

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

**Reserved on: 18.03.2024
Pronounced on: 03.04.2024**

WP (Crl) No. 655/2022

**Advocate Ali Mohammad Lone alias Zahid
Aged about 61 years
S/o Habibulah Lone
R/o Nehama, Pulwama
Through his son Asif Ali**

... Petitioner/Appellant(s)

Through: Mr. Z. A. Qureshi, Sr. Adv. with Ms. Rehana, Adv.

V/s

**1. Government of J&K through
Principal Secretary to Govt.
Home Department, Civil Secretariat
Jammu and Kashmir, Srinagar/Jammu**

2. District Magistrate, Pulwama

... Respondent(s)

Through: Mr. Zahid Qais Noor, GA

**CORAM: HON'BLE MR. JUSTICE RAHUL BHARTI, JUDGE
JUDGMENT
03-04-2024**

1. A quote by Laura Miller “The past is a very determined ghost, haunting every chance it gets” seems to be, though unsaid, but the underlying basis of the mindset of the Sr. Superintendent of Police, (SSP in short), Pulwama and the purported subjective satisfaction of the respondent No. 2-District Magistrate Pulwama passed on even to the Govt. in the matter of subjecting the petitioner to suffer fourth time preventive detention in row following each other in the fashion as passing of baton amongst relay race runners.

2. The petitioner is aggrieved of his preventive detention which has been affected in terms of a detention order No. 74/DMP/PSA/22 dated 14/09/2022 passed by the respondent No.2-District Magistrate Pulwama acting under section 8 of the J&K Public safety act 1978, subsequently approved and confirmed by the respondent No.1-Govt. of UT of J&K and as a result where of the petitioner has come to suffer loss of his personal liberty in order to regain which the petitioner is throwing challenge to preventive detention.
3. The process for the preventive detention of the petitioner was set into effect by the SSP Pulwama who forwarded a dossier vide letter No. CS/Pros/DPO/22/177-80 dated 14/09/2022 to the respondent No.2-District Magistrate Pulwama citing the basis that if the petitioner was left to enjoyment of his fundamental right to personal liberty then he would be indulging in activities prejudicial to the security of the State and therefore in order to prevent him from so acting preventive detention was warranted.
4. The dossier so framed and presented by the SSP Pulwama with respect to the petitioner introduced him to be a practicing advocate in the High Court of Jammu and Kashmir and also in the Sardar Court Srinagar. The petitioner is referred to have joined Jamti-e-Islami upon being influenced by the written literature of Ab. Qadi Awda of Egypt. The petitioner is referred to have contested assembly election in the year 1987 as a candidate of Muslim MuthidMahaz from Pampore Constituency.

The petitioner is alleged to have been a Rukin Jamat and legal advisor of banned Jamati-e-Islami party working as its press and publication chief. The petitioner is alleged to have been a close associate of Syed Ali Shah Geelani and Ameer-e-Jamat Gh. Mohammad Bhat under whose patronage the petitioner is alleged to have become a hard-core element propagating Islam in his own way to achieve ulterior motives including instigating the youth to carry out the activities which are said to be prejudicial to the integrity of the State and by that was able to manage joining of various innocent youth into militancy. The petitioner is said to have been booked under PSA in the year 1990 and 2020 for his prejudicial activities and not only retaining sympathy for militants but also rendering assistance to them. The petitioner is said to have been arrested a number of times but not existing from undesirable activities upon his release and as per the alleged discreet reports pouring in the petitioner is alleged to have been organising/participating in JeI indoor meetings to discuss strategies to be adopted with respect to the affairs of the party. Jamat-e-Islami is said to have been declared an unlawful association by the central government under the unlawful activities prevention act 1967 and despite that the petitioner is alleged to be continuing in the membership of the said organisation. Petitioner is alleged to have been organising anti-national rallies at various places to carry forward the illegal agenda of cessation of J&K from the union of India and its

merger with Pakistan. The petitioner's activities are said to have been preventing the law enforcement agencies to bring normalcy particularly in Pulwama. The petitioner is even alleged to have been striving for restoration of article 370 of the Constitution of India and for lifting of ban on JeI. This is the long and short of the projection of the petitioner to be a case for inviting slapping of preventive detention.

5. It is by proceeding upon the said projection and portraying of the petitioner by the SSP Pulwama that the respondent No.2-District Magistrate Pulwama purportedly formed a subjective satisfaction to hold that petitioner deserved to be put to preventive detention. The respondent No.2-District Magistrate Pulwama came to exhibit his subjective satisfaction of mind through the purported grounds of detention formulated by him from a reading whereof it gets exhibited as if the respondent No.2- District Magistrate Pulwama was unaware of the quashment of three successive preventive detention orders against the petitioner and that passing of the present detention order, fourth in row, was just a matter of doing paper work at the end of the respondent No.2-District Magistrate Pulwama to carry out lip service to claim that the curtailment of the personal liberty of the petitioner is not extra-legal and dishing out preventive detention order as a readymade recipe.
6. Before coming to deal with the legality of the preventive detention of the petitioner as effected for the fourth time and

- getting challenged fourth time again before this very High Court, this court needs to refer to the pleading in the writ petition and the documents in support thereof with respect to the previous three preventive detention instances concerning the petitioner as against the silence of reference to said three previous preventive detention of the petitioners in the very grounds of detention and the reply of the respondent No.2-District Magistrate Pulwama.
7. The petitioner's ordeal with the preventive detention started when the District Magistrate Ganderbal had, vide an order No. 03/DMG/PSA/2019 dated 05/03/2019, come to direct preventive detention of the petitioner in order to prevent him from acting in a manner prejudicial to the security of the state under the aegis of the Jammu and Kashmir Public Safety Act , 1978 and the petitioner came to be taken rather changed from arrest custody already effected under section 107/151 Cr.P.C on 28/02/2019 to the preventive detention custody.
8. The petitioner came to question the said preventive detention custody by filing a writ petition HCP No. 75/2019 which came to be allowed in terms of judgement dated 11/07/2019 and the preventive detention custody so imposed upon the petitioner was quashed which ought to have earned restoration of his personal liberty but not to be so as the petitioner being in the state of detention came to be slapped with second detention order No. 37/DMP/PSA/19 dated 19/07/2019 passed, within six days of quashment of the first detention order (supra), by the respondent

- No.2- District Magistrate Pulwama acting under Jammu and Kashmir Public Safety Act, 1978 and directing the preventive detention of the petitioner in order to prevent him from acting in a manner prejudicial to the security of the state.
9. The petitioner came to question his second time preventive detention through the medium of writ petition WP (Crl) No. 232/2019 which came to be allowed in terms of judgement dated 03/03/2020.
10. After a lapse of just three months of quashment of second preventive detention order, the petitioner again came to be booked for preventive detention by an Order No. 11/DMP/PSA/20 dated 29/06/2020 again passed by the respondent No.2-District Magistrate Pulwama by the repeat of pretext that the petitioner's alleged activities are prejudicial to the security of the state warranting his preventive detention under Jammu & Kashmir Public Safety Act, 1978.
11. This third preventive detention order was again challenged by the petitioner through medium of writ petition WP (Crl) No. 77/20202 filed before this court which too came to be allowed vide a judgment dated 24/02/2021 thereby quashing the detention order holding that the passing of the detention order was based upon stale basis being the grounds of the two detention orders earlier quashed with respect to the petitioner.
12. Against all the three judgments of quashment of the preventive detention of the petitioner, no challenge in letters patent appeal

- was taken by the UT of J&K and/or by the District Magistrate Pulwama meaning thereby the references and reasoning used by the writ court in all its three judgments held its ground.
13. The passing of the impugned detention order, which is fourth in row, against the petitioner by same set of mindset operating through SSP Pulwama and the respondent No.2-District Magistrate Pulwama and mechanically followed by the Govt., has been effected least bothering the SSP Pulwama and the respondent No.2-District Magistrate Pulwama to at least spare a reading, lest an appreciation, to the last judgment dated 24/02/2021 in which this court, in very clear and categorical terms, held the basis of the petitioner's third time preventive detention to be resting upon stale grounds. So, therefore, for the SSP Pulwama and the respondent No.2-District Magistrate Pulwama to propose and pass a fresh detention order against the petitioner, proximate and fresh factual inputs/incidents relatable to the petitioner taking place post 24/02/2021 ought to have been put into dossier and getting self reflected in the grounds of detention but there is nothing of that sort done at the end of the SSP Pulwama and the respondent No.2- District Magistrate Pulwama.
14. Now if three judgments of this Court quashing preventive detention of the petitioner made three times hereto before have not been spared a passing glance, lest an application of mind, by and on the part of the SSP Pulwama, the respondent No.2-District Magistrate Pulwama and last by the respondent No.1-

Govt. of UT of J&K as well, then how can it be claimed by the said three authorities at their respective end that the fourth time preventive detention of the petitioner is an outcome of an open and fair mindset acting upon changed factual scenario. Suffice to say that preventive detention of the petitioner is afflicted surely with malice in law, if not malice in fact, at the end of the entire chain of the preventive detention proposing, making and confirming authorities. The very fact that dossier and the detention order are of same date that is 14/09/2022 is a testament to the fact that case of preventive detention of the petitioner was an outcome of a preconceived mindset and that was to somehow keep chained the petitioner to jail bars even if without any conviction in a criminal case. Thus, the petitioner was being fated to suffer preventive detention by his past, allegedly reckoned by the detention proposing and detention order making authorities, to be a recurring condemnation against the petitioner.

15. The judgement of the constitutional bench of the Hon'ble Supreme Court of India in the case of Rameshwar Shaw Vs District Magistrate Burdwan, 1964 (AIR) SC 334 in terms of its legal import related to exercise of preventive detention jurisdiction would aptly apply to the present case of the petitioner. In this case the Constitutional Bench considered the scope of antecedents of a person forming basis for effecting preventive detention. In para 9 & 10 of its judgment, the Hon'ble

Supreme Court of India has dealt with the aspect and said two para are reproduced herein next for the facility of reference:

“9. It is also true that in deciding the question as to whether it is necessary to detain a person, the authority has to be satisfied that if the said person is not detained, he may act in a prejudicial manner, and this conclusion can be reasonably reached by the authority generally in the light of the evidence about the past prejudicial activities of the said person. When evidence is placed before the authority in respect of such past conduct of the person, the authority has to examine the said evidence and decide whether it is necessary to detain the said person in order to prevent him from acting in a prejudicial manner. That is why this court has held in *Ujagar Singh Vs State of Punjab*, 1952 SCR 756 (AIR 1952 SC 350) that the past conduct or antecedent history of a person can be taken into account in making a detention order, and as a matter of fact, it is largely from prior events showing tendencies or inclinations of a man that an inference could be drawn whether he is likely to even in the future to act in a manner prejudicial to the maintenance of public order.

10. In this connection, it is, however, necessary to bear in mind that the past conduct or antecedent history of the person on which the authority proposes to act, should ordinarily be proximate in point of time and should have a rational connection with the conclusion that the detention of the person is necessary. It would, for instance, be irrational to take into account the conduct of the person which took place ten years before the date of his detention, and says that even though after the said incident took place, nothing is known against the person, indicating his tendency to act in a prejudicial manner, even so on the strength of the said incident which is ten years old, the authority is satisfied that his detention is necessary. In other words, where an authority is acting bona fide and considering the question as to whether a person should be detained, he would naturally expect that evidence on which the said conclusion is ultimately going to rest must be evidence of his past conduct or antecedent history which reasonably and rationally justifies the conclusion that if the said person is

not detained he may indulge in prejudicial activities. We ought to add that it is both inexpedient and undesirable to lay down any inflexible test. The question about the validity of the satisfaction of the authority will have to be considered on the facts of each case. The detention of a person without a trial is a very serious encroachment on his personal freedom, and so, at every stage, all questions in relation to the said detention must be carefully and solely considered.”

16. Now, when this court examines the grounds of detention formulated by the respondent No.2- District Magistrate Pulwama, purportedly supporting the impugned detention of the petitioner, this court finds that read between and behind the lines the dossier and the grounds of detention, the SSP Pulwama and the respondent No.2- District Magistrate Pulwama are literally meaning to debunk the three judgments of this court whereby the preventive detention of the petitioner on all three occasions were quashed not on a technical ground but on the merits of the case holding the detention unjustified. Upon scratching below the surface, there is nothing in the name of reasonableness and rationality to be found in the impugned grounds of detention and in the impugned order of the detention so framed and passed by the respondent no.2-District Magistrate Pulwama against the petitioner.
17. This court can not be diplomatic to avoid observing that if left to the whims and fancies of the SSP Pulwama and the respondent No.2- District Magistrate, Pulwama then the judgment of the High Court of J&K and Ladakh quashing a given preventive

detention of a person is of no interest to them and same very person by repeat of the pretext can be made to suffer cyclic preventive detentions to outnumber judgments quashing the given preventive detention . It seems that the SSP Pulwama and the respondent No.2-District Magistrate Pulwama in continuing with the preventive detention of the petitioner meant to be law unto themselves having extra constitutional authority at their respective disposal in the matter of targeting the petitioner with repeated preventive detention custody unmindful of fact that each time failing to sustain the said preventive detention custody before the court of law.

18. In addition the impugned preventive detention order of the petitioner is inherently bad as the purported basis of its passing is related to the security of state whereas the Jammu & Kashmir Public Safety Act, 1978 nowhere provides “Security of State” to be a basis under section 8 of the said Act as a ground for the Govt., and/or Divisional Commissioner/District Magistrate to inflict a preventive detention upon a person by reference to his alleged reported activities to be prejudicial to the Security of the State. In his counter affidavit reply to the writ petition, the respondent No.2- District Magistrate Pulwama is pleading that all statutory requirements were met and fulfilled in ordering the preventive detention of the petitioner and nothing can be more fallacious that this claim of the respondent No.2-District Magistrate which is against the very text of section 8 of the

Jammu & Kashmir public Safety Act, 1978 nowhere and no more providing security of state to be a ground for preventive detention of the person.

19. This court cannot resist but to hold that the preventive detention of the petitioner is mala fide and illegal, *ab origine* and *ab intra*. The petitioner has been made to suffer loss of his liberty for a cumulative period of more than 1080 days of preventive custody covered under the span of four detention orders in row from 2019 to ending March 2024. Latest preventive detention of the petitioner is compounding the illegality attending the breach and violation of the petitioner's fundamental right to personal liberty with impunity and that entitles him to compensation. Therefore, this court drawing support from the judgment of the Hon'ble Supreme Court of India in the case of **"Rudul Shah vs. State of Bihar"** 1983 AIR SC 1086 and **"N. Sengodan vs. Secretary to Govt. Home (Prohibition and Excise) Department, Chennai and others"**, reckons this to be a fit case for this court to exercise its constitutional jurisdiction to extend constitutional remedy for grant of compensation in favour of the petitioner for illegal infringement of his fundamental right to personal liberty. Although the petitioner has claimed compensation of rupees twenty five lacs but this court holds that a compensation of rupees five lacs would meet the ends of justice and therefore besides holding and declaring the preventive detention of the petitioner illegal, also holds the petitioner entitled to

compensation of rupees five lacs payable by the respondents within a period of three months from the date of this judgment.

20. In the light of the aforesaid, the detention order no. 74/DMP/PSA/22 dated 14/09/2022 passed by the respondent No.2-District Magistrate Pulwama read with consequent Govt. Orders of approval and confirmation of the petitioner's preventive detention, are held to be illegal and unwarranted, and, therefore, the said order along with the petitioner's preventive detention are hereby set aside and quashed. The Superintendent of the Jail concerned, where the petitioner is being detained, is directed to release the petitioner free from his prison.

21. Disposed of.

(RAHUL BHARTI)
JUDGE

Srinagar
03.04-2024
N Ahmad

Whether the order is reportable: Yes

Whether the order is speaking: Yes