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**(2024) 05 J&K CK 0040**

**In the Jammu And Kashmir High Court**

**Case No :** Writ Petition (Criminal) No. 239 Of 2023, Criminal Miscellaneous Case (M) No. 961 Of 2024

Tanseem Ahmad Sheikh

APPELLANT

Vs

Union Territory Of J&K & Ors

RESPONDENT

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**Date of Decision :** 15-05-2024

**Acts Referred:**

Code Of Criminal Procedure, 1973 — Section 107, 151

**Citation :** (2024) 05 J&K CK 0040

**Hon'ble Judges :** Puneet Gupta, J

**Bench :** Single Bench

**Advocate :** M. Ayoub Bhat, Mahajabeena Bhat, Jehangir Dar, Zahid Qyas Noor

**Final Decision :** Dismissed

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## Judgement

Puneet Gupta, J

1. The detention order No. 32/DMP/PSA/23/2023 dated 24.05.2023 has been impugned by the petitioner Tasneem Ahmad Sheikh on the grounds mentioned in the petition.
2. The counter affidavit stands filed on behalf of the respondents and obviously the respondents have controverted the grounds of detention as taken in the petition.
3. Mr. Mohammad Ayoub Bhat, learned counsel appearing for the petitioner has argued that the grounds of detention mentioned in the detention order under challenge are same as reflected in the earlier two detention orders passed against him in the year 2020 and 2022. The detention orders earlier passed stand quashed by this Court on 27.04.2022 & 09.11.2022. In nutshell the argument is that no fresh ground is visible from the detention order in question.
4. Learned counsel for the respondents has argued that perusal of the detention order will reveal that fresh detention order has been passed against the

petitioner as the petitioner did not mend his ways and carried with the activities in which he was earlier involved. The activities of the petitioner speak of being security threat to the nation after he was released on quashment of 2022 detention order

5. The detention order in question reveals activities which the petitioner allegedly carried out prior to the present detention order. Perusal of the impugned detention order reveals that reliable source indicated that the petitioner has contacts with banned terrorist organization Hizbul Mujahideen for extending logistic support to the said organization and is instigating the young generation to join ranks of such outfit. There is also possibility of the petitioner joining the militancy if not prevented as early as possible. Not only that, it is also stated in the detention order that the petitioner activities on the cyber space and social media are such which disturb the peace and tranquility of the nation. Further, the petitioner was arrested under Section 107 read with Section 151 of Cr.P.C. and the bond was obtained by the Executive Magistrate 1st Class but the petitioner did not mend his ways. The alleged activities which are being carried out by the petitioner after the release from the custody on the quashment of the said detention order on 09.11.2022 are not adequately specified and in fact no fresh activity is attributed to the petitioner is the argument of learned counsel for the petitioner which requires only rejection. The court is of the view that the detention order has sufficiently mentioned all the activities of the petitioner which are found to be prejudicial to the interest of the nation. It cannot be said that grounds mentioned in the detention order are vague or unspecific more so when the name of terrorists organization to which the petitioner is stated to be aligned with also gets mention in the detention order. The argument of the petitioner that no details have been furnished of the proceedings that took place before the Executive Magistrate under Section 107/151 of Cr.P.C., and therefore, the detention order is bad in law is utterly misconceived argument. The aforesaid proceedings took place against the petitioner just few days before passing of the impugned order. The non-mention of dates of proceedings cannot be said to be fatal in the case in hand. The reliance by the counsel for the petitioner upon the earlier grounds of detention orders qua the detention order impugned in order to impress upon the court that the detention order passed against the petitioner is just replica of the earlier grounds and unspecified and general in nature is without any force and is unsustainable.

6. In AIR 1989 Supreme Court 1234 titled Chhagan Bhagwan Kahar Vs. N. L. Kalna and others, the Hon'ble Apex Court held that the grounds mentioned in the earlier detention order cannot be the ground for issuance of fresh detention order unless there are fresh facts for passing such an order. As detailed above, the fresh grounds are evident from the detention order in question.

7. In Shabir Ahmad Najar Vs. Union Territory of J&K and another LPA No.185/2022 decided on 30.12.2023, the Division Bench of this Court in somewhat similar circumstance held that the grounds mentioned in the detention

order are sufficient to form the opinion to the effect that the detention of the petitioner is necessitated.

8. The subjective satisfaction of the detaining authority is not normally to be reassessed by this Court and sit over the assessment made by the detaining authority as a Court of appeal is trite proposition of law. No doubt the constitutional court can interfere in a case when it is satisfied that the subjective satisfaction of the detaining authority is not prima facie made out from the detention order.

9. In AIR 2019 Supreme Court 3428 titled Union of India and another Vs. Dimple Happy Dhakad, the Apex Court reiterated the aforesaid well settled principle of law.

10. Learned counsel for the petitioner has vehemently argued that the petitioner was not provided all the relevant material and therefore he was deprived of making effective representation before the competent authority.

11. The Scanned record of the detention order has been produced by learned counsel for the respondents. Perusal whereof reveals that the petitioner was given 25 leaves in consequence to the passing of the detention order. There is no reason to disbelieve that the petitioner has not been handed over that much of material at the time of execution of the warrant. The plea taken that the copy of the FIR or other material was not provided to him is a plea which cannot be accepted by the Court. Even if a document or two is not provided to the detainee while executing the warrant that does not mean that the detention proceedings are illegal in their entirety. The reference to the past activities in the detention order is not the basis of impugned detention order and if some material regarding those allegations is not provided to the petitioner that will not be fatal to the detention proceedings.

12. Learned counsel for the petitioner has argued that the representation made by him to the Home Department has not been processed and considered by the concerned authorities and as such valuable right of the petitioner being considered for release on the representation made by him has been lost. The counsel has referred to annexure 4 in support of his contention that representation was duly preferred before the Home Department. It is not revealed from annexure-4, alleged representation, that the same was in fact presented/filed before the competent authority for consideration. May be, the representation even if prepared has remained with the father of the petitioner only through whom it was prepared. The petitioner cannot raise grouse that the representation of the petitioner has not been considered by the authorities as the same never reached concerned quarter.

13. The reliance placed upon AIR 2000 Supreme Court 2504 titled State of Maharashtra and others Vs. Santosh Shankar Acharya, wherein the Apex Court emphasized the requirement of communication of outcome of the representation made by the detainee before the concerned authorities. This authority has no

application in the instant case as the representation itself is held not filed by the petitioner before the authorities. Hence, there is no question of communicating the outcome of the representation to the petitioner.

14. Viewed in the light of aforesaid discussion, the petition is misconceived. The detention order passed against the petitioner is in accordance with law and is upheld. The petition is accordingly dismissed.