

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

...  
WP (Crl) no.228/2019

*Reserved on: 13.03.2020*

*Pronounced on: .04.2020*

**Azad Ahmad Sheikh**

..... Petitioner(s)

Through: Mr M. A. Makroo, Advocate

**Versus**

**State of J&K and another**

.....Respondent(s)

Through: Mr S. H. Naqashbandi, AAG

**CORAM: HON'BLE MR JUSTICE TASHI RABSTAN, JUDGE**

**JUDGEMENT**

1. District Magistrate, Kulgam- respondent no.2 herein, has, by Order no.30/ DMK/PSA/2019 dated 04.07.2019, placed *Azad Ahmad Sheikh* son of *Ghulam Hassan Sheikh* resident of *Arreh District Kulgam*(for short "*detenu*"), under preventive detention, and directed his detainment in Central Jail, Jammu, Kotbhalwal. It is this order of which petitioner is aggrieved and seeks quashment thereof on the grounds set out in writ petition on hand.
2. Counter Affidavit has been filed by respondents, vehemently resisting the petition. Detention record has also been produced by counsel for the respondents to substantiate the statements made in counter affidavit.
3. I have learned counsel for parties and considered the matter.
4. Though a number of grounds have been taken by petitioner in writ petition, yet one ground, which has been vehemently pressed by learned counsel for petitioner, is that detaining authority has made use of case FIR no.177/2018 P/S Kulgam, without mentioning the fact that detenu has already been released on bail in the aforesaid FIR, by court of competent jurisdiction, which reflects non-application of mind on the part of detaining authority.
5. It may not be out of place to mention here that whether a person, who is

in jail, can be detained under preventive detention law has been a subject matter of consideration before the Supreme Court very often. In *Dharmendra Suganchand Chelawat & anr v. Union of India*, AIR 1990 SC 1196, the Supreme Court while considering the same issue has reconsidered its earlier judgments on the point in *Rameshwar Shaw v. District Magistrate, Burdwan*, AIR 1964 SC 334; *Masood Alam v. Union of India*, AIR 1973 SC 897; *Dulal Roy v. District Magistrate, Burdwan*, AIR 1975 SC 1508; *Alijan Mian v. District Magistrate, Dhanbad*, AIR 1983 SC 1130; *Ramesh Yadav v. District Magistrate, Etah*, AIR 1986 SC 315; *Suraj Pal Sahu v. State of Maharashtra*, AIR 1986 SC 2177; *Binod Singh v. District Magistrate, Dhanbad*, AIR 1986 SC 2090; *Smt Shashi Aggarwal v. State of U.P.*, AIR 1988 SC 596, and came to the conclusion that an order for detention can be validly passed against a person in custody and for that purpose, it is necessary that the grounds of detention must show that (i) the detaining authority was aware of the fact that the detenu is already in detention; and (ii) there were compelling reasons justifying such detention despite the fact that the detenu is already in detention. The expression "compelling reasons" in the context of making an order for detention of a person already in custody implies that there must be cogent material before the detaining authority on the basis of which it may be satisfied that (a) the detenu is likely to be released from the custody in the near future, and (b) taking into account the nature of the antecedent activities of the detenu, it is likely that after his release from custody he would indulge in prejudicial activities and it is necessary to detain him in order to prevent him from engaging in such activities.

6. When the above principles are applied to the facts of the instant case, there is no gainsaying that impugned order cannot be sustained. Grounds of detention do not mention that detaining authority is aware of the fact that detenu had already been released on bail by court of competent jurisdiction at the time of making detention order. In the present case detaining authority has not drawn any subjective satisfaction vis-à-vis detention of detenu. There is no mention of the fact that detenu has applied for bail in criminal case nor is there any satisfaction that detenu

has been enlarged on bail before issuance of impugned order of detention. This clearly indicates and shows total absence of application of mind on the part of detaining authority while passing impugned order of detention. In that view of matter, impugned detention order is vitiated.

7. For the foregoing reasons, writ petition is disposed of and detention Order no. 30/ DMK/PSA/2019 dated 04.07.2019, passed by District Magistrate, Kulgam, is quashed. Respondents, including concerned Jail Superintendent, are directed to release the detenu forthwith, provided he is not required in any other case.
8. Registry to return detention record to counsel for respondents.

**(TashiRabstan)**  
**Judge**

**Srinagar**

.04.2020

*Ajaz Ahmad, PS*

Whether the order is reportable: No.

