

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

Case: HCP No.130/2024
CM No.5751/2024
CM No.5752/2024

1. Mohd. Asgar Alias Tola, Petitioner(s)
Aged 54 years, S/o Bashir Ahmed,
R/o Ward No.3, Dera Chowadi,
Tehsil Bahu, District Jammu.

Through :- Mr. Rahul Raina, Advocate

Vs

1. The Union Territory of J&K throughRespondent(s)
its Commissioner/Secretary, Home
Department, Civil Secretariat,
Jammu-180001.
2. The District Magistrate, Jammu-
180001.
3. The Senior Superintendent of Police,
Jammu-180001.
4. The SHO, Police Station, Channi
Himmat, Jammu-180001.

Through :- Mr. Rajesh Kumar Thappa, AAG

CORAM:

HON'BLE MR. JUSTICE SANJAY DHAR, JUDGE

JUDGMENT

07.03.2025

01. The petitioner through the medium of the present petition has challenged detention warrant issued vide No.32 of 2023 dated 24.11.2023 under Section 8 of J&K Public Safety Act, by respondent No.2-District Magistrate, Jammu at pre-execution stage. The petitioner has also sought a direction upon the respondents not to execute the impugned detention warrant.

02. It has been submitted in the writ petition that District Magistrate, Jammu had vide detention order No.05 of 2020 dated 22.02.2020 booked the petitioner under Section 8 of the Jammu and Kashmir Public Safety Act. It has been contended that while passing the aforesaid detention order, the detaining authority had placed reliance upon five FIRs registered against the petitioner at the Police Station, Bahu Fort, Jammu and Police Station, Channi Himmat, Jammu, however, the said detention order was quashed by this Court in terms of judgment dated 01.09.2020 passed in WP(Crl) No.11/2020. While quashing the detention order, this Court had observed that there has been non-application of mind on part of the detaining authority while formulating the grounds of detention. It has been submitted that after quashment of the earlier detention order passed by this Court, three more FIRs came to be registered against the petitioner, which according to him, are false and frivolous.

03. It has been further submitted that the aforesaid three FIRs were registered against the petitioner and his brothers/family members on the basis of complaints filed by Mohd. Muneer and Mohd. Ashraf, who happen to be the sons of Abdul Gafoor. According to the petitioner, both these persons are involved in grabbing of State land and are notorious people against whom the Deputy Commissioner, Jammu has already taken action on a number of occasions. It has been submitted that brother of the petitioner has also lodged an FIR against one-Mohd. Muneer. According to the petitioner, Mohd. Muneer, Mohd. Ashraf, Mohd. Latief and Mohd. Shakeel, who happen to be the sons of Abdul Gafoor have lodged baseless FIRs against him and all these three FIRs came to be registered against the petitioner after the earlier

detention order was quashed against him. It has been submitted that now the petitioner has entered into a negotiated settlement with the complainant of all these three FIRs.

04. It has been submitted that the petitioner was taken by surprise when on 15.09.2024, the police came to his residence and affixed a proclamation issued by learned Chief Judicial Magistrate, Jammu in terms of Sections 84/85 BNSS against him, whereby he was asked to appear before the District Magistrate, Jammu and to surrender within a period of one month. It has been further submitted that after going through the order of proclamation issued by learned Chief Judicial Magistrate, Jammu, he came to know that the impugned warrant of detention has been issued against him.

05. The petitioner has challenged the impugned warrant of detention on the grounds that the same has been issued by respondent No.2 on vague, extraneous and irrelevant grounds. It has been further contended that the warrant of detention could not have been issued against the petitioner on the basis of the FIRs lodged by one particular family against him. It has been further contended that the warrant of detention has been issued against the petitioner on the basis of three frivolous FIRs.

06. **Counter affidavit** on behalf of respondent No.2 has been filed, in which, it has been submitted that the petition is not maintainable because the petitioner is evading the execution of impugned detention order and has been declared as an absconder. It has been further contended that the petitioner is a hardcore criminal, desperate character and a history-sheeter, who has been indulging in acts of violence such as attempt to murder, assault, stabbing,

rioting, burglary, and violation of Arms Act, land grabbing and other criminal activities of serious nature. According to the respondents, the petitioner is a threat to maintenance of public order.

07. I have heard learned counsel for the parties and perused the record.

08. The petitioner is challenging impugned warrant of detention at pre-execution stage. Before proceeding to deal with grounds of challenge, this Court has to keep in mind the legal position as regards the scope of interference in preventive detention order at pre-execution stage. The law on this subject has been settled by the Supreme Court in the case of '*Additional Secretary to the Government of India Vs. Alka Subhas Gadia 1992 (Suppl.1) SCC 496*', in which, the Supreme Court has held that the grounds, on which courts can interfere with the order of detention at pre-execution stage, are very limited and it is only if courts are *prima facie* satisfied (i) that the impugned order is not passed under the Act under which is purported to have been passed, (ii) that it is sought to be executed against a wrong person, (iii) that it is passed for a wrong purpose, (iv) that it is passed on vague, extraneous and irrelevant grounds or (v) that the authority which passed had no authority to do so. The aforesaid legal position has been reiterated by the Supreme Court in the case of '*Subash Popat Lal Dave Vs. Union of India (2014) (1) SCC 280*'.

09. With the aforesaid legal position in mind, let us now advert to the facts of the present case. The petitioner claims that the earlier detention order against him was quashed by this Court, therefore, his fresh detention was not warranted under law. In this regard, it is to be noted that the earlier detention order was quashed by this Court on 01.09.2020. Thereafter, four more FIRs

stand registered against the petitioner, which is clear from the record produced by the learned counsel for the respondents. These cases are FIR No.45/2021 for offences under Sections 452, 447, 427, 336 and 147 IPC registered with Police Station, Channi Himmat, Jammu, FIR No.182/2021 for offences under Sections 409/120-B IPC registered with Police Station, Channi Himmat, Jammu, FIR No.120/2022 for offences under Sections 386, 504, 506 IPC of Police Station, Channi Himmat, Jammu and FIR No.174/2023 for offence under Sections, 451, 427, 506 IPC registered with Police Station, Channi Himmat, Jammu. Prior to the aforesaid FIRs the petitioner was found to be involved in as many as four more FIRs. Therefore, in total, the involvement of the petitioner has been found in eight FIRs.

10. The record produced by the learned counsel for the respondents, which contains the grounds of detention shows that the detaining authority has, on the basis of the allegations made in the aforesaid eight FIRs drawn satisfaction that preventive detention of the petitioner is imperative for preventing the petitioner for indulging in similar activities. Therefore, it cannot be stated that the impugned order of detention has been passed by the detaining authority for a wrong purpose or that it has been passed on vague, extraneous and irrelevant grounds.

11. Apart from the above, the petitioner admittedly has been declared as an absconder by Chief Judicial Magistrate, Jammu as he is evading the process of law. Therefore, it is not open to this Court to come for the rescue of the petitioner by either staying or quashing the impugned warrant of detention at pre-execution stage.

12. Learned counsel appearing for the petitioner has argued that the allegations made in the FIRs, on the basis of which detention order has been passed, relate to disputes between two families and such allegations cannot form basis of a preventive detention order. The contention of the petitioner cannot be accepted for the reason that in the grounds of detention, the detaining authority has given details about various activities in which the petitioner is stated to have indulged. The reference to the FIRs has been given by the detaining authority with a view to demonstrate the propensity of the petitioner to indulge in criminal activities. The fact that the petitioner has been found involved in as many as eight FIRs registered over a period of several years shows his consistent criminal bent of mind. Merely because these FIRs have been filed at the behest of persons belonging to one family does not make conduct of the petitioner less prejudicial to the maintenance of public order.

13. For the foregoing reasons, I do not find any merit in this petition. The same is, accordingly, ***dismissed*** along with connected application(s).

14. Detention record be returned to learned counsel for the respondents.

(SANJAY DHAR)
JUDGE

JAMMU
07.03.2025
Shammi

Whether the order is speaking: Yes
Whether the order is reportable: No