme Court of India has stated its position as under:-

".....The satisfaction to be arrived at by the detaining authority must not be based on irrelevant or invalid grounds. It must be arrived at on the basis of relevant material; material which is not stale and has a live link with the satisfaction of the detaining authority. The order of detention may refer to the previous criminal antecedents only if they have a direct nexus or link with the immediate need to detain an individual. If the previous criminal activities of the appellant could indicate his tendency or inclination to act in a manner prejudicial to the maintenance of public order, then it may have a bearing on the subjective satisfaction of the detaining authority. However, in the absence of a clear indication of a causal connection, a mere reference to the pending criminal cases cannot account for the requirements of Section 3. It is not open to the detaining authority to simply refer to stale incidents and hold them as the basis of an order of detention. Such stale material will have no bearing on the probability of the detenu engaging in prejudicial activities in the future."

- 12.** So far as second ground of challenge that no action has been taken under Section 126 of BNSS is concerned, it transpires that in the grounds of detention, it is stated that the detenu has remained involved in harbouring and providing logistic support to the terrorists and is also

OGW in the record of Police Station, Basantgarh, as such the detenue was proceeded against under Section 126 BNSS by the Executive Magistrate but said Section has not been complied with in totality as the Executive Magistrate has not issued any show cause notice to the detenue as to why he should not be ordered to execute a bond or bail bond for keeping the peace for such period, not exceeding one year.

- 13.** The detaining authority seems to have wavered in its satisfaction based on different grounds to pass the impugned detention order against the detenue indicating that the detenue was a known criminal whose activities had instilled fear among the peaceful residents of the area and also these activities pose a significant threat to national security, however, without making mention of any incident related to such activity except some vague accusations that he had been provided logistic support as an Over Ground Worker, the mere indication in the grounds that the detenue was resident of the local area where a CRPF Inspector had tragically lost his life makes no sense as without any specific allegation against the detenue, the detaining authority has made a mention of an FIR registered way back in the year 2022 on 11.02.2022 wherein the detenue along with one Showkat

Ali were found to have committed damage to the felled dry trees and as such, both of them were booked under the Indian Forest Act, 1927 and a chargesheet was laid in the court. The detinue as an accused, however, was admitted to bail. Besides the aforesaid FIR, a mention has been made to some preventive action taken against the detinue at the instance of Police Station, Basantgarh, however, no record in that behalf was either served upon the detinue or produced for the perusal of this court. In view of the case having been registered under Indian Forest Act, 1927 against the detinue and his no involvement in any other case of national security or public order being there, it appears that the detaining authority had acted upon the dossier prepared by the police only. Therefore, it shows that the detaining authority has not drawn any subjective satisfaction while passing the detention order.

- 14.** So far as third ground of challenge that relevant material has not been provided to the detinue is concerned, it is established from the perusal of the execution report that the detinue was provided thirty leaves including detention order, corrigendum thereto, notice of detention, grounds of detention, dossier of detention, copies of FIR, statements of witnesses and other related documents

which had been acknowledged by the detainee to the Executing Officer Inspector Jonesh Kumar. The respondents have, however, failed to substantiate with regard to the detailed documentation made available to the detainee so as to enable him to file a meaningful and effective representation to the detaining authority or the Government of Jammu and Kashmir, so much so that no record pertaining to preventive action under section 126 BNSS has been provided to the detainee, in the absence whereof, it could never be expected of the detainee to make an effective representation against the order of detention either to the Govt. or to the detaining authority itself.

15. In **Thahira Haris v. Government of Karnataka & Ors,** **AIR 2009 SC 2184**, the Apex Court after noticing various judgments on similar issue held that it was imperative for a valid continuance of detention that the detainee be supplied all documents, statements and other materials relied upon in the grounds of detention, failing which the right of the detainee of making an effective representation as enshrined under Article 22(5) of the Constitution, would be violated.
16. As a sequel to the aforementioned discussion and observations made hereinabove, the present petition is

allowed. Consequently, impugned detention order is quashed. The detenue is directed to be released forthwith if not required in any other case. The detention record be returned to the learned counsel for the respondents.

17. Disposed of accordingly.

(M A CHOWDHARY)
JUDGE

JAMMU
15.04.2025
Naresh/Secy

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