

HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT SRINAGAR

LPA No. 171/2024

Reserved on: **09.09.2024**

Pronounced on: **12.09.2024**

Aqib Ahmad Renzu S/O Bilal Ahmad Renzu
R/O Sheeraz Chowk Khanyar Srinagar
At present Kralsangri Brein Nishat Srinagar.

...Appellant/Petitioner(s)

Through: Mr. Shuja ul Haq, Advocate.

Vs.

1. Union Territory of J&K through
Addl. Chief Secretary to Govt.(Home Deptt.)
J&K Srinagar Kashmir.

2. District Magistrate Srinagar Kashmir.

3. Superintendent of Police Central Jail Kotbhalwal Jammu.

...Respondent(s)

Through: Mr. Faheem Nisar Shah, GA.

CORAM: HON'BLE MR. JUSTICE CHIEF JUSTICE (ACTING)

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

JUDGMENT

Per Chowdhary, J

1. The instant Letters Patent Appeal has been preferred against the order and judgment dated 07.06.2024 (for short 'the impugned judgment) passed by learned Single Judge in *HCP No. 172/2023 titled Aqib Ahmad Renzu Vs. UT of J&K & Ors.*, whereby the Habeas Corpus Petition, filed by the appellant-detenu herein, was dismissed for the reason that the appellant-detenu indulging in criminal activities, which are prejudicial to the maintenance of public order, cannot take shelter behind nationalist activities in

which he may have participated at some point of time in his career. Aggrieved of the said order and judgment, instant appeal has been filed.

2. Case set up by the appellant-detenué is that the judgment impugned is bereft of any legal support and is in conflict with the established legal position inasmuch as the appellant-detenué has to only inform the Court that his detention is bad in law, then it was the responsibility and duty of the respondents to prove before the Writ Court that all the safeguards provided under Article 22(5) of the Constitution of India have been complied with, which in the instant case has not been done. Another ground raised by the appellant is that the detenué was not provided the material upon which the respondents have made reliance, with the result the detenué was not in a position to make an effective and meaningful representation for seeking revocation of the order of detention. This question has not been considered by the learned Writ Court while passing the impugned judgment.
 3. The appellant-detenué, who was facing trial in almost seven FIRs from the year 2013 to 2023, was admitted to bail by the court of competent jurisdiction in all the seven FIRs, however, no motion/application was filed by the respondents for seeking cancellation of bail of appellant-detenué before the concerned courts which had granted bail to the appellant-detenué.
 4. Mr. Shuja ul Haq, learned counsel appearing for the appellant-detenué argued that while passing the judgment impugned, the learned Single Bench has not considered the fact that the detenué was neither a stone pelter nor anti-national/anti-social element as
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wrongly claimed by the detaining authority in the dossier which has become basis for issuance of detention order. The detenu has been part of mainstream politics and has been instrumental in attracting the youth to join mainstream politics. It is further argued that the detenu has saved many youngsters from becoming part of anti-national/anti-social groups. The detenu was elected as a Corporator of Srinagar Municipal Corporation (SMC) from Ward No.3, Brein Nishat Srinagar in the year 2018. Learned counsel submits that the detenu is a staunch nationalist and has worked shoulder to shoulder with the Government for restoration of peace and development of Kashmir Valley. Furthermore, the detenu has always participated in every event conducted by the Government of national/regional significance. Learned counsel pleaded that the order of detention has been passed on the basis of ill-will, vengeance and in rivalry.

5. Mr. Faheem Nisar Shah, learned Government counsel appearing for respondents, vehemently resisted the appeal. He has contended that the impugned judgment does not suffer from any legal infirmity and the detention order has been passed without any malice, inasmuch as safeguards provided under the Constitution of India as also the rights of the appellant-detenu have been followed, while ordering his detention, as such, challenge thrown to the impugned judgment is not sustainable, hence on this score only the instant appeal merits dismissal. It is further contended that the appellant-detenu has been detained with a view to prevent him from indulging in the activities which are prejudicial to the maintenance of public order and not for security of State, as argued by the opposite counsel.
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6. Heard, perused the material available on file and considered the same.
 7. The grounds of detention, on which the detention order was based by the detaining authority, reveals that the appellant-detenu was deeply influenced by radical ideology from a young age and as a result came into contact with disgruntled elements of his area who encouraged the appellant-detenu to indulge in illegal and anti-social activities that pose a direct threat to public order; that the detenu got motivated and engaged in unlawful activities, gained confidence and quickly rose to the status of a well-known nuisance, troublemaker, vagabond, chronic street fighter, or miscreant; that the appellant-detenu did not mend his ways even though got more confidence and was found continuously involved in series of heinous criminal cases in different police stations of District Srinagar. Thereafter, a general and vague allegation has been made against the appellant-detenu that he had been successful in carrying out nefarious plans in Srinagar city and also a case for the offence of sexual harassment was also registered against him; that another general and vague allegation was made that the appellant-detenu provokes / instigates youth of the area to indulge in illegal activities to disrupt peace and tranquility. The grounds of detention, however, do not detail as to how and where the detenu was provoking the youth and what are those illegal activities, which has been alleged against the appellant-detenu.
 8. While perusing the impugned detention order available on file, the ground raised by the appellant-detenu appears to be valid as the detenu has not been provided whole of the material relied upon by
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the Detaining Authority in order to enable him to make an effective representation.

9. One of the most precious right as guaranteed under the Constitution of India is personal liberty. No one can be denied of his right to life and personal liberty except in accordance with procedure established by law. Though, this personal liberty may be curtailed when person faces a criminal charge or is convicted of an offence sentenced to imprisonment. The Constitution, however, by adding [Article 22\(5\)](#) have incorporated provision for detention of a person without any formal charge and trial and without such person being held guilty of an offence and sentenced by a competent court. This is to keep the society safe from such activities that are likely to deprive large people of their right to life and personal liberty. The justification of such detention on suspicion or reasonability which requires action to be taken to prevent apprehended objectionable activities, [Article 22\(5\)](#) of the Constitution provides for the same.
10. Article-22(5) of the Constitution of India provides that specific protections to under trials and detainees in India. Article-22(5) of the Constitution of India reads as under:-

"When any person is detained in pursuant 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 afford him an earliest opportunity of making a representation against the order, therefore, it casts a duty upon the Detaining Authority to communicate to the detenu the grounds on which the order is made and a

corresponding right arising in him of making such representation against his detention."

11. In **Ram Krishan Bhardwaj Vs. The State Of Delhi &**

Ors. reported as AIR 1953 SC 318, while interpreting Article-22(5) of the Constitution of India, it was observed that furnishing of grounds of detention means material sufficient to enable the detenu to make an effective representation. Failure by the Detaining Authority to supply material relied upon at the time of passing the detention order renders the detention order unsustainable in law.

12. Reliance can also be placed on **Thahira Haris etc. etc. Vs.**

Government of Karnataka & Ors., reported as AIR 2009 Supreme Court 2184, wherein it has been held as under:

"27. There were several grounds on which the detention of the detenu was challenged in these appeals but it is not necessary to refer to all the grounds since on the ground of not supplying the relied upon document, continued detention of the detenu becomes illegal and detention order has to be quashed on that ground alone.

28. Our Constitution provides adequate safeguards under clauses (5) and (6) of Article 22 to the detenu who has been detained in pursuance of the order made under any law providing for preventive detention. He has right to be supplied copies of all documents, statements and other materials relied upon in the grounds of detention without any delay. The predominant object of communicating the grounds of detention is to enable the detenu at the earliest opportunity to make effective and meaningful representation against his detention."

13. Thus, the Detaining Authority is required to furnish to the detenu the grounds of detention, all the documents referred in the grounds of detention and all the material which the Detaining Authority has considered while framing its subjective satisfaction. Police report of the dossier is also to be provided. Record reveals that all the material has not been provided to the appellant-detenu. Thus, it is also clear from the material available on file that all the documents have not been provided to the appellant-detenu in order to enable him to make an effective representation to the Government or Detaining Authority, as such, non-supply of material violates the rights of the appellant-detenu under [Article 22\(5\)](#) of the Constitution of India and would make the order unsustainable in the eyes of law.

14. It is next argued by learned counsel for the appellant-detenu that the grounds of detention reveal that the activities of the detenu are having a direct threat to the maintenance of public order in the society and his activities were found to be a root cause of other social evils and anti-national activities, like street fight/ outraging modesty of women and stone pelting etc., in this regard, number of FIRs have been registered against him but he has not desisted from same, thus, it was necessary to detain him. The offences as alleged in the FIRs are not of the nature that ordinary criminal law cannot deal with those offences and the fact that he was admitted to bail in these FIRs is no ground to detain him under preventive law and, thus, impugned detention of the detenu is unsustainable under law. In the present case, the ordinary law of land was sufficient to deal with the situation.

15. Reliance in this regard is placed on the judgment of Hon'ble Apex Court in [Vijay Narain Singh Vs. State of Bihar & Ors.](#) reported as (1984) 3 SCC 14, wherein it has been held as under:-

"32 It is well settled that the law of preventive detention is a hard law and therefore it should be strictly construed. Care should be taken that the liberty of a person is not jeopardised unless his case falls squarely within the four corners of the relevant law. The law of preventive detention should not be used merely to clip the wings of an accused who is involved in a criminal prosecution. It is not intended for the purpose of keeping a man under detention when under ordinary criminal law it may not be possible to resist the issue of orders of bail, unless the material available is such as would satisfy the requirements of the legal provisions authorizing such detention. When a person is enlarged on bail by a competent criminal court, great caution should be exercised in scrutinizing the validity of an order of preventive detention which is based on the very same charge which is to be tried by the criminal court."

16. The grounds of detention also reveal that the allegations against the detenu in the grounds of detention with regard to offences also do not fall under the realm of public order as defined under [Section 8\(3\)](#) of the Act as there is no allegation against the appellant-detenu regarding his activities effecting public at large. The allegations may amount to law and order issue but he cannot be held to have disturbed the public order.

17. For the foregoing reasons and keeping in view the above said legal position, the instant appeal is allowed and the judgment impugned dated 07.06.2024 passed in HCP No. 172/2023 is set aside. As a result Habeas Corpus Petition is allowed, consequently the order of detention of the appellant-detenu bearing No. DMS/PSA/69/2023 dated 04.10.2023 passed by District Magistrate Srinagar, is, hereby, quashed. Appellant-detenu is ordered to be released from detention, if otherwise, not required in any other case(s).

18. LPA is disposed of accordingly.

(M. A. CHOWDHARY)
JUDGE

(TASHI RABSTAN)
CHIEF JUSTICE (ACTING)

Srinagar
12.09.2024
Muzammil. Q

Whether the judgment/order is reportable: Yes / No