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**(2023) 11 J&K CK 0032**

**In the Jammu And Kashmir High Court**

**Case No : Writ Petition (Criminal) No. 147 Of 2022**

Suhail Ahmad Malla

APPELLANT

Vs

UT Of J&K & Ors

RESPONDENT

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**Date of Decision :** 17-11-2023

**Acts Referred:**

**Citation :** (2023) 11 J&K CK 0032

**Hon'ble Judges :** Sanjay Dhar, J

**Bench :** Single Bench

**Advocate :** Arshid Ahmad, P. S. Ahmad, Irfan Ahmad, Alla ud din Ganie

**Final Decision :** Allowed

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## **Judgement**

Sanjay Dhar, J

1) By the medium of instant petition, the petitioner has challenged the legality and veracity of the order No.17/DMK/PSA/2022 dated 08.04.2022, issued by District Magistrate, Kulgam-respondent No.2 herein, in terms whereof, Suhail Ahmad Malla (hereinafter referred to as the detinue), has been placed under preventive custody and lodged in Central Jail, Jammu (Kotbalwal), for preventing him from acting in any manner prejudicial to security, sovereignty and integrity of the State.

2) The petitioner has contended that the detaining authority has passed the impugned detention order mechanically without application of mind as the allegations mentioned in the grounds of detention have no nexus with the detinue and that the same have been fabricated by the police in order to justify its illegal action of detaining the detinue. It has been contended that the grounds of detention are vague on the basis of which no prudent man can make a representation against such allegations. It has been further contended that the procedural safeguards have not been complied with in the instant case, inasmuch as whole of the material which formed basis of the impugned detention order has not been supplied to the petitioner. That the grounds of detention are non-

existent and stale and that the representation filed by the detainee has not been considered by the respondents.

3) The respondents have resisted the petition by filing a reply affidavit thereto, wherein they have disputed the averments made in the petition and insisted that the activities of detainee are highly prejudicial to the security of the State. It is pleaded that the detention order and grounds of detention along with the material relied upon by the detaining authority were handed over to the detainee and the same were read over and explained to him. It is contended that the grounds urged by the petitioner are legally misconceived, factually untenable and without any merit. That the detainee was informed that he can make a representation to the government as well as to the detaining authority against his detention. It is further claimed in the reply affidavit that all statutory requirements and constitutional guarantees have been fulfilled and complied with by the detaining authority and that the order has been issued validly and legally. The respondents have placed reliance on various judgments of the Supreme Court. The respondents have produced the detention record to lend support to the stand taken in the counter affidavit.

4) Learned counsel for the petitioner, while seeking quashment of the impugned order, projected various grounds but his main thrust during the course of arguments, was on the following grounds:

(I) That the detainee was not furnished the whole of the material to enable him to make an effective representation against his detention.

(II) That the impugned order of detention is based upon stale incidents having no proximate link to the activities alleged to be prejudicial to the maintenance of public order.

5) So far as the first ground of challenge is concerned, a perusal of the material on record reveals that the petitioner has received detention order (01 leaf), notice of detention (01 leaf), grounds of detention (02 leaves), dossier of detention (Nil), copies of FIR, statements of witnesses and other related relevant documents (Nil) (total 04 leaves), and in token whereof, his signatures have been obtained on the document under the style 'Execution Report', which forms part of detention record. If we have a look at the grounds of detention, it bears reference to three FIRs viz. FIR Nos.21/2019, 67/2019 and 54/2019 of P/S Qaimoh. It was incumbent upon respondents to furnish not only the copies of the FIRs but also the statements of witnesses recorded during investigation of the said FIR sand other material on the basis of which petitioner's involvement in these FIRs is shown. Even the copy of the dossier of detention has not been supplied to the petitioner.

6) Thus, contention of the petitioner that whole of the material relied upon by the detaining authority, while framing the grounds of detention, has not been supplied to him, appears to be well-founded. Obviously, the petitioner has been hampered by non-supply of these vital documents in making an effective

representation before the Advisory Board. Thus, vital safeguards against arbitrary use of law of preventive detention have been observed in breach by the respondents in this case rendering the impugned order of detention unsustainable in law.

7) It needs no emphasis that the detainee cannot be expected to make an effective and purposeful representation which is his constitutional right guaranteed under Article 22(5) of the Constitution of India, unless and until the material, on which the detention is based, is supplied to the detainee. The failure on the part of detaining authority to supply the material renders the detention order illegal and unsustainable in law. While holding so, I am fortified by the judgments rendered in *Sophia Ghulam Mohd. Bham V. State of Maharashtra and others* (AIR 1999 SC 3051) *Ram Krishan Bhardwaj v. State of Delhi*, AIR 1953 SC 318, *Shalini Soni v. Union of India*, (1980) 4 SC 544, *Nazeer Ahmad Sheikh vs. Additional Chief Secretary Home*, 1999 SLJ 241, and, *Thahira Haris Etc. Etc. V. Government of Karnataka & Ors.* (AIR 2009 SC 2184).

8) Next it has been contended by learned counsel for the petitioner that the impugned order of detention has been passed on the basis of stale incidents having no proximate link with the activities alleged to be prejudicial to the security of the State.

9) A perusal of the grounds of detention reveals that the incidents referred therein pertain to the year 2019, that is more than four years prior to the passing of the impugned order of detention. There is no reference to any recent incident involving the petitioner in the grounds of detention. Thus, it is clear that the order of detention has been based on past and stale incidents.

10) The Supreme Court in the case of *Sama Aruna v. State of Telengana and & anr*, (2018) 12 SCC 150, while holding that the incidents which are said to have taken place long back, cannot form basis for being satisfied that the detainee is going to engage in similar activities, observed as under:

"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."

From the aforesaid enunciation of the law on the subject, it is clear that there has to be a live and proximate link between the past conduct of the detainee and

the activities alleged to be prejudicial to the maintenance of security of the state. In the instant case, the said link is completely missing as the time between the order of detention and the incident referred to in the grounds of detention is far too large to presume such a link. The impugned order of detention, therefore, cannot be sustained.

11) 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.

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