

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

**LPA No. 270/2022 in
WP (Crl) No. 09/2022**

Reserved On: 31st of October, 2023
Pronounced On: 9th of November, 2023.

Sajad Ahmad Dar, Age: 30 Years

S/O Ghulam Mohammad Dar
R/O Baghat Mohalla Shah Gund,
Tehsil Hajin, District Bandipora
Through his brother
Zahoor Ahmad Dar
S/O Ghulam Mohammad Dar
R/O Baghat Mohalla Shah Gund,
Tehsil Hajin, District Bandipora.

... Appellant(s)

Through: -

Mr N. A. Ronga, Advocate with
Mr Tuba Manzoor, Advocate.

V/s

1. **Union Territory of Jammu & Kashmir,**
through Principal Secretary to Home Department,
Civil Secretariat, Srinagar/ Jammu.
2. District Magistrate, Bandipora.
3. Station House Officer, Police Station, Hajin,
Bandipora.

... Respondent(s)

Through: -

Mr Ilyas Nazir Laway, Government Advocate.

CORAM:

**HON'BLE THE CHIEF JUSTICE
HON'BLE MR JUSTICE M. A. CHOWDHARY, JUDGE**

(ORDER)

[Chowdhary-J:]

01. This *intra* Court appeal, under Clause 12 of the Letters Patent, has been preferred by the Appellant against the final Order/ Judgment dated 1st of December, 2022 passed by the learned Single Judge in WP (Crl) No.09/2022, whereby and whereunder the said Writ Petition of Habeas Corpus filed by the Writ Petitioner/ Appellant herein stands dismissed.

02. The brief factual matrix of the case is that the detenu, namely, Sajad Ahmad Dar, came to be detained under the provisions of the Jammu & Kashmir Public Safety Act consequent to the Order of detention bearing No. 25/DMB/PSA of 2021-22 dated 14th of January, 2022 passed by the Respondent No.2-District Magistrate, Bandipora. This Order of detention was challenged by the detenu through the medium of Writ Petition bearing WP (Crl) No. 09/2022, wherein it was pleaded that the detenu is a law abiding and peace-loving citizen and has never ever involved himself in any subversive activity prejudicial to the maintenance of public order or security of the State. It was also contended that the detenu has been arrested by the police authorities without any justification and was illegally detained for several days, whereafter he was falsely implicated in FIR Nos. 12/2021, 79/2021 and 02/2022 registered in Police Station, Hajin and that, while being in custody in the aforesaid FIRs, he came to be detained under the preventive custody in terms of Order dated 14th of January, 2022 and lodged at Central Jail, Jammu.

03. The Respondents filed their Counter Affidavit in opposition to the Writ Petition filed by the detenu, wherein it was stated that the detenu, being a well-educated person, used social media as a tool to provoke people against Government establishments, made controversial tweets/ statements on social media and, being a Journalist, promoted enmity and run Twitter account @SajadGul_ for nefarious designs. It was also submitted by the Respondents that the detenu has been previously detained in a number of criminal cases, however, he has not deterred himself from anti-national activities as is evident from the narration of facts mentioned in the grounds of detention. It was also averred that on account of and in view of the aforesaid facts and circumstances, the detaining authority found it necessary and imperative to invoke the relevant provisions of the Act and detain the detenu from acting in any manner which is prejudicial to the maintenance of public order and the security of the State.

04. The Writ Court, after hearing the parties, vide the impugned Judgment dated 1st of December, 2022, dismissed the Writ Petition filed by the Appellant herein, by holding that the same was devoid of any merit.

05. The impugned Judgment dated 1st of December, 2022 has been assailed, *inter alia*, on the following grounds:

- i. That the detention order passed against the appellant by the respondents is bad in law, on account of the grounds of challenge pleaded in the writ petition and submitted before the Single Bench, same were not properly dealt with consequently the writ petition was dismissed;
- ii. That the detenu was already in the custody of respondents when the order of detention was passed by the respondent No.2. The detenu had not filed any bail application before any court of law with respect to FIR No. 02 of 2022 of Police Station Hajin, Bandipora. As such, there was no necessity for the respondents to pass the detention order against the detenu. There was no cogent material before the detaining authority to observe that there were chances of the bail of detenu in the above said FIR, as the detenu had not at all applied for the bail. Therefore, there was no compelling reason for the detaining authority to pass the order of detention against the detenu. Although this ground was specifically pleaded before the Hon'ble Single Judge of this Hon'ble Court, but same has not been effectively and properly decided. On this score alone, the impugned judgment deserves to be set aside and the order of detention is also required to be quashed;
- iii. That the material viz. copy of dossier and copies of FIRs with investigation report which have been referred and relied upon by the detaining authority have not been given/ communicated to the detenu in order to enable him to make an effective, meaningful and purposeful representation against his detention before the competent authority. Although, this ground was pleaded before the Hon'ble Single Judge of this Hon'ble Court, but same has not been also properly dealt with. On this count also, the impugned judgment deserves to be set aside and the order of detention is required to be quashed;
- iv. That the grounds of detention are vague, non-existent and unclear. The detenu could not make any meaningful representation against his detention before the competent authority and, as such, has been deprived of his constitutional and legal right. On this score also, the detention order could have been quashed by the Hon'ble Single Judge, but unfortunately this aspect of the case was also not well taken and properly considered. On this ground also, the impugned judgment deserves to be set aside and the order of detention needs to be quashed;
- v. That the detaining authority (the respondent No.2) has not recorded his satisfaction as required by law while taking recourse to the passing of the detention order against the detenu (appellant). In the grounds of detention, the respondent No.2 has nowhere shown or recorded that the activities of the detenu (appellant) are prejudicial to the security of state. The detaining authority has used the words peace, tranquillity and integrity and law and order of the nation under threat by the activities of the appellant (detenu). But no cogent and well-founded reason has been given. On this count also, the detention of the detenu is bad in law and same deserves to be quashed. Although this plea was also mentioned and

- taken by the detenu before the Hon'ble Single Judge, but same has not been properly decided. On this count, the impugned judgment deserves to be quashed and the detenu (appellant) deserves to be set at liberty after quashing the order of detention;
- vi. That all the safeguards available to the detenu (appellant) in terms of law have been observed in breach by the detaining authority while passing the order of detention and thereafter. It appears that the detaining authority has passed the order of detention against the appellant (detenu) on the dictation of the police and not by his independent application of mind. He has not formulated the grounds of detention, but reproduced the police dossier which is evident on plain perusal of the grounds of detention. On this score also, the order of detention is bad in law. This aspect has also not been dealt with by the Hon'ble Single Bench, as such, the impugned judgment deserves to be quashed and the order of detention deserves to be quashed;
- vii. That the relevant law in support of the arguments and the grounds taken in the writ petition were submitted before the Hon'ble Single Judge, but same has not been taken care of, rather the same was not considered at all. In light of those judgments submitted before the Hon'ble Single Bench, the detention order was to be quashed, but same has not been done. On this count also, the impugned judgment needs to be set aside and the order of detention deserves to be quashed; and
- viii. That the grounds urged in the Writ Petition were not rebutted or refuted by the respondents in the Counter Affidavit filed by them before the Hon'ble Single Bench. On this score also, the Writ Petition was to be allowed but the same has not been done. On this count also, the impugned judgment deserves to be set aside and the detenu is required to be released after quashment of his detention order.”

06. We have heard the learned Counsel for the parties and have perused the pleadings on record. We have also gone through the detention record as produced before us by the learned Counsel for the Respondents.

07. The detenu, vide Order No. 34/DNB/PSA/22 dated 14th of January, 2022, was detained by the Respondent-District Magistrate, Bandipora, after drawing his satisfaction based on the dossier placed before him by the Senior Superintendent of Police, Bandipora dated 11th of January, 2022, that there were sufficient grounds to prevent the detenu from acting in any manner which is prejudicial to the security of the State and that it was necessary to detain him under the provisions of the Public Safety Act, 1978. While passing the impugned Order of detention, the detaining authority formulated the grounds of detention showing the detenu as a person of 29 years age, having qualification of Masters in Journalism and a professional Journalist (Media Reporter); that the detenu was a well-

educated person, who used social media as a tool to instigate people against Government establishments by making statements on social media which caused mischief and enmity; that the detenu had made/tweeted controversial statements and was less reporting about the welfare of the Union Territory, rather promoting enmity; that on his Twitter account bearing ID @SajadGul_, he had natural tendency to support anti-national/ anti-social desires, so as to cherish his dream; that his statements/ stories are readily available on the social media platforms, among them Facebook *via* Url (<https://www.facebook.com/sajad.gul.7528>) and Twitter with the ID @SajadGul_ are prominent, which portrays his intentions clearly.

08. The grounds of detention further reveal that three FIRs had been registered against the detenu at Police Station, Hajin, being FIR No. 12/2021 for the commission of offences punishable under Sections 147, 447, 336 and 353 of the Indian Penal Code (IPC); FIR No. 79/2021 for the commission of offences punishable under Sections 120-B, 153-B, 505 of the Indian Penal Code (IPC); and FIR No. 02/2022 for the commission of offences punishable under Sections 147, 148, 336, 307, 153-B of the Indian Penal Code (IPC). In the first FIR No. 12/2021, the detenu was shown to have created obstacles in the encroachment drive of the Revenue Department in his native village on 14th of December, 2021, whereas in the second FIR No. 79/2021, he was shown to have tweeted against the Union of India on 16th of October, 2021 from his Twitter account @SajadGul_, thereby spreading false and fake narrative of a terrorist operation which was carried out in Gund Jahangeer and in which one local terrorist, namely, Imtiyaz Ahmad Dar, was eliminated and, thus, tried to agitate people against the security forces. In the third FIR No. 02/2022, the detenu was alleged to have uploaded a video on social media highlighting the anti-national slogans raised by the people on 13th of January, 2022 in the house of a most wanted terrorist, namely, Saleem Parray, eliminated in an encounter at Shalimar, Srinagar. The aforesaid activities were based to invoke the provisions of the Jammu & Kashmir Public Safety Act, 1978 for ordering preventive detention of the detenu.

09. Learned Counsel for the Appellant has vehemently argued that the Writ Court had not considered the Judgments cited and relied upon by the learned Counsel for the Writ Petitioner/ Appellant while adjudicating the case. He has drawn the attention of this Court to the observations of the Writ Court made in paragraph No.12 'that the Judgments referred to and relied upon by the learned Counsel for the Petitioner are not applicable to the facts and circumstances of the case, being misplaced and misdirected and do not lend any support to the case of the Petitioner'.

10. On a perusal of the impugned Judgment, the contentions raised by the learned Counsel for the Appellant seems to be proper as there is no mention with regard to the Judgments which are stated to have been referred to and relied upon by the Petitioner's Counsel. The Writ Court, while deciding the case, has observed that the bare perusal of the impugned detention Order would reveal that the Respondents have complied with all the statutory and constitutional requirements and guarantees in letter and spirit and that the detaining authority has seemingly applied its mind to the facts and circumstances of the case to draw subjective satisfaction while detaining the detenu, taking into account his activities, being prejudicial to the security of the State.

11. Before going into this aspect of the case as to whether the activities mentioned in the grounds of detention do indicate anything which may be prejudicial to the security of the State, two other aspects of the case are required to be seen. Firstly, that whether the detenu had been provided with the whole of the record which has been based to pass the impugned Order of detention. A bare perusal of the detention record produced by the learned Counsel for the Respondents, particularly the Execution Report of the detention Order submitted by the Executing Officer, SI Mohammad Shafi of DPL Bandipora, indicates that the Executing Officer, in compliance to the detaining authority's Order, had executed the detention warrant on the detenu on 16th of January, 2022 at Central Jail, Jammu, which had been acknowledged under the signatures of the detenu as well. This report reveals that the detenu had been provided just 05 leaves:

detention Order (01 leaf), notice of detention (01 leaf) & grounds of detention (03 leaves) and had not been provided the copies of the dossier, FIRs, statements of witnesses and other related documents relied upon. Therefore, it is clear from the execution report that the whole of the record of the three FIRs registered against the detenu and relied upon by the detaining authority to draw his satisfaction with regard to ordering preventive detention of the detenu has not been furnished/ supplied to the detenu. In absence of providing of the whole of the documentary record, the detenu cannot be said to be able to make an effective and meaningful representation against his detention which was his statutory as well as constitutional right.

12. With regard to the aforesaid issue of non-supply of relevant and relied upon documents which had formed the basis for ordering the preventive detention of the detenu, the law is well settled. The Hon'ble Supreme Court in case titled **“Thahira Haris V. Government of Karnataka & Ors.”**, reported in **“AIR 2009 SC, 2184”**, in Paragraph Nos. 27 and 28, has observed 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 documents, 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 material 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.”

In the present case, the detenu has not been provided all the relevant material like dossier, FIRs, statements of witnesses and other allied documents, including the alleged posts on his social media accounts, which were relevant for making a proper representation against his detention, not only to the detaining authority but also to the Government, besides seeking

audience before the Advisory Board constituted under the J&K Public Safety Act.

13. The detenu, in his Petition, had also raised the issue that he was under detention in three cases registered against him and that he had been bailed out only in one of the cases, being FIR No. 79/2021 on 15th of January, 2021, a day after the impugned Order of detention was passed on 14th of January, 2022. The learned Counsel for the Appellant submitted that the detaining authority under the influence of the police had passed the detention Order on 14th of January, 2022, anticipating and apprehending that the detenu would be released on bail, however, he was still required in two other FIRs and, thus, the ordinary law was sufficient to deal with the detenu, instead of resorting to preventive detention. This contention of the learned Counsel is misplaced, inasmuch as the arrest in one case does not automatically result in arrest in other cases pending against a particular detenu and the detaining authority, by not mentioning the fact of the detenu having been bailed out in one of the cases, could not have recorded the same as the impugned Order of detention was passed on 14th of January, 2022, whereas the bail is stated to have been granted on 15th of January, 2021, a day after.

14. Coming to the grounds of detention, there is no specific allegation against the detenu as to how his activities could be attributed to be prejudicial to the security of the State. The detaining authority, itself, has admitted that the detenu, having done Masters in Journalism, was working as a Journalist (Media Reporter) and it was his professional/ occupational duty to report the happenings in his area, even including the operations of the security forces. Such a tendency on the part of the detaining authority to detain the critics of the policies or commissions/ omissions of the Government machinery, as in the case of the present detenu-a professional media person, in our considered opinion is an abuse of the preventive law. The grounds of detention nowhere suggest/ reveal that the detenu had, at any point of time, filed/ uploaded any false story/ reporting based not on true facts. It is nowhere stated as to how the detenu had disrupted the public

order creating any alleged enmity, inasmuch as, there is no specific instance in any of the allegations levelled against him to show that he had been working against the national interests, so as to be prejudicial to the security of the State.

15. While going through the records, this Court finds an observation of the detaining authority that the detenu had been a negative critic towards the policies of the Government of the Union Territory of Jammu & Kashmir and that his tweets used to provoke the people against the Government. This cannot be said to be a ground to be relied upon that a true and factual media report can provoke people against the working of the Government, that too without any specific instance as to how his tweets had caused any problem, much less public order problem with the Government. In the grounds of detention, it has also been referred that the uploading of the news items by the detenu, as a Journalist, had created enmity and acrimony against Government machinery, however, there is no specific instance as to which of the posts/ write ups are there as being so and on what date. The Appellant has been, now, in preventive detention since the 16th day of January, 2022.

16. The afore-stated grounds of detention, as such, are general allegations against the detenu, with no specific instance/ incident. The detention order based on such vague grounds is not sustainable, for the reason that the detaining authority, before passing the order, has not applied its mind to draw subjective satisfaction to order prevention detention of the detenu by curtailing his liberty which is a valuable and cherishable right guaranteed under Article 21 of the Constitution of India. Reliance, in this regard, can be placed on the Judgments of the Hon'ble Supreme Court rendered in cases titled: (i) '**Jahangirkhan Fazal Khan Pathan v. Police Commissioner, Ahmadabad**'; reported as (1989) 3 SCC 590; and (ii) '**Abdul Razak Nanekhan Pathan v. Police Commissioner, Ahmadabad**', reported as AIR 1989 SC 2265.

17. The impugned detention order in the Writ Petition for the reasons that the whole of the record/ documents, on which reliance was

placed to detain the detenu, had not been supplied to him and that there are vague grounds of detention, with no right of making an effective and meaningful representation is not sustainable, for contravention of the statutory provision of the J&K Public Safety Act as well as constitutional guarantees provided under Article 22 (5) of the Constitution of India.

18. For the foregoing reasons and observations made hereinabove, this appeal is **allowed** and the impugned Judgment dated 1st of December, 2022 passed by the learned Single Judge is set aside. Resultantly, the Writ Petition filed by the Appellant, being WP (Crl) No.09/2022, is **allowed** and the impugned Order of detention bearing No. 25/DMB/PSA of 2021-22 dated 14th of January, 2022 passed by the Respondent-District Magistrate, Bandipora is **quashed**. The Respondents are directed to release the detenu, namely, Sajad Ahmad Dar S/O Gh. Mohammad Dar R/O Baghat Mohalla Shahgund, Tehsil Hajin, District Bandipora, forthwith from the preventive custody, if not required in any other case.

19. Letters Patent Appeal **disposed** of as above, along with the connected CM(s).

20. Detention record be returned to the learned Counsel for the Respondents against proper receipt.

(M. A. CHOWDHARY)
JUDGE

(N. KOTISWAR SINGH)
CHIEF JUSTICE

SRINAGAR

November 9th, 2023

"TAHIR"

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| i. | Whether the Judgment is speaking? | Yes. |
| ii. | Whether the Judgment is reporting? | Yes. |