HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT SRINAGAR
…
HCP No. 225/2024

Reserved on: 05.12.2025
Pronounced on: 26.12.2025
Uploaded on: *26.12.2025*
Whether operative part or : **Full**
full judgment is pronounced

Firdous Ahmad Shah

……. Petitioner(s)

Through: Mr. B. A. Dar, Advocate

Versus.

Union Territory of J&K and Ors.

..…Respondent(s)

Through: Ms. Maha Majeed, Assisting Counsel vice
Mr. Mohsin S. Qadri, Sr. AAG

CORAM:
HON'BLE MR JUSTICE VINOD CHATTERJI KOUL, JUDGE

JUDGEMENT

1. Through the medium of this writ petition, the petitioner prays for quashment of Order no.DMS/PSA/14/2024 dated 23.04.2024, *(impugned detention order)* passed by District Magistrate, Srinagar – respondent no.2, whereby detenu, namely, *Firdous Ahmsad Shah S/o Late Ali Mohammad Shah R/o Abi Guzar Lal Chowk, Srinagar (for brevity "detenu") has* been placed under preventive detention with a view to prevent him from indulging in the activities which are prejudicial to the maintenance of security of the State, on the grounds made mention of therein.

2. Respondents have filed reply affidavit, insisting therein that the activities indulged in by detenu are highly prejudicial to the maintenance of security of State and, therefore, his remaining at large is a threat to the security of State. The activities narrated in the grounds of detention have been reiterated in the reply/counter affidavit filed by respondents. The factual averments that detenu was not supplied with relevant material relied upon in the grounds of detention have been refuted. It is insisted that all the relevant material, which has been relied upon by the detaining authority, was provided to the detenu at the time of execution of warrant.

3. I have heard learned counsel for parties. I have perused the detention record produced by learned counsel for respondents and considered the matter.

4. Learned counsel for the petitioner has stated that the allegations made in the grounds of detention are vague and indefinite and no prudent man can make an effective representation against these allegations inasmuch as case mentioned in grounds of detention has no nexus with detenu and detaining authority has not given any reasonable justification to pass impugned order of detention, inasmuch as the detenu has been shown involved in series of FIR Nos. 167/2003, 55/2003, 12/2006, 70/2007, 81/2009, 15/2018 and 23/2023, however no specific allegation has been shown in the cases/FIRs mentioned in the grounds of detention nor even an iota of connection is given in the grounds of detention connecting the detenu with such allegations, inasmuch as, there is no live-link and proximity between alleged activities and date of issuance of impugned order of detention. It is also stated that the grounds of detention are replica of dossier and unequivocally reflects and shows non-application of mind on the part of detaining authority and as a consequence of which impugned order of detention is liable to be quashed.

5. The submission of the learned counsel for the petitioner is that the impugned detention order is without application of mind as there is no cogent reason for respondent no.2 to pass the detention order inasmuch as the detaining authority has not given any justification or cogent reason for passing of impugned order as to how the activities of the detenu are prejudicial to the maintenance of security of the State, hence the detention order has no proximity with the procedure as envisaged under law. It is stated that the detaining authority has not prepared the grounds of detention by itself, which is a pre requisite for it before passing any detention order,

6. *Per contra*, learned counsel for respondents insists that detention order has been passed on subjective satisfaction by detaining authority and detention order is in accordance with law and there is no violation or infringement of rights guaranteed under the Constitution of India. Hence, he pleads that petition be dismissed.

7. In the present case, the contention of the learned counsel for the respondents is that there are very serious allegations levelled against the detenu as he is said to have been creating a feeling of insecurity, pain and fear in the minds of the general public and disturbing the peace and tranquillity in Kashmir valley, especially in District Srinagar and in this regard the criminal cases are already going on against the detenu under various provisions of law and if he is found guilty, he will be convicted and given appropriate sentence. May be offences allegedly committed by the detenu attract the punishment under the prevailing laws but that has to be done under the prevalent laws and taking detention cannot be made a substitute for ordinary law and absolve the investigating authorities of their normal functions of investigating the crimes, which the detenu may have committed. After all the preventive detention cannot be used as an instrument to keep a person in the perpetual custody without trial.

8. The question whether the prejudicial activities of a person requiring to pass a detention order is proximate to time when the order is made or the live-link between the prejudicial activities and the purpose of detention is snapped, depends on the facts and circumstances of each case. Nonetheless, when there is an undue and long delay between the prejudicial activities and the passing of the detention order, the court has to scrutinise whether the detaining authority has satisfactorily examined such a delay and afforded a tenable and reasonable explanation as to why such a delay has occasioned, when called upon to answer and further the court has to investigate whether the casual connection has been broken in the circumstances of each case. Certainly, in the present case, there is no cogent explanation coming to fore from perusal of the grounds of detention with reference to the live-link between the prejudicial activities and the purpose of the detention and resultantly the impugned detention order is liable to be quashed. In this regard reference is made to the law laid down in ***T. A. Abdul Rahman v. State of Kerala (1989) 4 SCC 741*** and ***Rajinder Arora v. Union of India and others (2006) 4 SCC 796***].

9. Preventive detention must be supported by existence of a 'live and proximate link' between past conduct and present imperative need to detain a person. It has been very often held that order of preventive detention must be passed by due application of mind and taking note of relevant factors. If order

of detention is passed on the basis of incidents which are stale, it is often stated that incident not being of relevance to establish imperativeness in passing an order of detention and such order passed must be treated as being based on extraneous factors. The observations made by the Supreme Court in ***Sama Aruna v. State of Telangana and another, (2018) 12 SCC 150***, is relevant to be reproduced herein below:

> "22. We are of the view, that the detention order in this case is vitiated by taking into account incidents so far back in the past as would have no bearing on the immediate need to detain him without a trial. The satisfaction of the authority is not in respect of the thing in regard to which it is required to be satisfied. Incidents which are stale, cease to have relevance to the subject-matter of the enquiry and must be treated as extraneous to the scope and purpose of the statute."

10. In such cases, the question would also arise regarding validity of an order of detention where after the last of such incidents there is a lull and after a substantial time lag, an order of detention is sought to be passed. The detaining authority must establish habituality of commission of offences which could be directly linked to a pattern of behaviour. In order to establish such pattern of behaviour that would reasonably indicate continuing commission of offences, the detaining authority must establish intermittent commission of offences which would indicate a regular pattern.

11. In plethora of judgments, the Supreme Court has held that the order of detention must not be based upon stale events and the relevant observations made by the Supreme Court in ***Ameena Begum v. State of Telangana and others, (2023) 9 SCC 587***, are as under:-

> "17. In a different context, we may take note of the decision in *Sama Aruna vs. State of Telangana*[11]*, where, S.A. Bobde, J.* (as the Chief Justice then was) while construing the provisions of the Act, held:
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> "16. 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 holding that the order of detention therein was grounded on stale grounds, the Court held that:
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> "The detention order must be based on a reasonable prognosis of the future behaviour 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."

12. This was further affirmed by the Supreme Court in ***Khaja Bilal Ahmed vs. State of Telangana, (2020) 13 SCC 632***, in which order of detention was issued on 2nd November 2018 and detaining authority had delved into the history of cases involving the appellant-detenu therein from the years 2003-2018, despite the subjective satisfaction of the Officer not being based on such cases. In quashing such an order, it was observed:

> "23….. If the pending cases were not considered for passing the order of detention, it defies logic as to why they were referred to in the first place in the order of detention. The purpose of the Telangana Offenders Act 1986 is to prevent any person from acting in a manner prejudicial to the maintenance of public order. For this purpose, Section 3 prescribes that the detaining authority must be satisfied that the person to be detained is likely to indulge in illegal activities in the future and act in a manner prejudicial to the maintenance of public order. 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."

13. Reference is also made to the decision of a Constitution Bench of the Supreme Court in ***Sunil Fulchand Shah v. Union of India, (2000) 3 SCC 409***, wherein the need to strictly adhere to the timelines, provided as procedural safeguards, was stressed upon. It was held thus:

> "11.….The safeguards available to a person against whom an order of detention has been passed are limited and, therefore, the courts have always held that all the procedural safeguards provided by the law should be strictly complied with. Any default in maintaining the time-limit has been regarded as having the effect of rendering the detention order or the continued detention, as the case may be, illegal. The

> justification for preventive detention being necessity a person can be detained only so long as it is found necessary to detain him. If his detention is found unnecessary, even during the maximum period permissible under the law then he has to be released from detention forthwith. It is really in this context that Section 10 and particularly the words 'may be detained' shall have to be interpreted."

14. In the case in hand lack of demonstration of a live and proximate link between the year 2024 and 2003-2018, has resulted in the order of detention being based on stale incidents. The assertion of habitual offender or absence of respect towards law of the land and other assertions as made in the grounds of detention are not sufficient to maintain the thread of connection between the last incident and the order of detention in the absence of any material to substantiate propensity to commit crime realistically. Thus, the order stands vitiated.

15. The requirement of 'proximity/live link' is required to demonstrate imperativeness in invoking power of preventive detention more so where criminal prosecution is pending which proceedings may culminate in imposition of a punitive sentence. It is a settled position of law that the power of passing an order of preventive detention cannot be a punitive measure on the apprehension however reasonable it maybe that detenu is going to go scot free in pending trials due to lack of support to prosecution by crucial witnesses or otherwise.

16. The power of preventive detention as the very word indicates has to be used *bona fidely for* the purpose of prevention of possible criminal offences by detenu based on past behaviour with a pattern of repeated offences. The observations of the Supreme Court in ***Khudiram Das v. State of West Bengal, AIR 1975 SC 550***, would throw light on the above, the relevant observations are as follows:-

> "8.... The power of detention is clearly a preventive measure. It does not partake in any manner of the nature of punishment. It is taken by way of precaution to prevent mischief to the community. Since every preventive measure is based on the principle that a person should be prevented from doing something which, if left free and unfettered, it is reasonably probable he would do, it must necessarily proceed in all cases, to some extent, on suspicion or anticipation as distinct from proof….."

17. When the incidents, constituting the last incident, stops about ten years back and as discussed above the thread of connectivity between the last incident and the order of preventive detention, is lost. The order of detention can be stated to be based on stale events in the absence of live link. Intertwined with the issue of proximity and live link are other factors that have vitiated the order of detention in the present case.

18. It is pertinent to mention here that perusal of grounds of detention reveals that the same are replica of dossier with interplay of some words here and there. This, thus, portrays non-application of mind and in the process of deriving of subjective satisfaction, has become causality. While formulating grounds of detention, detaining authority has to apply its own mind. It cannot simply reiterate whatever is written in the dossier. Here it will be apt to notice the observations of the Supreme Court in the case of ***"Jai Singh and ors vs. State of J&K" (AIR 1985 SC 764),*** which are reproduced hereunder:

> "First taking up the case of Jai Singh, the first of the petitioners before us, a perusal of the grounds of detention shows that it is a verbatim reproduction of the dossier submitted by the Senior Superintendent of Police, Udhampur, to the District Magistrate requesting that a detention order may kindly be issued. At the top of the dossier, the name is mentioned as Sardar Jai Singh, father's name is mentioned as Sardar Ram Singh and the address is given as village Bharakh, Tehsil Reasi. Thereafter it is recited "The subject is an important member of ……"
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> Thereafter follow various allegations against Jai Singh, paragraph by paragraph. In the grounds of detention, all that the District Magistrate has done is to change the first three words "the subject is" into "you Jai Singh, S/o Ram Singh, resident of village Bharakh, Tehsil Reasi". Thereafter word for word the police dossier is repeated and the word "he" wherever it occurs referring to Jai Singh in the dossier is changed into "you" in the grounds of detention. We are afraid it is difficult to find proof of non-application of mind. The liberty of a subject is a serious matter and is not to be trifled with in this casual, indifferent and routine manner."

19. From perusal of above quoted observations of the Supreme Court, it is crystal clear that grounds of detention and dossier, if in similar language, go on to show that there has been non-application of mind on the part of detaining authority. As already noted, in the instant case, it is clear from the record that the dossier and the grounds of detention contain almost similar wording which shows that there has been non-application of mind on the part of the detaining authority. The impugned order of detention is, therefore, unsustainable in law on this ground alone.

20. For the reasons discussed above, Detention Order No. DMS/PSA/14/2024 dated 23.04.2024, passed by District Magistrate, Srinagar, is quashed. Respondents, including Superintendent Jail concerned, are directed to release the detenu forthwith, provided he is not required in any other case.

Disposed of.

22. Registry to return detention record to learned counsel for respondents.

(Vinod Chatterji Koul)
Judge

Srinagar
26.12.2025
(Qazi Amjad, Jt. Reg/Secy)

QAZI AMJAD YOUSUF
I attest to the accuracy and
authenticity of this document

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