

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

**Reserved on: 19.02.2025
Pronounced on: 03/03/2025**

**LPA No. 345/2024 in
HCP No. 90/2023**

Mohd. Altaf Najar, aged 33 years
S/O Ab. Gani Najar
R/O Nehama,
Tehsil Kakapora
District Pulwama.

....Appellant(s)

Through his father
Abdul Gani Najar, aged 63 years

Through: Mr. Wajid M. Haseeb, Advocate.

Vs

1. U.T of Jammu & Kashmir through
Principal Secretary,
Home Department,
J&K Govt.,
Civil Sect. Srinagar/Jammu.
2. District Magistrate, Pulwama.



..... Respondent(s)

Through: Mr. Fahim Shah, GA with
Ms. Maha Majeed, Assisting Counsel.

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

JUDGMENT

Per: Chowdhary-J

- 01.** The appellant-Mohd. Altaf Najar (for short '**detenue**') has filed this Letters Patent Appeal, assailing the Order dated

21.11.2024 passed by the learned Single Judge in HCP No. 90/2023 titled **“Mohd. Altaf Najar Vs. U.T of J&K & Anr”** whereby the petition filed by the detinue was dismissed upholding his detention order passed by the respondent No. 2-District Magistrate, Pulwama (for short, **‘detaining authority’**) vide order No. 50/DMP/PSA/23 dated 04.08.2023 (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 detinue 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 detinue and have been

fabricated by the police in order to justify its illegal action of detaining the detinue; that the detinue was already in custody in terms of Section 107 CrPC which is preventive in nature and as per grounds of detention, he was bound down by the Executive Magistrate and there is no allegation of violation of the said bond meaning thereby he has not been involved in any case post 107 proceedings, as such, the apprehension of the detaining authority has no legal basis; that the detaining authority has not prepared the grounds of detention by itself which is a prerequisite 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 detinue has not been supplied the relevant material based on which, the detaining authority has recorded its satisfaction; that the detinue has filed a representation before the respondents but the same was not considered, in due course of law.
- 05.** Learned counsel for the detinue has, in line with the memorandum of appeal and grounds taken therein, argued that the detinue had been detained by the detaining

authority on vague allegations which do not justify the passing of the detention order on the basis of such vague allegations; that not even an iota of connection is given in the grounds of detention connecting the detainee with the allegations, as he had been ordered to be detained without any good ground and without following the process of law, as such, detention order was vitiated, however, the learned writ court decided the petition filed by the detainee without taking into account the plea raised by the detainee and the petition was dismissed upholding the detention order.

06. He has further argued that the respondent No. 1 as well as the Advisory Board 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 04.08.2023 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 representation submitted by the detainee was received on 06.09.2023 and the same was considered by the respondents. He lastly 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 Learned Single Judge while passing the impugned order has observed that though the petition has been filed on many grounds, however, the learned counsel for the detainee restricted his arguments only on two questions, *firstly*, that whole of the material has not been supplied to the detainee and secondly, that his representation filed has not been considered by the detaining authority or the Govt., as was statutorily required. Finding from the record that the detainee had been provided with whole of the record which has been relied upon while passing the detention order and that the representation filed on behalf of the

detenue had also been considered by the Government and rejected, the petition was dismissed by the learned Single Judge.

- 11.** The detenue in his petition before the writ court had raised the important questions for the consideration of the Court that the grounds, which have been based to pass the detention order, were vague as such, the detention order was not justifiable and also that an effective and meaningful representation could not be filed in view of the vague nature of the accusations leveled against the detenue. The detenue, who is stated to be B. Tech qualified and a resident of Nehama Kakapora of District Pulwama, vide detention order has been shown to be a sympathizer of terrorist outfits and was stated to be working under the directions of an LeT hardcore terrorist Riyaz Ahmad Dar @ Khalid @ Sheeraz of Sathergund, Kakapora and that he was preparing the youth to join in terrorist ranks to strengthen their cadres and making all out efforts to revive subversive activities, which have been minimized over the past few years and that it was made to appear that his hand is behind each and every terrorist act that has been perpetrated within the jurisdiction of Tehsil Kakapora and its adjoining areas.

- 12.** Though the detenue had been shown working at the behest of one terrorist commander Riyaz Ahmad Dar @ Khalid @

Sheeraz, however, no such incident has either been diarized in the police dossier or in the detention order, which could have made the preventive detention of the detainee to prevent him from indulging in the activities, which were stated to be prejudicial to the security of the State except that he was proceeded against under section 107 of the CrPC, which is like a preventive detention to obtain a security bond from indulging into any criminal activity, no other case was stated to have been registered against the detainee or it has not been shown as to how he had been working for the terrorist commanders including the one named in the dossier and the detention order.

- 13.** It is also interesting to note that the complaint under section 107 CrPC, the Police Station, Kakapora had just mentioned that the detainee along with some other persons was found at Gund Kakapora on 07.07.2023 and that they could not explain as to how they were all there. It was not suffice to even proceed against the detainee under section 107 CrPC in view of the assertions made by the police in its complaint. Since there was no detailing of any of the incident other than this proceeding under section 107 CrPC, the grounds of detention drawn by the detaining authority appear to be vague and in view of the vague grounds, the detainee was not in a position to move any meaningful and effective representation to the detaining

authority or to the Government to ask for review of his detention, which vitiates the detention order itself.

14. Having regard to the aforesaid observations made by this Court in the preceding para, we are of the opinion that the impugned order of detention before the writ court is not sustainable and is liable to be set aside.

15. Viewed thus, the order impugned passed by the writ court is set aside and consequently, the petition moved by the appellant is allowed and the detention order 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. No order as to costs.

16. 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