

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

HCP 286/2024

Reserved on: 20.08.2025

Pronounced on: 03 :09 :2025

IMTIYAZ AHMAD GANIE, AGED 34 ...Petitioner(s)
YEARS

S/O AB MAJEED GANIE

R/O CHEE ANANTNAG

DISTRICT ANANTNAG

THROUGH HIS FATHER

AB MAJEED GANIE, AGED 62 YEARS

F/O IMTIYAZ AHMAD GANIE

R/O CHEE ANANTNAG

DISTRICT ANANTNAG

Through: Mr. Sheikh Younis, Advocate

Vs.

1. UNION TERRITORY OF JAMMU AND
KASHMIR, THROUGH PRINCIPAL
SECRETARY, HOME DEPARTMENT,
J&K GOVT., CIVIL
SECTT.SRINAGAR/JAMMU

...Respondent(s)

2. DISTRICT MAGISTRATE, ANANTNAG

3. SR. SUPERINTENDENT OF POLICE,
ANANTNAG

Through: Mr. Ilyas Nazir Laway, GA

CORAM:

HON'BLE MS. JUSTICE MOKSHA KHAJURIA KAZMI, JUDGE

JUDGMENT

1. The petitioner is assailing *Order No.13/DMA/PSA/DET/2024* dated 20.04.2024 (hereinafter referred to as "*the impugned order*") passed by the District Magistrate, Anantnag, whereby Imtiyaz Ahmad Ganie S/o Ab Majeed Ganie resident of Chee Anantnag (hereinafter referred to as "*the detenue*"), has been detained under the provisions of the J&K Public Safety Act, 1978 (for short, "*the Act*") on the grounds of

acting in a manner prejudicial to the maintenance of security of State/ U.T. of J&K.

2. Briefly stated, the case of the petitioner is that the detenue is a peace-loving citizen who has never been involved in any subversive activity prejudicial to the security of the Union Territory of Jammu and Kashmir. The detenue was arrested without any justification or cause on 15.04.2024 by Police Station Anantnag and was subsequently shifted to Central Jail, Kot Bhalwal, Jammu on 20.04.2024, where he has been kept under preventive detention in terms of the impugned order.
3. Feeling aggrieved, the petitioner has challenged the impugned order, *inter alia*, on the following grounds: that the detention order suffers from non-application of mind; that the material relied upon for detention was not furnished to the detenue; that the procedural safeguards mandated under law have not been adhered to by the detaining authority; and that the allegations forming the basis of the grounds of detention bear no nexus with the detenue.
4. Upon notice, the respondents entered appearance and filed their counter affidavit opposing the petition. It is, *inter alia*, contended therein that the averments made by the petitioner are factually untenable and devoid of merit; that the fact of the matter is that FIR No. 49/2024 under Sections 18, 20 of the UAP Act, Sections 7/25 of the Arms Act, and Sections 3/4 of the Explosive Substances Act, was registered at Police Station Anantnag in connection with the arrest of a hybrid terrorist of the JeM outfit, namely Waseem Ahmad Ganie S/o Basher Ahmad Ganie R/o Lukhbhawan, Larkipora, who was

apprehended on 24.03.2024 along with arms, ammunition, and explosive material and during investigation, it surfaced that the said hybrid terrorist was in contact with other terrorists and OGWs with the objective of spreading terror activities in District Anantnag, particularly in view of the forthcoming General Elections. In the course of the investigation, among other OGWs and suspected persons, the detainee was also apprehended by Anantnag Police; that the detainee has been found involved in anti-national activities and is of a criminal disposition; that the detaining authority, upon due consideration of the material placed on record, was satisfied about the detainee's involvement in such anti-national activities, which have serious repercussions on the maintenance of security of the Union of India as well as the Union Territory of Jammu and Kashmir; that all statutory safeguards provided under the Act, as also the constitutional rights guaranteed to the detainee, have been scrupulously followed; that the detention order, notice of detention, grounds of detention, dossier, and all other relevant documents were duly supplied to the detainee; and that he was also informed of his right to make a representation against the detention order.

5. I have heard learned counsel for the parties, considered the submissions made and perused the impugned order along-with connected documents.
6. It appears that the detainee has been arrested on 15.04.2024 by Police Station Anantnag in connection with case FIR No. 49/2024 punishable in terms of sections 18, 20 of the UAP Act, sections 7/25 of the Arms Act and sections 3/4 of the Explosive Substances Act. It

further appears, upon perusal of the record (grounds of detention), that the respondents had intended to detain another individual, but on account of mistaken identity, the detainee has been detained in his place. The relevant paragraph No. 2 of the grounds of detention is extracted hereinbelow:

“2. Whereas, the concerned reports that in case FIR No. 49/2024 U/S 18, 20, UAP Act 7/25 Arms Act Explosive Substances Act of Police Station Anantnag which pertains to the arrest of hybrid terrorist of JeM outfit namely Waseem Ahmad Ganie S/O Bashir Ahmad Ganie R/O Lukhbawan Larkipora along with Arms/Ammunition and explosive material on 24-03-2024 and during investigation it has been transpired that the hybrid terrorist was in touch with the terrorists and other OGWs to spread terror activities in the District, particularly during forth coming General Elections. Among other OGWs and suspected persons Imtiyaz Ahmad Wani S/O Late Ama Wani R/O Cheer Pora Utersoo Shangus Anantnag was also apprehended by Police Anantnag, in the investigation of instant case, who was questioned thoroughly and tactfully. Although the evidence collected against the individual is not sufficient to the extent to book him in the case under substantive laws but his involvement in the case cannot be ruled out at the first sight. However, the individual was bound down and released on surety bond and further investigation to burst the network of OGWs is going on.”

7. The aforesaid extract from the detention record, forming the basis of the impugned order, suggests that the detaining authority has failed to apply its mind to the material placed before it while passing the impugned order, and such lapse goes to the very root of the impugned order.
8. Since the non-application of mind on the part of the detaining authority in issuing the impugned order is writ large on the face of the record, therefore, the action taken pursuant to such non-application of mind by the detaining authority cannot be sustained in the eyes of law.
9. There is absolutely no justification available on record or in the counter affidavit filed by the respondents as regards the factum of mistaken identity as indicated by the learned counsel for the petitioner during the course of argument. The prognosis, therefore, is that the

submission advanced by learned counsel for the petitioner in this regard is correct.

10. The vitiating fact appearing in the grounds of detention is worth serious notice as admittedly the detinue is not involved in a criminal case on the basis whereof he has been detained, as it is someone else who has a similar name, who is stated to be involved in the case which founds basis for preventive detention of the detinue. The detaining authority is shamelessly trying support for the issuance of the impugned order from material which does not speak of the involvement of the detinue in a case which has formed basis for issuance of the impugned order, as such the foundation on the basis whereof the detinue has been implicated and detained under preventive detention has collapsed by default.

11. Since the petitioner has succeeded in proving his case on the ground of non-application of mind alone, therefore, the Court does not required to go into the other grounds of challenge.

12. The Apex Court in case titled “**Ameena Begum vs. State of Telangana**” reported as (2023) 9 SCC 587 has held that the detention order cannot sustain if the same appears to be an outcome of non-application of mind. The detaining authority in the instant case has altogether lost sight of an important fact that the detinue has been granted bail in respect of the allegations for which he has been detained under preventive detention inasmuch as the counter affidavit does not contain any specific averment in this behalf. All that is reflected therein is that the respondents have the privilege of power and authority to pass detention order even after the bail has been

granted in favour of the accused. This being a general assertion proves nothing, but non-application of mind on part of the detaining authority. It would be profitable to reproduce paragraph No.28 of the said judgement herein:

“(i) the order is based on the requisite satisfaction, albeit subjective, of the detaining authority, for, the absence of such satisfaction as to the existence of a matter of fact or law, upon which validity of the exercise of the power is predicated, would be the sine qua non for the exercise of the power not being satisfied;

(ii) in reaching such requisite satisfaction, the detaining authority has applied its mind to all relevant circumstances and the same is not based on material extraneous to the scope and purpose of the statute;

(iii) power has been exercised for achieving the purpose for which it has been conferred, or exercised for an improper purpose, not authorised by the statute, and is therefore ultra vires;

(iv) the detaining authority has acted independently or under the dictation of another body;

(v) the detaining authority, by reason of self-created rules of policy or in any other manner not authorized by the governing statute, has disabled itself from applying its mind to the facts of each individual case;

(vi) the satisfaction of the detaining authority rests on materials which are of rationally probative value, and the detaining authority has given due regard to the matters as per the statutory mandate;

(vii) the satisfaction has been arrived at bearing in mind existence of a live and proximate link between the past conduct of a person and the imperative need to detain him or is based on material which is stale;

(viii) the ground(s) for reaching the requisite satisfaction is/are such which an individual, with some degree of rationality and prudence, would consider as connected with the fact and relevant to the subject-matter of the inquiry in respect whereof the satisfaction is to be reached;

(ix) the grounds on which the order of preventive detention rests are not vague but are precise, pertinent and relevant which, with sufficient clarity, inform the detenu the satisfaction for the detention, giving him the opportunity to make a suitable representation; and

(x) the timelines, as provided under the law, have been strictly adhered to.”

13.The Apex Court in case titled “**Jai Singh and Ors. Vs State of Jammu and Kashmir**” reported as **AIR1985 SC 764** has observed that if the detention order is verbatim copy of the dossier, it speaks about non-application of mind by detaining authority. The liberty of a subject is a serious matter and it is not to be trifled in this casual, indifferent and routine manner.

14.The court is convinced that the petitioner has been able to prove that the detaining authority has not applied its mind while issuing the impugned order and since the petitioner has succeeded in proving his.

15.Viewed thus, the petition is allowed and impugned *Order No.13/DMA/PSA/DET/2024* dated 20.04.2024 passed by the District Magistrate, Anantnag, whereby Imtiyaz Ahmad Ganie S/o Ab Majeed Ganie resident of Chee Anantnag has been detained, is quashed and the respondents are directed to release the detenue forthwith.

(MOKSHA KHAJURIA KAZMI)
JUDGE

SRINAGAR:
03-09-2025
Mubashir

1. Whether the judgment is speaking: Yes/No
2. Whether the judgment is reportable: Yes/No