

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

WP(Crl) No. 543/2022

Showkat Ahmad Beigh (age 30)

S/o Abdul Majeed Beigh.

R/o Budergund Ganderbal.

District Ganderbal.

Through his father namely Abdul Majeed Beigh.

...Petitioner(s)

Through: Mr. Lone Altaf, Advocate.

**Vs.**

1) Union Territory of J&K

through Principal Secretary to Home Department, Civil  
Secretariat, Srinagar/Jammu.

2) District Magistrate, Ganderbal.

...Respondent(s)

Through: Mr. Jehangir Ahmad Dar, GA.

**CORAM:**

**HON'BLE MR JUSTICE JAVED IQBAL WANI, JUDGE**

**ORDER**

31.05.2024

**(ORAL)**

1. The petitioner in the instant petition seeks quashment of detention order No. 16-DMG-PSA-2022 dated 25.06.2022 (hereinafter for short the impugned order) passed by respondent 2 (hereinafter for short the detaining authority) under and in terms of the J&K Public Safety Act, 1978 (for short the Act of 1978) on the grounds that the detainee came to be implicated falsely in FIR No.59/2022 for commission of offences under Sections 147, 148, and 207 RPC registered with Police Station Ganderbal on 08.06.2022 and thereafter granted bail by the Court of Judicial Magistrate 1<sup>st</sup> Class on 18.06.2022 i.e. before passing of the impugned order which fact was not taken into consideration by the detaining authority and had instead shown complete non-awareness about the said fact and that the grounds of detention are verbatim of the dossier drawn and prepared by the sponsoring agency suggesting that the detaining authority has failed to draw its subjective satisfaction in the matter and pass detention of the detainee independently.

2. **Reply** to the petition has been filed by respondents. wherein the petition is being opposed *inter alia* on the grounds that the preventive detention of the detenue has been resorted to on account of his activities after complying with and fulfilling all necessary, statutory and Constitutional requirements.

**Heard counsel for the parties and perused the record.**

3. Perusal of the record indisputably demonstrate that the detenue has been bailed out in the FIR no. 59/2022 on 18.06.2022 before passing of the impugned order of detention by the competent court about which fact the sponsoring as well as the detaining authority seemingly were oblivious suggesting thus, patent non-application of mind on the part of the detaining authority rendering the impugned order illegal.

A deeper and closer examination of the record also tends to show that the grounds of detention are in essence a replica of dossier drawn and prepared by the sponsoring agency suggesting non-application of mind on the part of the detaining authority on this count as well. In this regard the judgment of the Apex Court passed in case titled as **“Jai Singh and Ors Vs. State of J&K”** reported in **AIR 1985 SC 764**, and **“Mohd Maqbool Itoo Vs. State and Ors”** reported in **2010 (3) JKJ 700**, the Apex Court has ruled out that unawareness of the detaining authority about the grant of bail to the detenue in the FIR.

4. Besides record further reveals that the detenue has been provided below mentioned material referred to and relied upon by the detaining authority being 01 leaf of detention order, 01 leaf of notice of detention, 02 leaves of ground of detention, 04 leaves of dossier and 02 leaves of copies of FIR, statement of witnesses and other relevant documents. None of the statement of witnesses claimed to have been furnished to the detenue pertaining to FIR in question or the other relevant documents referred in the receipt obtained from the detenu are available in the said record. Non-furnishing of the entire relevant material referred to and relied upon by the detaining authority has been held to be gross breach of Constitutional guarantee provided

under Article 22(5) of the Constitution, rendering the detention order bad in law as the non-furnishing of the entire material relied upon by the detaining authority deprives the detinue of making an effective representation against his detention.

5. Viewed thus, for the aforesaid reasons, the petition is allowed as a consequence whereof the impugned order No. 16-DMG-PSA-2022 dated 25.06.2022 is quashed and the respondents including the concerned jail authority consequently are directed to release the detinue forthwith from the preventive custody provided the detinue is not required in any other case.
6. Record produced by counsel for the respondents is returned to him in the open Court.

**(JAVED IQBAL WANI)**  
**JUDGE**

**SRINAGAR**

31.05.2024

*Ishaq*