

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

...

HCP No. 380/2024

CM No. 5874/2025

Reserved on: 25.09.2025

Pronounced on: 14 .10.2025

Adil Hussain Shah, Aged 30 years
S/o Mohammad Yaqoob Shah
R/o Rawalpora, Shopian
through his father Mohammad Yaqoob Shah, Aged 76 Years
S/o Mohammad Sultan Shah
R/o Rawalpora, Shopian
District, Shopian.

.....Petitioner(s)

Through:

*Mr. Ahmad Javid, Advocate and
Mr. Asif Nabi, Advocate*

Versus

1. Union Territory of Jammu and Kashmir through Principal Secretary to (Home Dept), J&K Government, Civil Secretariat Srinagar/Jammu.
2. Divisional Commissioner, Kashmir, Srinagar
3. Sr. Superintendent of Police, Shopian
4. Superintendent Central Jail, Poonch, Jammu.

.....Respondent(s)

Through:

Mr. Nadiya Abdullah, Assisting Counsel

CORAM:

HON'BLE MS JUSTICE MOKSHA KHAJURIA KAZMI, JUDGE

JUDGMENT

1. Petitioner, Father of Adil Hussain Shah S/o Mohammad Yaqoob Shah Shah R/o Rawalpora Shopian, District Shopian, hereinafter, for short as detainee has challenged and sought quashment of order No. DIVCOM-“K”/164/ 2024 dated 13.09.2024, for short “impugned order”, issued by the Divisional Commissioner, Kashmir- respondent No. 2 herein, whereby the detainee has been placed under preventive detention.

2. The impugned order is assailed *inter alia* on the grounds that the allegations/grounds of detention are vague; on mere assertions of the detaining authority; no prudent man can make an effective representation against these allegations; the involvement of detainee in case FIR No. 69/2024, under Section 8/20,29 NDPS Act mentioned in the grounds of detention have no nexus with the detainee and has been fabricated by the Police in order to justify its illegal action of detaining the detainee; the impugned order is without subjective satisfaction of the detaining authority; the order of detention is silent about the name and person of the officer in Divisional Commissioner, who is presumed to be have been recorded subjective satisfaction; the detaining authority was supposed to furnish copy of the FIR No. 69/2024, copy of the seizure memo, copy of the statements recorded under 161 or 164 Cr. PC, copy of the dossier and other relevant material besides furnishing the report of the FSLs to the detainee; the detainee persisted upon the executing authority to furnish the said material so as to enable the detainee to make an effective representation against his detention order, but the executing authority only furnished copy of the order of detention and copy of the grounds of detention; the detainee had been granted bail by the competent Court; the bail order was contested by the State/Union Territory authorities and the said application was dismissed in terms of the order dated 17.08.2024; the impugned detention order is passed on 13.09.2024 and the detainee was arrested on 28.10.2024, from his home by the Police Station, Shopian and was subsequently shifted to District Jail, Poonch Jammu and as such, there is delay of more than 45 days in execution of detention warrant and the detaining authority has not tendered any reasonable explanation for delaying execution of the detention warrant. The delayed execution has lost the proximate link between the detention order and the object sought to be

achieved by passing the detention order as such, the detention order is illegal; that the father of the detainee filed the representation against the order of the detention before the Advisory Board, but the same was not considered by the detaining authority; that in the grounds of detention the respondent No. 2, has mentioned that the detainee is motivating the youth for consumption of drugs so as to increase the earning, however, he has not mentioned the name of any person, whom the detainee has sold the drugs.

3. Upon notice, the respondents appeared and filed the counter affidavit, resisting the claim of the petitioner by stating therein that no legal, fundamental or statutory right of the detainee has been violated; the detainee has transformed into a notorious illicit drug peddler and became the dealer of narcotic drugs and psychotropic substance in his area. The detainee developed contacts with drug peddler's operative in his area and started selling/dealing in drugs among the youth of the area which have adverse impact on the younger generation. The detainee was continuously exposing the young and gullible minds including school going children into the heinous world of drugs and making them habitual addicts. The detainee was a part and active member of a larger drug mafia who are relentlessly involved in drug trafficking not only in local area of his residence but also involved in such illegal activities at the district level; that the activities of the detainee in indulging in narcotic trade and with a view to prevent him further committing any offence under the provisions of Prevention of Illicit Traffic in Narcotic Drugs and Psychotropic Substance Act, 1988, the detainee was ordered to be detained in accordance with the provisions of Prevention of illicit Traffic in Narcotic Drugs and Psychotropic Substances Act, 1988 under order dated 13.09.2024; that the order of detention was executed by the concerned Police and the contents of grounds of detention were

read over and explained to the detainee in the language which he understands fully. The detainee was also informed that he has a right to file a representation to the Government against his detention order; that the Advisory Board examined the instant case and it is only when they found sufficient ground for the detention of the detainee, the Government in exercise of powers conferred under clause (f) of Section 9 read with Section (11) of Prevention of Illicit Traffic in Narcotic Drugs and Psychotropic Substances Act, 1988, confirmed the detention order of the detainee vide Government order dated 25.11.2024 and detained him for a period of one year in District Jail, Poonch; that the activities of the detainee were highlighted in the grounds of detention which are itself a compelling reason to detain the detainee under prevention of Illicit Traffic in Narcotic Drugs and Psychotropic Substances Act, 1988 and the order of detention is perfectly issued in accordance with the provisions of the Prevention of Illicit Traffic in Narcotic Drugs and Psychotropic Substances Act, 1988.

4. Heard learned counsel for the parties, perused the material on record, including the detention record made available by the learned counsel for the respondents.

5. The impugned order of detention has been assailed on numerous grounds, but learned counsel for the detainee has laid stress on the ground that there is un-explained delay in execution of detention order, which has rendered the detention of the detainee unsustainable and (ii) that the representation submitted by the detainee against his detention has not been considered. Learned counsel for the detainee has relied on Judgments of the Supreme Court in the case of *A. Mohammad Farook v. Jt. Secy to GOI and Others*, (2000) 2 SCC 360 and *Sarabjeet Singh Mokha v. District Magistrate Jabalpur and Others*, (2021) 20 SCC 98 to substantiate his arguments. Learned counsel has

also relied upon a judgment of this Court in the case of ***Imtiyaz Ahmed v. UT of J&K and others***, HCP No. 15/2024 decided on 05.11.2024 to argue that unreasonable and unexplained delay in executing the detention order would vitiate the detention order unless such delay is sufficiently explained.

6. Learned Assisting counsel on the other hand submits that the detainee has transformed into a notorious illicit drug peddler and became the dealer of narcotic drugs and psychotropic substance in his area and has been involved in various criminal offences by blatantly violating the rule of law indulging in bovine smuggling and other criminal activities and has spread a reign of terror amongst the peace-loving people of the area and his anti-social activities are pre-judicial to the maintenance of public order and had he been let free, there would have been every likelihood of his indulging again in criminal activities. She further submits that the procedural safeguards prescribed under the provisions of Public Safety Act and the rights guaranteed to the detainee under the Constitution have strictly been followed in the instant case. The detainee has been furnished all the material, as was required, and was also made aware of his right to make representation to the Government, against his detention. Learned counsel for the respondents has referred two judgments of this Court in the cases of ***Shakeel Mohd. v. UT of J&K and another***, HCP No.55/2024 decided on 21.11.2024 and ***Sher Mohd. v. UT of J&K and others.***, HCP No.136/2024 decided on 05.50.2025.

7. The law is well settled that an unreasonable and unexplained delay in executing the detention order will vitiate the detention order, unless such delay is sufficiently explained by the detaining authority. The Supreme Court in various judgments has laid down that if a detainee satisfies that there has been

an unexplained delay in execution of the detention order, then such an order would be interpreted as breaking the live-proximity link in between the event of detention and passing of the detention order.

8. The Supreme Court, while dealing with the issue of delay in execution of the detention order, in the case of Mohammed Farook (supra), has in paragraph No.9 observed thus:-

“9. There is a catena of judgments on this topic rendered by this Court wherein this Court emphasized that the detaining authority must explain satisfactorily the inordinate delay in executing the detention order otherwise the subjective satisfaction gets vitiated. Since the law is well settled in this behalf we do not propose to refer to other judgments which were brought to our notice.”

9. This Court in Imtiyaz Ahmed (supra) after considering the various decisions of the Supreme Court on the issue of delayed execution of the detention order in paragraph No.22 of the judgment held thus:-

“22. From the above decisions of the Supreme Court, it becomes crystal clear that when there is no proximity or live link between the passing of the detention order and date of arrest of the detainee, it would render the detention order ineffective unless such delay is satisfactory explained.”

10. The Supreme Court in the case of **Nenavath Bujji vs The State Of Telangana**, (2024) 3 SCR 1181, after surveying case law on the subject and considering its earlier decisions, concluded thus:

“ i) The Detaining Authority should take into consideration only relevant and vital material to arrive at the requisite subjective satisfaction,

(ii) It is an unwritten law, constitutional and administrative, that wherever a decision-making function is entrusted to the subjective satisfaction of the statutory functionary, there is an implicit duty to apply his mind to the pertinent and proximate matters and eschew those which are irrelevant & remote,

(iii) There can be no dispute about the settled proposition that the detention order requires subjective satisfaction of the detaining authority which, ordinarily, cannot be questioned by the court for insufficiency of material. Nonetheless, if the detaining authority does not consider relevant circumstances or considers wholly unnecessary, immaterial and irrelevant circumstances, then such subjective satisfaction would be vitiated,

(iv) In quashing the order of detention, the Court does not sit in judgment over the correctness of the subjective satisfaction. The anxiety of the Court

should be to ascertain as to whether the decision-making process for reaching the subjective satisfaction is based on objective facts or influenced by any caprice, malice or irrelevant considerations or non-application of mind,

(v) While making a detention order, the authority should arrive at a proper satisfaction which should be reflected clearly, and in categorical terms, in the order of detention,

(vi) The satisfaction cannot be inferred by mere statement in the order that “it was necessary to prevent the detenu from acting in a manner prejudicial to the maintenance of public order”. Rather the detaining authority will have to justify the detention order from the material that existed before him and the process of considering the said material should be reflected in the order of detention while expressing its satisfaction,

(vii) Inability on the part of the state’s police machinery to tackle the law and order situation should not be an excuse to invoke the jurisdiction of preventive detention,

(viii) Justification for such an order should exist in the ground(s) furnished to the detenu to reinforce the order of detention. It cannot be explained by reason(s) / grounds(s) not furnished to the detenu. The decision of the authority must be the natural culmination of the application of mind to the relevant and material facts available on the record, and

(ix) To arrive at a proper satisfaction warranting an order of preventive detention, the detaining authority must, first examine the material adduced against the prospective detenu to satisfy itself whether his conduct or antecedent(s) reflect that he has been acting in a manner prejudicial to the maintenance of public order and, second, if the aforesaid satisfaction is arrived at, it must further consider whether it is likely that the said person would act in a manner prejudicial to the public order in near future unless he is prevented from doing so by passing an order of detention . For passing a detention order based on subjective satisfaction, the answer of the aforesaid aspects and points must be against the prospective detenu. The absence of application of mind to the pertinent and proximate material and vital matters would show lack of statutory satisfaction on the part of the detaining authority.”

11. Coming to the facts of the instant case, the record indicates that the detention order, which was passed on 13.09.2024, came to be executed 28.10.2024 i.e. after forty five days. No explanation muchless the sufficient reason has been offered by the respondents to justify the delay in execution of the detention order. If the real intent of the impugned order of detention was to prevent the detenue from acting any manner prejudicial to the public peace and order the respondents should not have waited for forty-five days to execute the detention order. It appears that no serious effort has been made by the respondents to execute the detention order, which casts doubt on the subjective satisfaction drawn by the detaining authority. Once there was delay in execution of the warrant of detention and no explanation is coming forth

from the respondents for having delayed the execution of the detention order for forty-five days, the order of detention would be construed as breaking the live proximity link between the event of detention and order of detention, which casts doubts on the genuineness of the subjective satisfaction of the detaining authority and vitiates the detention order. In view of the law laid down by the Supreme Court in *Nenavath Bujji* (supra), satisfaction cannot be inferred by mere statement in the order that “it was necessary to prevent the detainee from committing any of the acts within the meaning of Illicit Traffic in Narcotic Drugs and Psychotropic Substances Act, 1988”.

12. The judgments referred to by the learned counsel for the respondents are of no help to the respondents as there is no live-proximity link between the arrest of the detainee and the order of detention, which vitiates the detention order. As such, the detention of the detainee in terms of the impugned detention order becomes illegal.

13. Viewed thus, the petition is allowed and detention order No. DIVCOM-“K”/164/2024 dated 13.09.2024, issued by the Divisional Commissioner, Kashmir- respondent No. 2, herein, whereby one *Adil Hussain Shah S/o Mohammad Yaqoob Shah R/o Rawalpora Shopian, District Shopian, was detained*, is quashed and the respondents are directed to release the detainee forthwith, if not required in any other case.

14. Disposed of.

15. Record produced by learned counsel for the respondents is returned to him against receipt.

(MOKSHA KHAJURIA KAZMI)
JUDGE

Srinagar

14.10.2025

“Mohammad Yasin Dar”

Whether the Judgment is reportable: Yes/No.

Whether the Judgment is speaking: Yes/No