

Serial No. 07
Regular cause list

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

...
HCP No. 82/2024

Reserved on: 10.04.2025
Pronounced on: 25.04.2025

Majid Nisar Najar

.....Petitioner(s)

Through:

*Mr. S. T. Hussain, Sr. Advocate with
Ms. Nida Nazir, Adv.*

Versus

UT of J&K and Ors.

.....Respondent(s)

Through:

Mr. Zahid Qais Noor, GA

CORAM:

HON'BLE MS JUSTICE MOKSHA KHAJURIA KAZMI, JUDGE

JUDGMENT

1. Challenge is made and quashment of the order bearing No. 01/DMK/PSA/2024 dated 07.03.2024, hereinafter for short as “impugned order” is sought by the petitioner Surat Jan sister of Majid Nisar Najar S/o Nisar Ahmad Najar R/o Chugalpora Manzgam Tehsil D.H. Pora District Kulgam, hereinafter for short as “detenu”, on the grounds taken in the memo of petition.

BRIEF FACTS:

2. The petitioner is pleading that the detenu was arrested in the month of August, 2021 after having been illegally implicated in case FIR No. 53/2021 of P/S Kulgam for the commission of offences punishable in terms of Sections 13(1), 18, 20, 23, 39 Unlawful

Activities Prevention Act, wherein the detenu, during trial before the competent court of jurisdiction, was admitted to interim bail on 24th November, 2023, and in compliance whereof was released from custody.

3. The petitioner challenges the impugned order *inter alia* on the grounds that the grounds of detention have no nexus with the detenu as the police has fabricated the involvement of the detenu; the impugned order appears to have been issued against the wrong person as detenu has never associated himself with any such individual or an organization as referred in the grounds of detention; the allegations made in the grounds of detention are vague and non-existent and no prudent man can make a representation against such allegations; the last alleged activity alleged against the detenu is shown to have taken place in the year 2021 and no subsequent activity is alleged against the detenu, therefore, there is no proximity or live link between the allegations and the activities of the detenu; the impugned order is passed in disregard of the order of interim bail dated 24.11.2023 passed by the learned Special Judge Designated NIA Court for Shopian & Kulgam, Kulgam; the Detaining Authority has not applied its mind to the facts of the case and has relied upon the police dossier blindly; the detenu was not furnished the requisite material to enable him to move a representation against the impugned order so that the apprehensions of the respondents are dispelled, however, the petitioner on the basis of few documents as provided to her moved a representation to the respondent No. 2 which was not considered in due course of law.

4. Upon notice the respondents appeared and filed their counter affidavit *inter alia* stating therein that the procedural safeguards as provided by the provisions of the Public Safety Act have been followed in letter and spirit and with due application of mind. It is stated that the detenu had developed contacts with militants, started to work himself as an OGW and was involved in several subversive and unlawful activities and has been named in case FIR No. 53/2021 of P/S Kulgam under Section 13(1), 18, 20, 23, 39 UAP Act. It is further stated in the counter affidavit that the activities of the detenu were found prejudicial to the security, sovereignty and integrity of the State, therefore, was detained under preventive detention. The entire material in the shape of detention order, grounds of detention and other documents were furnished to the detenu which were read over and explained to the detenu in the language that he understood.

5. I have heard learned counsel for the parties, perused the material made available including the detention records and considered the submissions made.

6. The admitted position of the case is that the detenu has been detained under the provisions of preventive detention after having been found involved in case FIR No. 53/2021 for the Commission of Offences punishable in terms of Sections 13(1), 18, 20, 23, 39 of P/S Kulgam. It is also admitted that the detenu was in custody in connection with his involvement in the aforesaid case and had been admitted to interim bail by the competent court of jurisdiction in terms of order dated 24.11.2023.

7. It becomes quite axiomatic that the detenu was in custody for over a period of two years till he was granted bail i.e., from the date of arrest till 24.11.2023 and subsequently also from the date of release on bail till the issuance of the impugned order i.e., 24.11.2023 to 07.03.2024 and in this way was very much available to the respondents to be detained under the provisions of preventive detention, if they so required, however, the respondents did not do so instead they waited quite long to issue the impugned order without any justification whatsoever for such delayed issuance of the impugned order.

8. Furthermore, the respondents have not disputed that the detenu has been granted bail and in compliance whereof was set at large. The respondents, as such, have passed the impugned order in disregard of the bail order passed by the competent court of jurisdiction. The respondents nowhere in the detention order or in the grounds of detention or even for that matter anywhere in the detention records make even a whisper about such enlargement of the detenu on bail which goes on to suggest that the detaining authority was either in not in know of the fact that detenu has been enlarged on bail or it had issued the impugned order in derogation thereof.

9. The Apex Court in case titled "***Joyi Kitty Joseph vs. Union of India & Ors.***" *reported in 2025 LiveLaw (SC) 298*, while observing that the preventive detention issued in disregard of the bail orders is unsustainable in law, has laid down in paragraphs 21 and 22 as under;

21. “The criminal prosecution launched and the preventive detention ordered are on the very same allegations of organised smuggling activities, through a network set up, revealed on successive raids carried on at various locations, on specific information received, leading to recovery of huge cache of contraband. When bail was granted by the jurisdictional Court, that too on conditions, the detaining authority ought to have examined whether they were sufficient to curb the evil of further indulgence in identical activities; which is very basis of the preventive detention ordered. The detention order being silent on that aspect, we interfere with the detention order only on the ground of the detaining authority having not looked into the conditions imposed by the Magistrate while granting bail for the very same offence; the allegations in which also have led to the preventive detention, assailed herein, to enter a satisfaction as to whether those conditions are sufficient or not to restrain the detenu from indulging in further like activities of smuggling.

22. We, hence, allow the appeal and set aside the order of detention. The detenu shall be released forthwith, if still in custody.”

10. The Apex Court in yet another case titled “***Sushanta Kumar Banik vs. State of Tripura & Ors.***” reported in 2022 *LiveLaw (SC) 813* has, while deprecating the practice of disregard given to the bail orders passed in respect of the individuals detained under preventive laws, held in paragraph No. 22 as under;

22. As noted above, in the case on hand, in both the cases relied upon by the detaining authority for the purpose of preventively detaining the appellant herein, the appellant was already ordered to be released on bail by the concerned Special Court. Indisputably, we do not find any reference of this fact in the proposal forwarded by the Superintendent of Police, West Tripura District while requesting to process the order of detention. The reason for laying much stress on this aspect of the matter is the fact that the appellant though arrested in connection with the offence under the NDPS ACT, 1985, the Special Court, Tripura though fit to release the

appellant on bail despite the rigours of Section 37 of the NDPS Act, 1985. Section 37 of the NDPS Act, 1985 reads thus:

“Section 37. Offences to be cognizable and nonbailable:- (1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974)

- (a) *every offence punishable under this Act shall be cognizable;*
- (b) *no person accused of an offence punishable for offences under section 19 or section 24 or section 27A and also for offences involving commercial quantity shall be released on bail or on his own bond unless-*
 - (i) *the Public Prosecutor has been given an opportunity to oppose the application for such release, and*
 - (ii) *where the Public Prosecutor opposes the application, the court is satisfied that there are reasonable grounds for believing that he is not guilty of such offence and that he is not likely to commit any offence while on bail.*
- (2) *The limitations on granting of bail specified in clause (b) of sub-section (1) are in addition to the limitations under the Code of Criminal Procedure, 1973 (2 of 1974) or any other law for the time being in force, on granting of bail.”*

11. In the above background the court does not feel it necessary to go into other grounds raised against the impugned order like the non-furnishing of requisite material to the detenu or prejudicing him by not affording him an opportunity to represent against his detention as the petition succeeds on the ground of non application of mind only.

12. Viewed thus, the petition succeeds, it is allowed as such, and the impugned order bearing No. 01/DMK/PSA/2024 dated 07.03.2024 in consequence thereof is quashed. The detenu namely Majid Nisar Najar S/o Nisar Ahmad Najar R/o Chugalpora Manzgam Tehsil

D.H. Pora District Kulgam is directed to be released from the preventive detention forthwith.

13. Registry is directed to return the detention records to the learned counsel for the respondents against receipt.

14. Disposed of.

(MOKSHA KHAJURIA KAZMI)
JUDGE

Srinagar

25.04.2025

Sakeena, PS

Whether the judgment is reportable: Yes/No

Whether the judgment is speaking: Yes/No

