

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

HCP No. 68/2024

Manzoor Ahmad Wani.
S/O Gh. Mohi U Din Wani, R/O Reshi Pora Tral,
Th. His brother
Fayaz Ahmad Wani,
Manzoor Ahmad Wani.
S/O Gh. Mohi U Din Wani, R/O Reshi Pora Tral,

..... Petitioner(s)

Through: -
Mr. Mohammad Ibranim Wani, Advocate.

V/s

1.Union Territory of J&K, th.
Principal/Secretary, Home Department, J&K Govt.
Civil Secretariat, Srinagar.
2. District Magistrate, Pulwama.

..... Respondent(s)

Through: -
Mr. Bikramdeep Singh, Dy. AG with
Ms. Nowbahar Khan, Assisting counsel.

CORAM:

HON'BLE MR. JUSTICE JAVED IQBAL WANI, JUDGE

JUDGMENT

20.02.2025

1. The petitioner herein has maintained the instant petition under Article 226 of the Constitution through his brother for quashment of detention Order No. 11/DMP/PSA/24 dated 01.02.2024 (for short "Impugned order") passed by the District Magistrate, Pulwama-respondent 2 herein (for short "the Detaining Authority") where under the petitioner/detenué namely, Manzoor Ahmad Wani, S/O Gh. Mohi- U Din Wani R/O Reshi Pora Tral, Pulwama, has been detained by the Detaining Authority under the Provisions of Section 13 of the Jammu and Kashmir Public Safety Act, 1978 (hereinafter referred to as "the Act").
2. The impugned order has been challenged on multiple grounds urged by the petitioner in the instant petition.

3. Counter affidavit has been filed by the respondents in opposition to the petition wherein it is being stated that upon receipt of information through reliable sources by the sponsoring agency/police Awantipora, that the petitioner is working for a terrorist organization as Under Ground Worker (OGW) and is planning criminal conspiracy and providing logistics and shelter to the terrorists, the petitioner came to be booked in FIR No. 10 of 2023 under Section 7/25 Arms Act, 17,18,19,23,38 and 39 UA(P) Act, registered with Police Station Tral, Pulwama, where after, however, the petitioner came to be released on bail on 4th November, 2023 after he was discharged in various offences covered in the FIR supra in terms of order dated 11th September, 2023 and that post release on bail, the petitioner indulged in terrorist activities necessitating his detention under the preventive law and that the detention order came to be passed by the Detaining Authority in accordance with the provisions of the Act, after the activities of the petitioner were found highly prejudicial to the security of the state by the Detaining Authority and that in the process of and upon detention of the detinue under the preventive law, all statutory requirements and constitutional guarantees came to be complied with and fulfilled.

Heard the learned counsel for the parties and perused the record.

4. According to the counsel for the petitioner, the petitioner admittedly came to be released on bail by the competent court in FIR supra on 4th November, 2023 subject to various terms and conditions including the one that the petitioner shall not repeat the offence in future, while providing a liberty to the prosecution that in the event of breach of any of the conditions contained in the bail order, same shall entail cancellation of the bail, if violation of such conditions are reported by the prosecution to the court, that the respondents instead of availing liberty granted to them by the court

below in the order of grant of bail dated 4th November, 2023 did not seek cancellation of bail granted to the petitioner and instead chose to take recourse to the provisions of preventive law as a shortcut which is countenanced by law.

5. Learned counsel for the petitioner would further submit that even otherwise also the grounds of detention drawn and framed by the Detaining Authority for the purpose of detaining the petitioner are vague and ambiguous, do not spell-out the details and particulars of the activities alleged to have been committed by the petitioner post grant of bail warranting the detention of the petitioner under the preventive law, which failure of the Detaining Authority has deprived the detinue from making an effective representation against his detention, thus violating his constitutional right.

6. On the contrary the counsel for the respondents while controverting the submissions of counsel for the petitioner would reiterate the stand taken by the respondents in the counter affidavit filed to the petition and would insist for dismissal of the petition.

7. In so far as the aforesaid first plea of the counsel for the petitioner is concerned, it is an admitted fact that the petitioner came to be implicated in FIR No. 10/2023 along with other accused persons, registered in Police Station Tral. It is also not in dispute that a Designated Court under NIA Act in terms of order dated 11th September, 2023, dropped the offences under Section 17,18,19 and 39 UA(P) Act covered in the said FIR, while keeping intact the offence under Section 13 UA(P) Act. It is also an admitted fact that the said court subsequently, admitted the petitioner to bail in FIR supra in terms of order dated 4th November, 2023 subject to various conditions set

out therein in the said order which are extracted in *extenso* and reproduced hereinunder:-

- (i) *That the accused/applicants shall not induce the witnesses of the prosecution directly or indirectly.*
- (ii) *That the accused/applicants shall appear before this court on each and every date of hearing.*
- (iii) *That the accused/applicants shall not tamper with the evidence of the prosecution in any manner.*
- (iv) *That the accused/applicants shall not repeat the offence in the future,*
- (v) *That the accused/applicants shall not leave the territorial jurisdiction of this court without prior permission of the court and also shall not change their places of residence during the period of bail.*
- (vi) *That the applicants/accused will disclose/provide mobile number issued in his/her/their name alongwith telecom network to Investigating Officer.*
- (vii) *That the applicants/accused will neither use any secret/encrypted messaging apps or any proxy network (viz- VPNS) to remain anonymous and circumvent provisions of Indian Telegraph Act and Indian Wirelss Act and orders/restrictions issued there under nor provide any type of telecommunication facility from his/her/their number or device to another person through hotspot, WiFi etc.*
- (viii) *That applicants/accused will disclose the details of cell phone device to be used by him (IMEI number and make MI, Samsung, Oppo etc) to the investigating officer.*
- (ix) *In case the applicants/accused wants to buy another mobile handset or a new sim card in the event of damage, loss theft or to upgrade, he shall seek prior permission from this court and shall furnish the information to the IO of the case.*
- (x) *Any breach of the aforesaid conditions by the accused shall be viewed seriously by this court and shall warrant*

cancellation of bail, if such breach is reported to this court by the I.O. or through prosecution.

As is manifest from the aforesaid conditions imposed upon the petitioner while granting him the bail in the FIR supra, the prosecution stands granted liberty to seek cancellation of the bail granted in favour of the petitioner, in the event, it is found that the petitioner has indulged in the commission of similar offences post grant of bail. Indisputably, the prosecution has not sought cancellation of bail granted to the petitioner before the court below, although, it is alleged in the grounds of detention that the detinue has indulged in the activities prejudicial to the security of the State of his release on bail but the respondents have chose to refer the case to the Detaining Authority for detaining the petitioner under preventive law, without spelling out any justified reason as to why it did not chose to seek cancellation of bail of the petitioner and instead took recourse for detaining the detinue under preventive law.

The respondents in general and the Detaining Authority in particular seemingly has overlooked this fundamental aspect inasmuch as, the fact that according to the respondents post grant of bail to the petitioner, proceedings under Section 107 Cr. P.C, had been initiated by the concerned Police Station, yet detention record produced by counsel for the respondents do not reveal anywhere that such proceedings were actually launched before the competent authority or else, the petitioner was bound down by the competent authority there under Section 107 Cr. P.C.

The aforesaid position obtaining in the matter manifestly tends to show that the respondents have adopted a shortcut method and

procedure for detaining the petitioner under preventive law instead of taking recourse to ordinary law in connection with the offences alleged to have been committed by the petitioner and in respect of which the petitioner is stated to be facing trial before the court below. The impugned order, thus found on this ground alone, not legally sustainable. A reference in this regard to the judgment of the Apex Court passed in case titled as **“*Rekha v. State of T. Nadu Tr. Sec. to Govt. & Anr, (2011) 5 SCC 244*”**, would be relevant wherein it has been held that if the ordinary law (Indian Penal code and other penal statutes) can deal with the situation, recourse of the detention law will be illegal.

8. In so far as the aforesaid next plea raised by the counsel for the petitioner is concerned, a deeper and closer examination of the record in general and the grounds of detention in particular based upon which the Detaining Authority has passed the impugned order manifestly reveal that the Detaining Authority while drawing and framing the grounds of detention though has referred to the alleged activities attributable to the petitioner, warranting his preventive detention, yet has failed to spell out the details of such activities, dates and particulars of such activities including the persons with whom the petitioner indulged in such activities. The grounds of detention *ex-facie* are vague and cryptic which runs contrary to the object of the provisions of the Act rendering the petitioner incapable of making an effective representation against his detention. A reference in this regard to the judgment of the Apex Court is made passed in the case titled as ***Jahangirkhan Fazalkhan Pathan v. Police Commissioner, Ahmedabad & Ors reported in AIR 1989 (3) SCC page-590*** would be appropriate wherein the Apex Court has held that the order of detention passed on vague

grounds, depriving the petitioner from making an effective representation against the said detention, vitiates the order of detention.

9. For what has been observed, considered and analyzed hereinabove, the instant petition deserves to be allowed.

10. Accordingly, the petition is allowed and the impugned Order No. 11/DMP/PSA/24 dated 01.02.2024 is, quashed with the direction to the respondents including the concerned Jail authority to release the petitioner- *Manzoor Ahmad Wani, S/O Gh. Mohi- U Din Wani R/O Reshi Pora Tral, Pulwama*, from preventive detention unless is required in any other case.

11. The detention record produced by counsel for the respondents is returned back to him in the open Court.

(Javed Iqbal Wani)
Judge

SRINAGAR
20.02.2025
"Abdul Rashid"

Whether approved for reporting? Yes/No