

**HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT SRINAGAR
(Through virtual mode)**

Reserved on: 24.02.2025
Pronounced on: 03.03.2025

**LPA No. 308/2024 in
HCP No. 187/2024**

Parvaiz Ahmad Fashoo, aged 35 years
S/O Ab. Rashid Fashoo
R/O Boat Colony Khanbal,
District Anantnag, through his father.

....Appellant(s)

Through: Mr. Wajid Md. Haseeb, Advocate.

Vs

- 1. U.T of Jammu & Kashmir through Additional Chief Secretary, Home Department, J&K Govt., Civil Sectt., Srinagar/Jammu.**
- 2. Divisional Commissioner, Kashmir.**
- 3. Senior Superintendent of Police, Anantnag.**

..... Respondent(s)

Through: Mr. Faheem Nisar Shah, GA.

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

JUDGMENT

Per: Chowdhary-J

- 01.** The appellant-Parvaiz Ahmad Fashoo (for short '**detenue**') has filed this Letters Patent Appeal, assailing the Order

dated 24.10.2024 passed by the learned Single Judge in HCP No. 187/2024 titled “**Parvaiz Ahmad Fashoo Vs. U.T of J&K & Anr**” whereby the petition filed by the detainee was dismissed upholding his detention order passed by the respondent No. 2-Divisional Commissioner, Kashmir (for short, ‘**detaining authority**’) vide Order No. DIVCOM-“K”/114/2024 dated 01.05.2024 (for short, ‘**detention order**’).

02. The impugned order passed by the learned writ court has been challenged on the grounds, that the grounds taken by the appellant in the writ petition were not considered by the learned Single Judge while considering the petition; that the grounds of detention have no nexus with the detainee and have been fabricated by the police in order to justify the detention order; that the learned Single Judge has neither appreciated the grounds referred in the petition nor the law referred on the subject.

03. It has been alleged that the detention order has been passed by the respondent No. 2 without application of his mind and no independent satisfaction has been recorded by the detaining authority while passing the detention order; that the grounds of detention are replica of police dossier to such an extent that the detaining authority has not changed the language of dossier while drafting the grounds of detention; that the allegations mentioned in the grounds of detention have no nexus with the detainee and have been

fabricated by the police in order to justify its illegal action of detaining the detainee; that the detainee was already admitted to bail in the cases on the basis of which detention order has been passed and there is no fresh allegation as such, the apprehension of the detaining authority has no legal basis; that the last activity which has been alleged in the grounds of detention has taken place in September, 2019 and thereafter no fresh activity has taken place whereas, the detention order has been passed in May, 2024 after a delay of more than five years; that the detaining authority has not prepared the grounds of detention by itself which is a pre-requisite before passing any detention order and that the detaining authority has relied upon the police dossier only and has not considered any supporting material.

04. It is further asserted in the grounds that the detaining authority seems to have worked on the dictates of police authorities and has not enquired about the existence of the facts by perusing the supporting material; that the detainee has not been supplied the relevant material based on which, the detaining authority has recorded its satisfaction; that the detainee has filed a representation before the respondents but the same was not considered, in due course of law.

05. Learned counsel for the detainee has, in line with the memorandum of appeal and grounds taken therein, argued

that the last activity attributed to the detainee had allegedly taken place in the year 2019 and thereafter no fresh activity has been attributed to the detainee; that there is a gap of more than five years between the last alleged activity which renders the detention order unreasonable and unjustified; that the respondent No. 3-Superintendent of Police, Anantnag has recommended the detention order on 06.01.2024, however, it has been passed on 01.05.2024, after a delay of about four months which also renders the impugned detention order unreasonable and unjustified.

- 06.** He has further argued that the respondent No. 2 has not considered the representation filed by the detainee in due course of time rendering the impugned order passed by the writ court vitiated as the writ court has not considered this aspect of the matter while passing the impugned judgment; that the detainee has also not been provided with the dossier along with connected material on the basis of which the detaining authority has passed the detention order against the detainee.
- 07.** Learned counsel for the respondents, ex adverso, argued that the detainee was ordered to be detained in preventive detention by the detaining authority, vide detention order dated 01.05.2024 to prevent him from acting in any manner prejudicial to the security of the State; that all the relevant documents, on the basis of which detention order

was passed against the detainee, were duly supplied to the detainee.

08. He further argued that the impugned order has been passed by the writ court on sound principles and does not call for any interference by this court, invoking appellate jurisdiction and prayed for dismissal of the appeal and upholding the impugned order passed by the writ court.
09. Heard learned counsel for the parties and perused the record.
10. The impugned judgment has been assailed, inter alia, on two primary grounds, **firstly**, that the learned Single Judge has not considered the arguments advanced by the learned counsel for the appellant that the detention order in question was based on stale references of FIRs of the year 2015 and 2017 and **secondly**, that the detention order was passed after a delay of about four months after the submission of dossier by the Senior Superintendent of Police, Anantnag.
11. So far as the first ground of challenge that the detention order in question was based on stale references of FIRs of the year 2015 and 2017 is concerned, the learned Single Judge ought to have considered this aspect of the matter while passing the impugned order inasmuch as the petitioner's involvement has been shown in three criminal cases of 2015 and 2017 which ex facie show that these

three criminal cases, by all stretch of reference, are too remote to be a live link to consider a case of preventive detention of a person and are stale references to have any nexus with the grounds of detention forming basis for subjecting the petitioner to preventive detention custody.

12. In the case of **“Sama Aruna Vs State of Telangana and others,” reported in (2018)12 SCC 150** against a detention order dated 23.11.2016 passed by the Commissioner of Police Rachakonda Commissionerate, Rangareddy District, Telangana, the detenue, through his wife, had preferred a writ petition challenging preventive detention which came to be dismissed and the matter reached before the Hon’ble Supreme Court of India in an appeal. The order of preventive detention was based upon the grounds of detention which came to be referred to six criminal cases against the detenue, four of which of 2007, one of 2013 and other of 2014. The detention came to be questioned on the grounds of detention being stale. The Hon’ble Supreme Court of India came to consider the relevance of 9 to 14 years’ old incidents resulting in FIRs through a grossly belated order of detention. In paras 16 & 17, the Hon’ble Supreme Court of India came up with the following reference:-

“16. Obviously, therefore, the power to detain, under the Act of 1986, can be exercised only for preventing a person from engaging in, or pursuing or taking some action which adversely affects or is likely to affect adversely the maintenance of public order; or for

preventing him from making preparations for engaging in such activities. There is little doubt that the conduct or activities of the detenu in the past must be taken into account for coming to the conclusion that he is going to engage in or make preparations for engaging in such activities, for many such persons follow a pattern of criminal activities. But the question is how far back? There is no doubt that only activities so far back can be considered as furnish a cause for preventive detention in the present. That is, only those activities so far back in the past which lead to the conclusion that he is likely to engage in or prepare to engage in such activities in the immediate future can be taken into account. In *Golam Hussain alias Gama v. Commissioner of Police, Calcutta and Ors.* (1974)4 SCC 530, this Court observed as follows:

“5. No authority, acting rationally, can be satisfied, subjectively or otherwise, of future mischief merely because long ago the detenu had done something evil To Rule otherwise is to sanction a simulacrum of a statutory requirement. But no mechanical test by counting the months of the interval is sound. It all depends on the nature of the acts relied on, grave and determined or less serious and corrigible, on the length of the gap, short or long, on the reason for the delay in taking preventive action, like information of participation being available only in the course of an investigation. We have to investigate whether the causal connection has been broken in the circumstances of each case.

Suffice it to say that in any case, incidents which are said to have taken place nine to fourteen years earlier, cannot form the basis for being satisfied in the present that the detenu is going to engage in, or make preparation for engaging in such activities.

17. We are, therefore, satisfied that the aforesaid detention order was passed on grounds which are stale and which could not have been considered as relevant for arriving at the subjective satisfaction that the detenu must be detained. The detention order must be based on a reasonable prognosis of the future behavior of a person based on his past conduct in light of the surrounding circumstances. The live and proximate link that must exist between the past conduct of a person and the imperative need to detain him must be taken to have been snapped in this case. ***A detention order which is founded on stale incidents, must be regarded as an order of punishment for a crime, passed without a trial, though purporting to be an order of preventive detention. The essential concept of preventive detention is that the detention of a person is not to punish him for something he has done but to prevent him from doing it. See G. Reddeiah v. Government of Andhra Pradesh and Anr. (2012) 2 SCC***

389, and *P.U. Iqbal v. Union of India and Ors. (1992) 1 SCC 434.*"

13. In the case of ***"Khaja Bilal Ahmed Vs State of Telangana and others," (2020) 13 SCC 632*** the Hon'ble Supreme Court of India again came up dealing with the case of preventive detention based upon stale grounds. In this case, the Hon'ble Supreme Court of India makes reference to its judgment in the case of ***Sama Aruna Vs State of Telangana and others (supra)***. In para 23, the Hon'ble Supreme Court of India has stated its position as under:-

".....The satisfaction to be arrived at by the detaining authority must not be based on irrelevant or invalid grounds. It must be arrived at on the basis of relevant material; material which is not stale and has a live link with the satisfaction of the detaining authority. The order of detention may refer to the previous criminal antecedents only if they have a direct nexus or link with the immediate need to detain an individual. If the previous criminal activities of the appellant could indicate his tendency or inclination to act in a manner prejudicial to the maintenance of public order, then it may have a bearing on the subjective satisfaction of the detaining authority. However, in the absence of a clear indication of a causal connection, a mere reference to the pending criminal cases cannot account for the requirements of Section 3. It is not open to the detaining authority to simply refer to stale incidents and hold them as the basis of an order of detention. Such stale material will have no bearing on the probability of the detenu engaging in prejudicial activities in the future."

14. So far as second ground of challenge that the detention order was passed after a delay of about four months after the submission of dossier by the Senior Superintendent of

Police, Anantnag is concerned, the learned Single Judge has also not considered this aspect of the matter.

15. From a perusal of the detention order, it transpires that the Senior Superintendent of Police, Anantnag has submitted a dossier and other material for detaining the appellant on 06.01.2024 but the detaining authority took almost four months for passing the detention order dated 01.05.2024 detaining the appellant under Section 3 of Prevention of Illicit Traffic in Narcotic Drugs and Psychotropic Substances Act, 1988 which renders the detention order unjustified and unreasonable. Law on this point is no longer res integra. The Apex Court in **“Adishwar Jain Vs. Union of India & Anr”** reported as (2006) 11 SCC 339 held in paragraph 15 as under:

“15. Delay, as is well known, at both stages has to be explained. The court is required to consider the question having regard to the overall picture. We may notice that in [Sk. Serajul v. State of West Bengal](#) [(1975) 2 SCC 78], this Court opined:

“There was thus delay at both stages and this delay, unless satisfactorily explained, would throw considerable doubt on the genuineness of the subjective satisfaction of the District Magistrate, Burdwan recited in the order of detention. It would be reasonable to assume that if the District Magistrate of Burdwan was really and genuinely satisfied after proper application of mind to the materials before him that it was necessary to detain the petitioner with a view to preventing him from acting in a prejudicial manner, he would have acted with greater promptitude both in making the order

of detention as also in securing the arrest of the petitioner, and the petitioner would not have been allowed to remain at large for such a long period of time to carry on his nefarious activities..."

Similar view was reiterated by the Apex Court in case titled **"Sushanta Kumar Banik Vs. State of Tripura & Ors"** reported as 2022 (0) AIR (SC) (Cri) 1522.

- 16.** In view of the law laid down by the Apex Court and discussed hereinabove, this Court reaches to the inescapable conclusion that the detention order passed by the detaining authority, which had been impugned before the writ court, was passed on stale grounds and there was no live link and also that the detention order was passed almost after about four months from the date of proposal. Both these factors, thus, render the detention order as vitiated and as such, the same cannot be sustained. The appellant had taken these grounds in his petition before the writ court, however, these grounds seem to have escaped the attention of the learned writ court.
- 17.** Viewed thus, the order impugned passed by the writ court is set aside and consequently, the Habeas Corpus Petition moved by the appellant is allowed and the detention order impugned therein passed by the detaining authority is ordered to be quashed. The detenue is ordered to be

released forthwith from custody provided he is not required in any other case(s). No order as to costs.

18. The LPA along with connected application(s) is, accordingly, disposed of.

(M A CHOWDHARY)
JUDGE

(TASHI RABSTAN)
CHIEF JUSTICE

JAMMU
03.03.2025
NARESH/SECY

Whether order is speaking: Yes
Whether order is reportable: Yes

