

**IN THE HIGH COURT OF JAMMU & KASHMIR AND LADAKH AT
SRINAGAR**

Reserved on: 11.08.2025

Pronounced on: 22.08.2025

CJ Court

LPA No.190/2024

1. Union Territory of J&K through Financial Commissioner (Additional Chief Secretary) to Govt. Home Department, J&K Govt. Civil Secretariat Srinagar/Jammu.
2. District Magistrate, Bandipora.
3. Superintendent of Police, Bandipora.
4. Superintendent, District Jail, Kupwara.

...APPELLANTS(S)

Through: - Mr. Jehangir Ahmad Dar, GA.

Vs.

Arif Aijaz Shahri S/o Aijaz Ahmad Shahri R/o Nadihal Tehsil and District Bandipora.

...RESPONDENT(S)

Through: - Mr. Mir Majid Bashir, Advocate.

**CORAM: HON'BLE THE CHIEF JUSTICE
HON'BLE MR. JUSTICE RAJNESH OSWAL, JUDGE**

JUDGMENT

OSWAL 'J'

1) The respondent came to be detained by the appellant No.2 (for short "the Detaining Authority) in terms of order dated 23.08.2023 by invoking powers in terms of clause (a) of Section 8 of the J&K Public Safety Act (for short "the Act"). The order of detention came to be impugned by the respondent through the medium of HCP No.109/2023 on various grounds including that the respondent had submitted

the representation dated 04.09.2023 through his wife to appellants No.1 and 2 but the same was not considered. It was also contended by the respondent that the constitutional as well as statutory safeguards as provided under the Constitution of India and the Act respectively were flagrantly violated by the appellants.

2) The appellants, in their reply to the writ petition, filed by the respondents, stated that the respondent has been detained in terms of impugned order issued by the Detaining Authority and all the statutory requirements and constitutional guarantees have been fulfilled and complied with by the Detaining Authority. The grounds of detention, order of detention and the entire material relied upon by the Detaining Authority came to be furnished to the detainee well within the statutory period provided under Section 13 of the Act. The warrant was executed by the appellants on 24.08.2023 and the respondent was handed over to Superintendent, District Jail, Kupwara, for lodgment. The contents of the detain order/warrant and the grounds of detention were read over and explained to the detainee in the language which he fully understood and in lieu whereof, he subscribed his signatures on the execution report/order. He was also informed about his right of making representation to the Detaining Authority or to the Government but he didn't choose to do so. It was further averred that in terms of Section

15 of the Act, the case of the respondent was referred to the Advisory Board for its opinion and the Advisory Board, after considering the material placed before it, opined that there is sufficient cause for detention of the respondent and after opinion of the Advisory Board, the Government, vide order dated 06.10.2023, confirmed the order of detention.

3) The learned Writ Court vide its order dated 01.04.2024, allowed the petition preferred by the respondent and, while quashing the order of detention, directed the appellants to release the respondent from the preventive detention.

4) Aggrieved of the order dated 01.04.2024, the appellants have assailed the same on the ground that the learned Writ Court has wrongly mentioned in para (13) of the impugned order that the Detaining Authority did not exhibit its awareness about discharge of the respondent in FIR No.67/2022 and that the learned Writ Court has not rightly considered the stand of the appellants.

5) Mr. Jehangir Ahmad Dar, learned counsel for the appellants has argued that the learned Writ Court, on wrong premises, has quashed the detention order. It has been contended that the expression “State” used in the Public Safety act would include “Union Territory of J&K” as well.

6) *Per contra*, Mr. Mir Majid Bashir, learned counsel for the respondent, has argued that notwithstanding the grounds

that weighed with the learned Writ Court for the purpose of quashing of order of detention, the respondent could not have been detained on the basis of the activities which were stale in nature and further the respondent was detained only in view of Shri Amarnathji Yatra, 2023 and once the contingency, which prompted the appellants to detain the respondent was over, the appellants ought to have withdrawn the detention order. He has further argued that the representation submitted by the respondent through his wife was never decided by the appellants.

7) Heard and perused the record.

8) We are in perfect agreement with the submission made by the learned counsel for the appellants that the learned Writ Court while quashing the order of detention has wrongly stated in the order impugned in this appeal that the Detaining Authority was not aware about discharge of the respondent as at page No.2 of the grounds of detention, it is specifically stated by appellant No.2 that the respondent was discharged in FIR No.67/2022 under Section 13 UAP Act, 4-B Explosive Substance Act of P/S Bandipora.

9) So far as other contention of the appellants that the expression “State” used in the Act would include the expression “UT of J&K” as well, is concerned, a Coordinate Bench of this court has already held that the expression

“State” used in the Public Safety Act includes “Union Territory of J&K”. Therefore, the learned Writ Court was not correct in quashing the order of detention on this ground as well.

10) Be that as it may, even on other grounds, the detention order passed by appellant No.2 is not sustainable in the eyes of law. It is evident that the respondent was detained on account of Shri Amarnathji Yatra, 2023 and upcoming elections. Since the respondent also stood discharged in FIR No.67/2022 under Section 13 UAP Act, 4-B Explosive Substance Act of P/S Bandipora, and no other specific illegal activity has been mentioned in the grounds of detention, the respondent could not have been detained on vague grounds. A Coordinate Bench of this Court in the case titled “**Imran Rashid Rather vs. UT of J&K**” 2024 LiveLaw (JKL) 351 has, while deliberating upon the effect of vagueness of the grounds of detention on the subjective satisfaction of the detaining authority, observed as under:-

“Therefore, this Court holds that vague and non-specific grounds of detention firstly, violates the fundamental right to life and personal liberty of the detainee under Article 21 of the constitution as it summarily curtails the liberty of the citizen based on the subjective satisfaction of the executive which is an exceptional power as against the general law relating to arrest and detention. Secondly, it deprives the detainee of giving a specific rebuttal to the grounds of detention which may satisfy the detaining authority or the Government that his detention is unlawful and compels him to answer the grounds of detention as "it is incorrect" or "it is false" etc. Thirdly, vague and generalised grounds in the order of detention, smacks of arbitrariness on the part of the detaining authority rendering the subjective satisfaction arrived at as violative of Article 14 of the constitution and fourthly, vague and non-specific grounds raise the

impression that the same has been done deliberately in order to deprive the detenu of giving a precise rebuttal. Malafide in fact may be difficult to establish as they must be pleaded with specific facts, but the lack of bonafides 1State of Bihar Vs. P.P. Sharma, 1992 Supp(1) SCC 222, paragraph 49 - State of Punjab Vs. Gurdial Singh, (1980) 2 SCC 471, paragraph 9 - Pooja Batra Vs. Union of India and others, (2009) 5 SCC 296, paragraphs 18, 40 and 41 may be presumed where the executive act results in the deprivation of personal liberty from a detention order based on vague grounds. In such cases, the lack of bonafides is to be presumed due to a cavalier or casual exercise of the authority to detain the citizen without any specific ill will or personal animosity. The lack of bonafides is on account of failure to take due care and act without introspection, blindly on the report of the SP without insisting on supporting material which justifies the deprivation of liberty.

11) From the aforesaid analysis of law, it is manifest that the vagueness of grounds of detention strikes at the root of the subjective satisfaction of the detaining authority thereby vitiating the order of detention.

12) Secondly, we find that the appellants, in their response, are silent in respect of the representation submitted by the respondent through his wife and rather it is the positive stand of the appellants that no representation was submitted by the respondent against his detention. Once the representation is submitted to the Detaining Authority and to the Government, it is their bounden duty not only to decide the said representation as expeditiously as possible but also to communicate decision thereupon to the detenu. The record depicts that the representation dated 04.09.2023 submitted by the respondent through his wife was decided by the Detaining Authority on 12.10.2023 after receiving the

comments dated 11.09.2023 from the respondent No.4. Thus, there is delay on the part of appellant No.2 in consideration of the representation. In **Sarabjeet Singh Mokha vs. District Magistrate, Jabalpur and others”(2021) 20 SCC 98**, the consideration of representation after a delay of one and a half month from the date of receipt of representation was held to be violative of the right of the detenue of consideration of his representation without delay.

13) After examining the impugned judgment, we find that the learned Writ Court has chosen a wrong path to reach the correct destination and, as such, without subscribing to the view taken by the learned Writ Court, the decision of the learned Writ Court cannot be disturbed at this stage, particularly when the respondent has been set at liberty.

14) Viewed thus, there is no merit in this appeal and the same is dismissed accordingly.

15) The record be returned to learned counsel for the appellants.

(RAJNESH OSWAL)
JUDGE

(ARUN PALLI)
CHIEF JUSTICE

Srinagar
22.08.2025
“Bhat Altaf”

Whether the **Judgment** is speaking: **Yes**
Whether the **judgment** is reportable: **No**