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

Reserved on: 11.02.2025
Pronounced on:17.03.2025

HCP No.267/2024

NAZIR AHMAD RONGA ...PETITIONER(S)

Through: - Mr.Davendra N. Goburdhan, Sr. Advocate, With M/S Umair Ronga, Tuba Manzoor and Ms. Sabiya Shabir, Advocates.

Vs.

UT OF J&K &ORS. …RESPONDENT(S)

Through: - Mr. Mohsin Qadiri, Sr. AAG with Mr. Faheem Nisar Shah, GA and Ms. Maha Majeed, Advocate.

CORAM: HON'BLE MR. JUSTICE SANJAY DHAR, JUDGE

JUDGMENT

1) The petitioner has challenged order No.DMS/PSA/16/2024 dated 10.07.2024 issued by respondent No.2-District Magistrate, Srinagar, whereby he has been detained under Section 8(4) of the J&K Public Safety Act with a view to prevent him from acting in any manner prejudicial to the security of the State.

2) The petitioner has assailed the aforesaid detention order on the grounds that there has been non-application of mind on the part of respondent No.2 while passing the impugned order of detention as there is similarity in the language of the police dossier and the grounds of detention formulated by the detaining authority. It has

been further contended that earlier detention order passed against the petitioner was revoked by the respondents in the year 2019 and thereafter there has been no fresh activity attributed to the petitioner. Thus, according to the petitioner the impugned order of detention is unconstitutional and illegal. It has also been contended that the allegations made in the grounds of detention against the petitioner with regard to his association with APHC(M) group is absolutely baseless and the alleged activities attributed to the petitioner pertaining to the years 1999, 2008 and 2010 are also baseless. It has been claimed that the petitioner was an elected Municipal Councillor and thereafter he has also served as a Government Advocate from 1987 to 1989. Thus, according to the petitioner, he is a peace loving and law abiding citizen who has never committed any offence, much less an offence against the State. It has been submitted that the petitioner throughout his life condemned terrorism and extremism through his lectures and speeches but the respondents have slapped the order of preventive detention against him without any basis. It has also been claimed by the petitioner that in his capacity as acting Chairman of the Bar Association, he had made it sure that objectionable clauses of the constitution of High Court Bar

Association are amended and for this purpose, a general body meeting of the Association was called and its consent to this effect was also obtained and now the constitution of the Bar Association has been brought in tune with the Advocates Act.

3) It has been further contended that there is no mention of any specific activity of the petitioner in the grounds of detention relating to the recent past that could have influenced the Detaining Authority to pass the impugned order of detention. It has also been claimed that the petitioner has all along throughout his life opposed the ideology of Advocate Mr. Mian Abdul Qayoom and has contested elections against him. It has been submitted that the petitioner has always preached against the policy of separatists and that he has been taken into custody on flimsy grounds. It has been further submitted that the petitioner has always preached that the Hurriyat leaders are selling bone and blood of Kashmiri people and his said statement has received wide publicity in the local newspapers regarding which he has also received death threats but in spite of this, the respondent authorities have slapped impugned order of detention against the petitioner.

4) It has been contended that there were no compelling reasons for the detaining authority to pass the impugned order of detention and that the said order has been passed on the basis of conjectures and surmises. It has been further contended that the petitioner was not informed about the time period within which he has to make a representation against the impugned order of detention. According to the petitioner, the grounds of detention are vague, indefinite, uncertain and baseless lacking in material particulars which has prevented him from making an effective representation against the impugned order of detention. It has also been contended that the petitioner has never been booked in any FIR nor any anti-national activity has been attributed to him throughout his career, as such, it was not open to the respondents to pass the impugned order of detention against him. It has been further contended that there has been total non-application of mind on the part of the detaining authority while passing the impugned order of detention and that safeguards available to the petitioner in terms of Article 22(5) of the Constitution of India have not been adhered to in the present case. It has also been contended that whole of the material forming basis of the grounds of detention has not been furnished to the petitioner.

5) Respondent No.2-District Magistrate, Srinagar, has filed his counter affidavit in opposition to the writ petition, wherein it has been contended that the petitioner is affiliated to APHC(M) which is well-known for spreading anti-national sentiments and secessionist ideologies. According to the respondents, the petitioner had joined APHC(M) organization for the purpose of spreading terrorism and to carry out unlawful activities including secession of J&K from the Union of India. It has been further submitted that the petitioner achieved a prominent position with separatist group as its legal advisor. According to the respondents in the previous past, the petitioner has organized various anti-national seminars, rallies and various other programs for glorifying the secessionism. It is alleged that the petitioner is actively working to revive High Court Bar Association in order to give terrorists and secessionists a platform and that the said Bar Association has adopted a constitution which specifies that it will assist the terrorist movement till the goal of separation of Jammu and Kashmir from the Union of India is achieved. It has been claimed that under the influence of Advocate Mr. Mian Abdul Qayoom, who is a fervent supporter of terrorism and secessionism, the

petitioner is pushing the previously adopted constitution of the Bar Association so as to aid the terrorist movement.

6) Giving details of the previous conduct of the petitioner, it has been submitted that in the year 1999, the petitioner along with Mr. Mian Abdul Qayoom led charge in uniting 11 secessionist parties under Tehreek-i-Hurriyat Kashmir Banner and the said organization has now been declared as unlawful association by the Government of India. It has been submitted that the petitioner has worked with secessionist groups to create and implement programs and calendars during 2008 Amarnath land row agitation and 2010 agitation, which resulted in widespread violence across the erstwhile State. It has been claimed that that the petitioner has organized many seminars within the premises of Saddar Court, Srinagar, for preaching cession of Jammu and Kashmir from Union of India and such seminars were attended by secessionist leaders like Syed Ali Shah Geelani, Mohammad Yaseen Malik, Ghulam Nabi Sumji and Mushtaq-ul-Islam.

7) According to the respondents, in the year 2019, the petitioner was detained under Public Safety Act following abrogation of Article 370 of the Constitution with a view to

prevent him from creating a situation that could jeopardize security of the State. It has been submitted that even after the release of the petitioner from preventive detention, he did not mend his ways and continued to glorify secessionism and held certain secret meetings organized with like-minded people of High Court Bar Association to achieve the anti-national goals. It has also been claimed that the petitioner visited various jails outside J&K for meeting secessionists and terrorists lodged in these jail so as to carry forward the ideology of terrorism and secessionism. Thus, according to the respondents, the petitioner has been found indulging in extremely offensive acts and he has not only misused the platform of Bar Association but he has also permitted terrorists and secessionists to spread his ideology on the said platform. According to the respondents, as per the inputs furnished by the police, the petitioner is a direct threat to the security of the State keeping in view his past activities.

8) The respondents have submitted that the detaining authority, after examining the police dossier and other material, has drawn subjective satisfaction that activities of the petitioner are prejudicial to the security of the State,

as such, it was necessary to pass the impugned order of detention against him. It has been submitted that the petitioner has been provided all the material that has formed basis of the grounds of detention and he has been explained and made to understand the contents thereof. It has been further submitted that all the statutory and constitutional safeguards have been adhered to by the respondents while detaining the petitioner in terms of the impugned order of detention.According to the respondents, the grounds of detention are precise, proximate, pertinent and relevant and there is no vagueness or staleness in the same.To lend support to their contentions, the respondents have also produced the detention record for perusal of the Court.

9) I have heard learned counsel for the parties and perused the pleadings and the material including the detention record produced by the respondents.

10) As already stated, a large number of grounds have been urged by the petitioner for impugning his detention order but during the course of arguments, much emphasis was laid by learned Senior Counsel appearing for the petitioner on the ground that there has been total non-application on the part of the detaining authority

while passing the impugned order of detention, as a result whereof, the subjective satisfaction derived by the detaining authority for detaining the petitioner has become a casualty and that the grounds of detention, particularly those relating to recent activities of the petitioner, on the basis of which the impugned order of detention has been passed, are vague lacking in material particulars on the basis of which no prudent person can make an effective representation nor can the detaining authority derive its subjective satisfaction for passing the order of detention.

11) Learned Senior Counsel appearing for the petitioner has been contended that the grounds of detention bear reference to the alleged past activities of the petitioner which relate to a period prior to 2019 but so far as his recent activities which, according to the detaining authority prompted it to pass the impugned order of detention, are concerned, the same are vague and lacking in material particulars, therefore, the detaining authority could not have derived subjective satisfaction on the basis of such material.

12) On the other hand, learned Senior AAG, appearing for the respondents, has contended that this Court cannot

undertake a judicial review of the grounds on which subjective satisfaction has been arrived at by the District Magistrate. In this regard, the learned Sr. AAG has relied upon the judgment of the Supreme Court in the case of **Haradhan Saha** v. **State of W.B (1975) 3 SCC 198.**

13) Before proceeding further to consider as to whether subjective satisfaction arrived at by the detaining authority in the instant case is liable to be interfered with by this Court, it would be necessary to understand the scope of interference of a Writ Corut in such matters. The Supreme Court has, in the case of **Ameena Begum vs. State of Telangana and others,**(2023) 9 SCC 587, after analyzing its previous the subject, delineated the scope of a Constitutional Court to interfere with the orders of preventive detention. The Supreme Court in the said case has held that a Constitutional Court,while testing the legality of the orders of preventive detention, would be entitled to examine whether:

> *(i) the order is based on the requisite satisfaction, albeit subjective, of the detaining authority, for, the absence of such satisfaction as to the existence of a matter of fact or law, upon which validity of the exercise of the power is predicated, would be the sine qua non for the exercise of the power not being satisfied;*
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> *(ii) in reaching such requisite satisfaction, the detaining authority has applied its mind to all relevant*

circumstances and the same is not based on material extraneous to the scope and purpose of the statute;

(iii) power has been exercised for achieving the purpose for which it has been conferred, or exercised for an improper purpose, not authorised by the statute, and is therefore ultra vires;

(iv) the detaining authority has acted independently or under the dictation of another body;

(v) the detaining authority, by reason of self-created rules of policy or in any other manner not authorized by the governing statute, has disabled itself from applying its mind to the facts of each individual case;

(vi) the satisfaction of the detaining authority rests on materials which are of rationally probative value, and the detaining authority has given due regard to the matters as per the statutory mandate;

(vii) the satisfaction has been arrived at bearing in mind existence of a live and proximate link between the past conduct of a person and the imperative need to detain him or is based on material which is stale;

(viii) the ground(s) for reaching the requisite satisfaction is/are such which an individual, with some degree of rationality and prudence, would consider as connected with the fact and relevant to the subject-matter of the inquiry in respect whereof the satisfaction is to be reached;

(ix) the grounds on which the order of preventive detention rests, are not vague but are precise, pertinent and relevant which, with sufficient clarity, inform the detenu the satisfaction for the detention, giving him the opportunity to make a suitable representation; and

(x) the timelines, as provided under the law, have been strictly adhered to.

14) After laying down the aforesaid tests, the Supreme Court held that if the exercise of power upon applying the aforesaid tests is found to be vulnerable, the detention order would call for being interdicted for righting the wrong.

15) In the present case, we are concerned with the contention of the petitioner that the grounds on which the order of preventive detention has been framed against the petitioner are vague and not precise. This according to the petitioner has prevented him from making an effective and suitable representation against the order of detention.

16) As to what is meant by "vague grounds" has been explained by the Supreme Court in the case of **State of Bombay vs. Atma Ram Sridhar Vaidya,** AIR 1951 SC 157. It would be apt to refer to paragraph 14 of the said judgment, which reads as under:

> *"14. The contention that the grounds are vague requires some clarification. What is meant by vague? Vague can be considered as the antonym of 'definite.' If the ground which is supplied is incapable of being understood or defined with sufficient certainty it can be called vague. It is not possible to state affirmatively more on the question of what is vague. It must vary according to the circumstances of each case. It is, however, improper to contend that a ground is necessarily vague if the only answer of the detained person can be to deny it. That is a matter of detail which has to be examined in the light of the circumstances of each case. If, on reading the ground furnished it is capable of being intelligently understood and is sufficiently definite to furnish materials to enable the detained person to make a representation against the order of detention it cannot be called vague. The only argument which could be urged is that the language used in specifying the ground is so general that it does not permit the detained person to legitimately meet the charge against him because the only answer which he can make is to say that he did not act, as generally suggested. In certain cases that*

argument may support the contention that having regard to the general language used in the ground he has not been given the earliest opportunity to make a representation against the order of detention. It cannot be disputed that the representation mentioned in the second part of Art. 22(5) must be one which on being considered may give relief to the detained person."

17) The aforesaid observations of the Supreme Court have been relied upon by a Division Bench of this Court in the case of**Bilal Ahmad Dar vs. UT of J&K and anr.** (LPA No.194/2023 decided on 02.03.2024. The Division Bench, after noticing the aforesaid observations of the Supreme Court, has explained the legal position in the following manner:

"*20. From the above, what is discernible is that the grounds must be capable of being understood clearly and these must be defined with sufficient clarity. Yet, this is an aspect which has to be examined in the light of the circumstance of each case. Thus, if on reading the ground furnished, it is capable of being intelligently understood and is sufficiently definite to furnish materials to enable the detained person to make a representation against the order of detention, the same cannot be called vague. After all, the purpose of making a representation is to enable the detained person to persuade the detaining/competent authority that the grounds are not good enough or valid for his detention so that he can be released, as otherwise there is no purpose for enabling the detained person to submit the representation. What is thus to be understood is that, in order to enable a detained person to make effective representation to get the relief, he must have sufficient detailed particulars to persuade the authority to take a contrary view about detention order."*

18) Another Division Bench of this Court in the case of **Showkat Ali vs. UT of J&K and Ors.**(LPA No.19/2024 decided on 26.07.2024)has, while answering the question as to what is required to be stated in the grounds of detention, observed as under:

> *14. Asregardsthethirdquestionastowhatisrequiredt obestated inthegroundsofdetentionviz.,allegationsorcha rge,thisCourt is of the view that the grounds of detention must lay down the charge against the detinue. It must be precise, unequivocal and unambiguous. The detinue must be in a position for give aspecific reply/rebuttal to the charge and that is only possible wherechargeisspecificandprecise.Else,thedetinu eisonly able to give a bare denial by stating that the allegation is false. However,ifthechargeisspecificregardingthedate ,timeand thespecificact of thedetinuewhichrequires him to betaken into preventive detention then, the detinue is able to give a specific response of denial rather than a bare denial. Thus, this Court is of the view that the grounds of detention must lay down the specific charge against the detinue rather than unsubstantiated and unverifiable allegations. If the grounds of detention are based on unsubstantiated allegations, the same, along with the order of detention can be quashed as the detinue has not been given an opportunity to make a viable representation either to the detaining authority or to theadvisory board. The opportunity to represent to the abovementioned authorities is not a hollow formality. To detaina person only based on allegations without there being any material to substantiate those allegations would imperil the fundamentalrightoftheindividualenshrinedinart icle21of the Constitution.*
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> *15. Whenever,theDistrictMagistratereceivesareque stfromthe*

policealongwiththedossiertodetainanindividual,hemust examine the charge by referring to the material accompanying thepolicedossierwhichwouldatleastprimafaciesubstantiate the charge against the detinue. Besides, the charge against the individual must be substantial and not fanciful or imaginary. The District Magistrate must appreciate that the authority to detain an individual as a preventive measure would also result in the violation of article 21 of the Constitution, if the same is exercised without caution or accountability. The exigencies of the time though relevant, cannot be stretched to the extent of depriving an individual's liberty in the absence of reasonable cause. The material in support of the charge warranting the detention of an individual must be such that it prima facie probabilise the allegations levelled against him.

16. *Thus, subjective satisfaction arrived at by the District Magistrateintheabsenceofanymaterialtoprimafaciesupport the allegations againstthe detinue,in the police dossier, would smack of non-application of mind on the part of the detaining authority. A constitution court must scrutinize the grounds of detention to satisfy itself that the allegations contained in the police dossier and considered by the District Magistrate in the grounds of detention, were supported by adequate material justifying the subjective satisfaction arrived at by the District Magistrate, that the detention of the detinue was essential, eitherintheinterestofsecurityofthestateorpublicorder.Whiledoingso,theHighCourtisnotexpectedtosupplantthe subjective satisfaction of the District Magistrate with thatof its own,butitisonlytoexaminethegroundsofdetentiontosatisfy itselfthat there was reasonable cause to detainthedetinue. No man may be summarily detained under the preventive detention laws only on the basis of unsubstantiated and bald allegations. It is only when the detention is justifiable on the basis of material in support of the allegations*

> *in the police dossier against the detinue, that the court would examine whether other procedural formalities, which are mandatory have been complied with. Where the subjective satisfaction of the detainingauthorityhasbeenarrivedatwithouta nyprimafacie material in supportofthe allegations warrantingthe detention ofthe detinue,the orderofdetentioncannotbe upheld onlyon thegroundthatotherconstitutionalandproced uralsafeguards of giving the material to the detinue on the basis of which has been detained, have scrupulously been observed. If the High Courtadopts a hands-offapproach while dealingwithanorder ofdetentionunderthePublicSafetyActonlyonth egroundthat themandatoryproceduralsafeguardshavebee ncompliedwith even after being convinced on merits that there existed no material against the detinue in support of the allegations against him in the police dossier forwarded to the District Magistrate,thesamewouldreducetheprotecti onunderarticle 21 of the Constitution purely cosmetic.*

19) From the foregoing analysis of law on the subject, it is clear that the grounds of detention must be precise, unambiguous containing specific and precise particulars so that a detenue is able to furnish an effective and precise response to the allegations. If the allegations made in the grounds of detention are ambiguous lacking in material particulars, it would not be possible for a detenue to make a specific response and in such circumstances the response of the detenue would be a bare denial. It is also clear that the allegations made in the grounds of detention should be based upon some material, may be intelligence inputs or any other

material accompanying police dossier that would substantiate the said allegations. It is further clear from the analysis of the law on the subject as discussed hereinbefore that if the allegations made against the detenue in the grounds of detention or the police dossier are vague and ambiguous and bereft of any supporting material, the passing of detention order by the detaining authority in such circumstances would amount to non-application of mind on its part.

20) In the light of the aforesaid legal position on the issue, let us now consider the facts of the present case. For coming to the conclusion as to whether or not the grounds of detention against the petitioner are vague and lacking in material particulars, as has been vehemently contended by the learned Senior Counsel appearing for the petitioner, it would be necessary to have a look at the same. For the facility of convenience, the grounds of detention against the petitioner are reproduced as under:-

> "Whereas, Senior Superintended of Police, Srinagar vide No. LGL/Det-PSA/2023/13870-72 dated 09.07.2024 submitted a dossier for issuance of warrant for detention under the provisions of J&K Public Safety act. The dossier submitted by the District Police Srinagar contains a host of instances/facts making out a case for steps required for preventive detention.
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> Whereas, SSP, Srinagar has reported in the dossier that you are working as an advocate and are affiliated to APHC-M, which is well-known for spreading anti-national sentiment and secessionist ideologies. You joined the

APHC (M) after being influenced by Molvi Umer Farooq. The organization's purpose is to spread terrorism in order to carry out its unlawful objectives , including the secession of J&K from the Union of India. Helping terrorists and their associates, under the guidance of mentors over the border, challenge their criminal charges before many courts around the valley. You achieved the prominent position within the separatist group and were proposed to the APHC (M) Group as their legal advisor. In past you have organized various anti-national seminars, rallies and formulated various programs in order to glorify secessionism.

Whereas, SSP has further reported that you were active in the J&K High Court Bar Association in Srinagar and are actively working to revive the HCBA in order to give terrorists and secessionists a platform. The Kashmir High Court Bar Association's adopted constitution specified that it will assist the terrorist movement till the goal of UT of J&K's separation from the union of India is accomplished. Under the influence of Advocate Abdul Qayoom, a fervent supported of both terrorism and secessionism, you are still pushing the previously established JKHCBA constitution in order to aid the terrorist movement in achieving the illegal goal of secessionism.

Whereas, SSP has also reported that in 1999, you and Mian Abdul Qayoom, President of the Bar Association, led the charge of uniting 11 secessionist parties under the Tehreek-i-Hurriyat-e-Kashmir banner. The said organization has been declared as unlawful Association by the Government of India. You worked with secessionist groups to create and implement programs and calendars during the 2008 Amarnath Land Row agitation and the 2010 agitation, which resulted in widespread violence which in all possibility was a direct threat to Security of the State.

Whereas, according to reports, you organized number of seminars within the premises of Sadder Court in Srinagar, where secessionist groups, terrorist organizations and anti-national elements were brought together to preach about the secession of UT of J&K and lure jubilant youths to join terrorist ranks.

Attending and giving sermons at these seminars was a common practice for terrorists and secessionists such as Syed Ali Shah Geelani, Mohammad Yaseen Malik, Ghulam Nabi Sumji and Mushtaq ul Islam. The Bar Association's platform has not only been misused by you, but you have also exploited it to spread anti-national and separatist ideas.

Whereas, in the year 2019, you were detained under the Public Safety Act despite the fact that following the Abrogation of Article 370, you advocated for leading numerous agitations and were determined to create a situation that could jeopardize Security of the State in collaboration with mentors across the border. However, you came to be released from the preventive detention, but you have not mend your ways and glorify the secessionism and reportedly held recently certain secret meetings organized with the like-minded people of the High Court Bar Association to achieve the anti-national goals. Your history shows that you have visited several jails outside of J&K to meet the secessionists and terrorists lodged in different jails to carry forward the ideology of terrorism and secessionism.

Whereas, you and other members who attended the meeting did not want the Kashmir Valley, especially in District Srinagar, to return to normalcy. Instead, you have always worked to inflame tensions in the State of J&K by disseminating terrorist and secessionist ideas and using the Bar Association as a platform for such propagation. Thus the aim is to revive the activities of terrorism in the Kashmir Valley so as to keep the security of state boiling and the peace returned is hampered.

Whereas, you have found indulging in extremely offensive acts that propagate the idea of secession and support terrorist and separatist movements. To achieve the desired outcome, you have not only mishandled the platform of the Bar Association, which is held in high regard according to the constitutional system, but you have also permitted terrorists and secessionists to spread their ideologies on the ground where the Bar Association is held in high regard.

Whereas, you are a direct threat to the security of the state as per the credible/confidential sources and the technical inputs and after assessing your past activities, you are always trying to find ways and means to devise programs/seminars/calendars which have been a direct threat the security of the state. You did not refrain your anti-national activities and conspired to flout a new secessionist terrorist outfit in Jammu and Kashmir with active support, convince, and funding from terrorist organizations based in Pakistan and Pakistani agencies, in order to further activities of terrorism and secessionism state of J&K.

Whereas you being a staunch anti-national element and you cannot see peace returning in UT of J&K. As such you are always in search of opportunity to mobilize the ways and means having bearing on security of UT of J&K. As such you have been found to have secretly devised programs for creating large-scale violence which in all possibility will have bearing on the security of the UTs.

Whereas, your audacity can be gauged from the activities you have carried out, is a potent threat to the maintenance of security of UT of J&K. There are more than compelling reasons that once you are allowed to remain at large at this point of time, you are going to indulge in activities which are prejudicial to the maintenance of the security of the state.

Whereas, taking a wholesome view of the likely impact of your activities upon the overall scenario, in case you remain at large at this point of time, there is every chance that you will conspire with terrorist organizations for plan some anti-national act in district Srinagar in coming time.

In order to stop you from indulging in above activities, your detention under the provisions of J&K Public Safety Act at this stage has become imperative, as the normal law has not been found sufficient to stop you from indulging in above activities.

Therefore, it is clear that your activities are highly prejudicial to the maintenance of security of the state and warrant immediate preventive measures to be taken against you

> to prevent the society from violence, strikes, economic adversity, and social indiscipline.
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> On the basis of pre-paras, I have reached to the conclusion that it would be expedient to detain you under the provisions of J&K Public Safety Act,1978 for which orders are being issued separately"

21) From a perusal of the afore-quoted grounds of detention, it transpires that the detaining authority has given details of the past conduct of the petitioner by referring to his association with APHC (M), Kashmir High Court Bar Association which had adopted a constitution providing for support to the secessionists, his association with Advocate Mian Abdul Qayoom, who, as per the grounds of detention, is a fervent supporter of the secessionism and terrorism, the association of the petitioner with secessionist groups during 2008 Amarnath Land Row agitation and 2010 agitation, holding of seminars by the petitioner at Saddar Court Complex Srinagar where secessionists like Syed Ali Shah Geelani, Mohammad Yaseen Malik, Ghulam Nabi Sumji and Mushtaq-ul-Islam had participated and finally the detention of the petitioner in the year 2019 following the abrogation of Article 370. All these activities which are specific in nature relate to the past conduct of the petitioner.

22) What has prompted the detaining authority to pass the impugned order of detention is the activities of the petitioner pursuant to his release from preventive custody in the year 2020. If

we have a look at the activities of the petitioner in which he is alleged to have indulged post his release in the year 2020, it is recorded that the petitioner has reportedly held recently certain secret meetings organized with the likeminded people of High Court Bar Association to achieve the anti-national goals. It is further alleged that the petitioner has visited several jails outside J&K to meet the secessionists and terrorists lodged in different jails to carry forward the ideology of terrorism and secessionism. It has also been alleged that the petitioner and other members, who attended the meetings, do not want valley of Kashmir, especially District Srinagar, to return to normalcy and that the petitioner is working to inflame tension in the state of J&K by disseminating terrorist and secessionist ideas and using the Bar Association as a platform for such propagation. It is further alleged that the aim of the petitioner is to revive activities of terrorism in Kashmir valley and that he has been found indulging in offensive acts supporting separatists and terrorist movements.

23) It is clear from the aforesaid allegations levelled in the grounds of detention that the same are lacking in material particulars. If we minutely examine the alleged activities of the petitioner post his release from preventive detention in the year 2020, if comes to the fore that the detaining authority has not

identified the person with whom the petitioner has recently held secret meetings nor has it identified the persons who are likeminded members of the High Court Bar Association with the help of whom the petitioner intends to achieve his anti-national goals. The identity of the secessionists and terrorists lodged in different jails with whom the petitioner has met to carry forward his ideology of terrorism and secessionism is also not discernable from the contents of the grounds of detention. Even the members with whom the petitioner attended the meeting with a view to prevent normalcy to prevail in District Srinagar are not identified in the grounds of detention. The particulars of the offensive activities including the places and the dates on which the petitioner has indulged in such activities are also missing in the grounds of detention.

24) Thus, it is clear that the allegations made in the grounds of detention, particularly those which have prompted the detaining authority to pass the impugned order of detention are vague, ambiguous, uncertain and lacking in material particulars. On the basis of such allegations, it was not possible for the petitioner to make an effective and suitable representation before the detaining authority or before the Government. This has resulted in violating

of his Constitutional right to make an effective representation against the order of detention.

25) The manner in which the grounds of detention have been formulated by the detaining authority clearly reflects non-application of mind on its part. The conclusion and the grounds appear to be of general nature without any specific details about the particular role played by the petitioner. As has been held by the Supreme Court in **Atma Ram Shridhar Vaidya's** case (supra), something more than mere grounds of detention is required which will enable the detenue to make an effective representation against the detention order. In the facts and circumstances of the present case, having regard to the nature of vague allegations made in the grounds of detention, the only thing the petitioner could have said in his representation was to deny his involvement without making any specific response to the allegations. In such circumstances and in view of the ratio laid down in ***Ameena Begum's case*** (supra) the impugned order of detention, becomes vulnerable to interference by this Court.

26) Learned Senior AAG appearing for the respondents has vehemently contended that having regard to the past conduct of the petitioner, it can be safely concluded that he is a threat to the security of the State and that there is nothing on record to show

that post his release from the preventive detention in the year 2020, he has either changed his ideology or he has mended his ways. According to the learned Sr. AAG having regard to dangerous ideology which the petitioner is holding and there being no evidence to show that he has shunned the said ideology , the detaining authority was well within its power to pass impugned order of detention against the petitioner.

27) To support his aforesaid contention, learned Senior AAG has relied upon a Division Bench judgement of this Court in the case of "**Mian Abdul Qayoom vs. Union Territory of J&K and Ors"**2020 (4) JKJ[HC] 127**.** In the said judgement, it has been held that in a case relating to a person with an ideology, even if the said person may not have violated any law in the immediate past, but if the detaining authority has suspicion that the person holding such an ideology has the potential to do so, he can take the measurers permissible within the law to prevent him from doing so. In the said judgement, it has also been held that the question only is whether past conduct or activities can lend succor to such a suspicion and whether such past conduct or activities emanating from an ideology can be said to be stale.

28) I am afraid the ratio laid down by the Division Bench of this Court in **Mian Abdul Qayoom's** case (supra) cannot be made

applicable to the facts of the present case. In the said case, the detaining authority had relied upon numerous intelligence reports from the year 2010 to 2019 while passing the order of detention against the appellant therein. The reference to these intelligence reports finds mention in the judgement of the Division Bench. It has been clearly recorded in the judgment that from a perusal of these chain of reports depicting activities of the detenue even after 2010, the date when last four FIRs were registered against the said detenue, the Court was satisfied about the continued propensity of the detenue which would have weighed with a detaining authority to arrive at a satisfaction recorded in the detention order. On this basis, the Court found that there was a live link between the activities of the detenue and the detention order. The Division Bench in the said judgment further recorded that when it comes to the propensity of an ideology of the nature reflected in the FIRs supported by the intelligence reports, which the Court had gone through, it was convinced that it subserves the latent motive to thrive on public disorder.

29) In the present case, the detaining authority has not referred to any intelligence reports nor reference to such intelligence reports is there in the police dossier. In fact, the detention record produced before this Court does not contain any intelligence report that would go on to show that the petitioner has continued to hold

the same ideology for which he was detained in the year 2019. The ratio laid down by the Division Bench in **Mian Abdul Qayoom's** case (supra) is clearly not applicable to the facts of the present case as there is no material on record in the shape of intelligence reports or otherwise to connect the past activities of the petitioner with the imperative need of his preventive detention.

30) From the foregoing discussion, it is clear that the allegations levelled against the petitioner in the grounds of detention are vague, ambiguous and lacking in material particulars, on the basis of which it was not possible for the petitioner to make an effective and suitable representation against the impugned order of detention. Thus, his valuable constitutional right available under Article 22(5) of the Constitution of India stands infringed. Besides this, there has been total non-application of mind on the part of detaining authority in passing the impugned order of detention, as the allegations made in the grounds of detention, particularly those relating to his recent activities, are vague and ambiguous. The same are not even supported by any material in the form of intelligence report etc, so as to lend some sort of credence to these allegations. The subjective satisfaction arrived at by the detaining authority, in these circumstances, has become a casualty. On this ground also, the impugned order of detention is not sustainable in law.

31) For the afore-stated reasons, the petition is allowed and the impugned detention order is quashed. The respondents are directed to release the petitioner from the preventive custody forthwith, provided he is not required in connection with any other case.

32) The record be returned to learned counsel for the respondents.

(Sanjay Dhar)
Judge

Srinagar
17.03.2025
"BhatAltaf-Secy"

Whether the order is reportable: ***Yes/No***