

HIGH COURT OF JAMMU AND KASHMIR
AT SRINAGAR

HCP No.243/2017

Date of Order: 31.10.2017

Parvaiz Ahmad Kaloo

Vs.

State of J&K & ors.

Coram:

Hon'ble Mr Justice Mohammad Yaqoob Mir, Judge.

Appearance:

For the Petitioner(s): Mr. Aijaz Bedar, Adv.

For the Respondent(s): Mr. Asif Maqbool, GA.

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| i) | Whether approved for reporting in Law journals etc.: | Yes/No |
| ii) | Whether approved for publication in press: | Yes/No |

1) Impugned is the order No. 51/DMB/PSA/2017 dated 22.06.2017, in pursuance whereof, Parvaiz Ahmed Kaloo (hereinafter referred to as the detainee), has been taken into preventive custody so as to deter him from acting in any manner prejudicial to the maintenance of public order.

2) Number of grounds have been projected, star ground is that the grounds of detention which formed base for earlier order of detention dated 18.01.2017, could not be made base for passing impugned order of detention when earlier order of detention has been quashed vide order dated 07.06.2017 passed in HCP No. 30/2017.

3) According to learned counsel for the petitioner, from the date i.e. 07.06.2017 when earlier detention order dated 18.01.2017 was quashed, till 22nd

June, 2017, no fresh material was available with the respondents, therefore, in an arbitrary manner order of detention impugned has been passed.

4) It is settled that when an order of detention is quashed, then the same material which formed base for the quashed detention order can't be made base for subsequent order of detention. I hasten to add that can be made mention of provided some new activities are attributable to the detainee so as to indicate as to what has been his past activities but for passing fresh order of detention, there must be fresh material.

5) Preventive custody is not by way of punishment. This power has to be exercised so as to prevent a person, by taking him into preventive custody, from acting in any manner prejudicial, in the instant case to the maintenance of public order.

6) Period of detention in such type of cases initially has to be only for three months extendable for a period of one year. That period has already expired 22.09.2017. Whether it has been extended or not, nothing in that direction has been placed on record.

7) Be that as it may, viewed from any angle, order of detention impugned is not sustainable, as such, quashed. Suffice it to say that further custody of the detainee shall be governed by the orders as shall be passed by the court of competent jurisdiction in connection with the cases registered against him.

8) Disposed of as above.

(Mohammad Yaqoob Mir)
Judge

Srinagar
31.10.2017
"Bhat Altaf, PS"