

Serial No. 1
Regular Cause List

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

HCP No. 303/2024

KAISER HAMEED BEIGH

..... Appellant/petitioner(s)

Through: -
Mr. Wajid Haseeb, Advocate

V/s

UNION TERRITORY OF J&K AND ORS. (HOME DEPARTMENT)

..... Respondent(s)

Through: -
Mr. Ilyas Nazir Laway, GA

CORAM:

HON'BLE MR JUSTICE RAJESH SEKHRI, JUDGE

JUDGMENT

(Oral)

01. Petitioner has invoked writ jurisdiction of this Court, for the quashment of detention order dated 25.06.2022, at the pre-execution stage, whereby he has been directed to be detained under Public Safety Act, 1978 ["PSA"].

02. Impugned order came to be stayed by this Court vide order dated 11.09.2024.

03. As factual narration of the case would unfold, Senior Superintendent of Police (SSP), Anantnag, on 23.06.2022, submitted a dossier and connected documents to District Magistrate, Anantnag—respondent No. 2, alleging thereby that petitioner being an Over Ground Worker (OGW), of a banned organization, JEM, was trying to strengthen the influence of the outfit by providing every kind of support in the form of shelter and transportation to the active militants, operating in the valley in general and

District Anantnag, in particular. He was earlier detained under PSA, in terms of detention order dated 19.10.2021, on the basis of FIR No. 132/2019, under Section 16,18,20 of Unlawful Activities and Prevention Act, 1967 (UAPA). He was lodged in Police Station, Anantnag, but he came to be released, following the quashment of the said detention order by the High Court. Allegation of the Sponsoring officer was that the petitioner despite his release from earlier detention, continued to harbour anti-national ideology.

04. Pertinently, the Sponsoring Officer, on the basis of aforesaid contentions, recommended preventive detention of the petitioner, on the apprehension that in view of his allegiance with the terrorists, it will be risky to keep him out, when Holy Shri Amarnath Yatra was about to begin.

05. On the basis of aforesaid dossier and the related documents, the detaining authority has come to the conclusion that with a view to prevent the petitioner from acting in any manner prejudicial to the security of the State, it was imperative to detain him under the provisions of PSA.

06. Petitioner is aggrieved of the impugned order *inter alia* on the following grounds:-

- a. That the allegations/grounds of detention are vague and mere assertions of the detaining authority and no prudent man can make an effective representation against these allegations and can only be defended in a Court of law and passing of an order of preventive detention on such grounds is arbitrary and act of despotism and outside the shadow of the constitution, the order of detention is unreasoned and unjustified and deserves to be*

quashed before it is executed so as to safeguard the constitutional rights of a petitioner.

- b.** *That the respondent No. 2 has passed the detention order and the same has to be approved within twelve days' time, it is the binding duty of the detaining authority to approve the order of detention within a period of 12 days from the date of passing of order of detention and beyond the period of twelve days the order cannot be executed- since more than twelve days have already elapsed from the date it has been passed as such the validity of the order has expired and the same cannot be executed now. on this ground the order of detention is no more enforceable and respondents deserve to be directed that the order be not executed.*
- c.** *That the detention order has been passed against the wrong person as the detenue is not involved in any allegations as mentioned in the grounds of detention more particularly the allegations mentioned in para 5 onwards in the grounds of detention. On this ground also the detention order is bad in law as being suffering from non-application of mind and deserves to be quashed.*
- d.** *That as per the grounds of detention the detaining authority has relied upon the implication of the detenue in case FIR 132/2021 mentioned in grounds of detention, so as to reach the satisfaction to pass the impugned detention order, however, the petitioner was already admitted to bail by the court of*

competent jurisdiction and the detaining authority despite having knowledge of the registration of the case has not mentioned this important fact in the grounds of detention as such on this ground, the detention order suffers from non-application of mind on part of detaining authority and deserves to be quashed.

- e. That the petitioner is alleged to be involved in only one FIR which is sub-judice and on the basis of this FIR he was already detained to preventive detention which was quashed by this Hon'ble Court and thereafter no fresh activity has been attributed to the petitioner as such it was not legally permissible for respondent No.2 to pass fresh detention order on same allegations and on this ground as well the detention order is bad in law ab-initio and deserves to be quashed.*

- f. That the allegations as reflected in the grounds of detention are vague and don't justify the passing of detention order on the basis of such allegations. The detaining authority has not given any reasonable justification to pass the detention order and neither the detaining authority has given the specific details, month date of occurrence, role played by the petitioner, how he is connected with the allegations post his release on bail, which it has leveled, in the grounds of detention. As such the impugned order of detention suffers from complete non-application of mind on the part of detaining authority and the same deserves to be quashed.*

- g** *That the last alleged activity as mentioned in the grounds of detention has occurred in year 2019 and the petitioner was arrested in the in year 2019 for these allegations and has been thereafter released on bail in due course of law in August 2020. Since after the last alleged activity no fresh allegation has been attributed to the petitioner, as such there was no justification to pass the preventive detention order after an elapse of more than three years from the date last alleged activity has taken place. The long delay between the alleged activity and the order of detention, makes the preventive detention alien with the very basic object of the preventive detention, particularly in the given fact that in between this period of delay the petitioner was taken into custody in furtherance of the investigation of the cases and thereafter released on bail. The delay between the last alleged activity and the order of detention makes the order unreasonable and unconstitutional and such order deserves to be quashed unexecuted.*
- h.** *That the order of detention has been passed on 25.06.2022 and till date no effort has been made by the respondents to execute the same and the respondents have chosen not to execute the detention order till date despite him being available for execution and has not absconded in any manner. The delay of more than two years in execution of the order has rendered the detention order purposeless and as such detaining the petitioner to the preventive custody will be unjustified and*

unconstitutional. It is well settled principle of law that when there is unsatisfactory delay in execution of detention order such a delay would throw considerable doubt on the genuineness of the subjective satisfaction of the detaining authority or the sponsoring authority as regards the necessity of the preventive detention of the person concerned. On this ground also the impugned order deserves to be quashed unexecuted.

- i. That the detaining authority has not made any effort till date to secure the arrest of the petitioner for the execution of the impugned detention order. It will be apt to mention here that the detenue has been attending the court hearings before the trial court in the case registered against him. The preventive detention is a serious invasion upon the personal liberty of a person and can be permitted only in extraordinary situation in the larger public interest. The preventive detention is the necessity of the time and not a liability upon a person. The order of preventive detention has to be allowed based upon purpose and not upon the wish of the administration. on this ground the impugned detention order is bad in law and deserves to be quashed.*
- j. That the allegations reveled in the grounds of detention relate to the year 2022 and the allegations have no proximity with present time for the purpose of preventive detention unless any fresh activity is not attributed to the petitioner. Furthermore,*

the alleged requirement of the preventive detention as mentioned in grounds of detention has already expired and if the order is allowed to execute now same will be arbitrary and miscarriage of justice and will be against the spirit of the Article 21 of the Constitution. On this ground the order of detention deserves to be quashed at pre-execution stage and the respondents deserve to be restrained from executing the impugned detention order.

k. *That the detention order has been passed for the purpose of maintenance of Security of State in year 2022 and the maximum period thereof in first instance is six months and is extendable upon review upto two years, meaning thereby the apprehension in such cases cannot be extended beyond six months without review for the purpose of preventive detention as such the object sought to be achieved by the impugned order has already been rendered infructuous by the efflux of time and the execution of the order will be unreasonable and unjustified and as such deserved to be quashed unexecuted.*

l. *That the grounds are vague, unfounded, and irrelevant and non-existent as the respondent No.2 has passed the detention order without following procedure of law as envisaged under Section 8 of Public Safety Act. The detaining authority has not clearly and vividly mentioned in the grounds of detention that what were the activities and when the petitioner has involved himself in the subversive activities, so called to be prejudicial to*

security of state. On this ground the order of detention and grounds of detention is bad in law and deserves to be quashed.

- m. That the impugned detention order is illegal and bad in law as the grounds of detention which forms basis for passing the detention order has been formulated by the superintendent of police and there has been no independent application of mind on part of detaining authority nor any material has been perused by it and as such the requisite satisfaction for passing detention order is lacking in the present case and on this ground also the detention order is illegal and deserves to be quashed.*
- n. That the procedural safeguards prescribed under the provisions of public safety Act and the rights given under Article 22 (5) of constitution of India have not been followed. On this ground the order of detention and grounds of detention are bad in law and deserves to be quashed.*
- o. That the allegations contained in the grounds of detention are false and frivolous, without any cogent material and reasoning. The allegation in the grounds of detention that the petitioner has been involved in unlawful activities, which has not been conspicuously and vividly unveiled. The respondent No.2 while issuing the order of detention has not profoundly divulged anywhere in the grounds of detention, whom and how has he resorted to unlawful activities. The petitioner has been ordered*

to be detained on flimsy grounds rendering the order of detention bad in law and deserves to be quashed.

- p.** *That the respondent No.2 has not spelled out any compelling reasons in the grounds of detention that warrants the passing of order of detention against the petitioner. Further the petitioner has all along been peaceful and law-abiding citizen and has not participated in any activity which would cause prejudice to maintenance of public order or security of State. On this ground the order of detention and grounds of detention are bad in law and deserves to be quashed.*
- q.** *That the respondent No.2 has passed the detention order on vague, irrelevant and extraneous grounds and on this ground the order of detention is bad in law and deserves to be quashed.*
- r.** *That for the reasons stated above, the life and liberty of the petitioner is being proposed to be deprived without any accord of law and hence the detention order deserves to be quashed at a pre-execution stage. However, the petitioner seeks leave of the Hon'ble court to agitate supplementary grounds against the order of detention at the time of hearing as would be known or available to the petitioner during the pendency of writ petition.*

07. The plea has been opposed on the other side by the respondents, primarily on the ground that no fundamental, legal or statutory right of the petitioner is found to have been violated.

08. It is contention of the respondents that impugned order came to be passed after due consideration of the dossier submitted by SSP, Anantnag, as petitioner was found continuously and repeatedly involved in anti-national activities, thereby posing a persistent threat to the security of the State.

09. According to the respondents, all the relevant documents, including grounds of detention, detention warrant were not only supplied to the petitioner but duly read over and explained to him in the language he understood and his signatures, as a token of receipt, were obtained by the Executing Officer. He was also informed about his right to make a representation.

10. It is contention of the respondents that since there was likelihood on the part of the petitioner to engage in anti-national activities and in view of allegiance of the petitioner with the banned outfit, it was risky to keep him out, when Holy Shri Amarnath Yatra was about to begin.

11. Respondents have prayed for dismissal of the petition.

12. Having heard rival contentions of the parties, I have gone through the detention record.

13. It is trite in law that High Court in exercise of its writ jurisdiction cannot decline to entertain a writ petition against a detention order at the pre-execution stage. High Court is vested with the jurisdiction to exercise such power in proper cases, though the grounds on which writ Court could interfere in such cases at the pre-execution stage are limited in scope.

14. Hon'ble Supreme Court in “***Additional Secretary to Government of India Vs. Alka Subash Gadia***”; 1992 (1) SCC 496, held that High Court cannot decline to entertain a writ petition against a detention order, prior to its execution if it is *prima facie* satisfied that (i) order is not passed under the

Act under which it is purported to have been passed (ii) it is sought to be executed against a wrong person (iii) it is passed for a wrong purpose (iv) it is passed on vague, extraneous and irrelevant grounds and (v) the authority which passed it had no authority to do so.

Relevant abstract of the Judgment reads as under:-

“ 30. As regards his last contention viz, that to deny a right to the proposed detenu to challenge the order of detention and the grounds on which it is made before he is taken in custody is to deny him the remedy of judicial review of the impugned order which right is a part of the basic structure of the Constitution, we find that this argument is also not well merited based as it is on absolute assumptions. Firstly, as pointed out by the authorities discussed above, there is a difference between the existence of power and its exercise. Neither the Constitution including the provisions of Article 22 thereof nor the Act in question places any restriction on the powers of the High Court and this Court to review judicially the order of detention. The powers under Articles 226 and 32 are wide, and are untrammelled by any external restrictions, and can reach any executive order resulting in civil or criminal consequences. However, the courts have over the years evolved certain self-restraints for exercising these powers. They have done so in the interests of the administration of justice and for better and more efficient and informed exercise of the said powers. These self-imposed restraints are not confined to the review of the orders passed under detention law only. They extend to the orders passed and decisions made under all laws. It is in pursuance of this self-evolved judicial policy and in conformity with the self-imposed internal restrictions that the Courts insist that the aggrieved person first allow the due operation implementation of the concerned law and exhaust the remedies provided by it before approaching the High Court and this Court to invoke their discretionary extraordinary and equitable jurisdiction under Articles 226 and 32 respectively That jurisdiction by its very nature is to be used sparingly and in circumstances where no other efficacious remedy is available. We have while discussing the relevant authorities earlier dealt in detail with the circumstances under which these extraordinary

powers are used and are declined to be used by the courts. To accept Shri Jain's present contention would mean that the courts should disregard all these time-honored and well-tested judicial self-restraints and norms and exercise their said powers, in every case before the detention order is executed. Secondly, as has been rightly pointed out by Shri Sibal for the appellants, as far as detention orders are concerned if in every case a detenu is permitted to challenge and seek the stay of the operation of the order before it is executed, the very purpose of the order and of the law under which it is made will be frustrated since such orders are in operation only for a limited period. Thirdly, and this is more important, it is not correct to say that the courts have no power to entertain grievances against any detention order prior to its execution. The courts have the necessary power and they have used it in proper cases as has been pointed out above, although such cases have been few and the grounds on which the courts have interfered with them at the pre-execution stage are necessarily very limited in scope and number, viz., where the courts are prima facie satisfied (i) that the impugned order is not passed under the Act under which it is purported to have been passed, (ii) that it is sought to be executed against a wrong person, (iii) that it is passed for a wrong purpose, (iv) that it is passed on vague, extraneous and irrelevant grounds or (v) that the authority which passed it had no authority to do so. The refusal by the courts to use their extraordinary powers of judicial review to interfere with the detention orders prior to their execution on any other ground does not amount to the abandonment of the said power or to their denial to the proposed detenu, but prevents their abuse and the perversion of the law in question.”

15. If the grounds of detention, in the present case are carefully glanced over, it is apparent that impugned order came to be passed against the petitioner on mere apprehension that due to his allegiance with a banned terrorist outfit, it will be risky to keep him out, when Holy Shri Amarnath Yatra, was about to begin. Otherwise, petitioner was concededly attending the proceedings before Additional Sessions Judge, Anantnag (NIA Court), in

the solitary FIR of 2019, cited against him, which is apparent from various interim orders passed by the said Court from time to time. Therefore, present case is squarely covered under grounds (iii) and (iv) of “**Alka Subash Gadia**”(supra), that it has been passed for a wrong purpose and on vague, extraneous and irrelevant grounds. The impugned order is liable to be quashed on this ground alone.

16. Be that as it may, Constitutional Courts of the country have consistently maintained that preventive detention is meant to address an immediate threat to public order and it no longer remains *res integra* now that the foundational legal principle to evaluate the validity of preventive detention orders is the doctrine of the “live and proximate link”, which means that there is unbroken connection between a detainee’s past actions and the proposed legal consequences. In other words, when the administration proposes to detain a citizen with a view to prevent him from acting in any manner detrimental to the security of the State or the public order, there must be a strong and immediate connection between his past activities and the imperative need to detain him.

17. The impugned detention order, came to be passed by the detaining authority on 25.06.2022. The petitioner approached this Court for the quashment of impugned order on 09.09.2024. It is intriguing to note that for more than two years, despite the fact that petitioner was regularly attending the trial, in the Court of Additional Sessions Judge, Anantnag (NIA Court), no serious effort was made by the respondents to execute the detention order. Therefore, there is no doubt that there is inordinate unexplained delay of two years on the part of the detaining authority in securing the detention of the petitioner, which snapped the “live and proximate link” between his

alleged criminal activities of the past and the imperative need to detain him now, at this length of time.

18. Viewed from any angle, the impugned order does not sustain in the eyes of law. Hence present petition is allowed and impugned order is quashed.

(RAJESH SEKHRI)
JUDGE

SRINAGAR
01.10.2026
“Mohammad Yasin Dar”

Whether the Judgment is reportable: Yes
Whether the Judgment is speaking: Yes

