

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

HCP No. 338/2024

Reserved On: 8th of April, 2025.
Pronounced On: 21st of April, 2025.

Mohammad Afreen Zargar.

... Petitioner(s)

Through: -

Mr Syed Sajad Geelani, Advocate.

V/s

Union Territory of J&K and Ors.

... Respondent(s)

Through: -

Mr Hakeem Aman Ali, Dy. AG.

CORAM:

Hon'ble Mr Justice Rahul Bharti, Judge.

(JUDGMENT)

01. Heard learned counsel for the parties.
02. Perused the pleadings and the record therewith.
03. Also perused the detention record related to the petitioner produced by Mr Hakeem Aman Ali, learned Deputy Advocate General.
04. The respondent No.2-District Magistrate, Baramulla came to be approached by the Senior Superintendent of Police (SSP), Baramulla vide a letter No. Lgl/PSA/2024/2071-74 dated

10th of September, 2024 bearing the dossier with respect to the petitioner and thereby soliciting the preventive detention of the petitioner under the J&K Public Safety Act, 1978 by highlighting that the petitioner's activities are prejudicial to the maintenance of Public Order in the Union Territory of Jammu & Kashmir.

05. On the basis of this dossier so served, the respondent No.2-District Magistrate, Baramulla came to draw out purported grounds of detention wherein it has come to be recited that the petitioner figures adversely in the police record due to his involvement in unlawful activities harboring anti-national sentiments bearing malicious and nefarious intentions and adamant to disrupt public peace and vitiate peaceful atmosphere during the General Elections to Lok Sabha, 2024.

06. The petitioner was alleged to have printed and posted posters of the banned terrorist organization TRF along with his associate-Hilal Ahmad Dar through which the local population was threatened and warned not to participate in the election process.

07. The petitioner's criminal antecedents by reference to FIR No. 39/2024 registered by the Police Station Kreeri under

section 13 of the ULA (P) Act read with section 506 and 120-B IPC was referred.

08. The arrest of the petitioner in reference to the said FIR and his consequent bail was also referred in a passing manner in the grounds of detention.

09. It is by the said alleged antecedents of the petitioner that the respondent No.2-District Magistrate, Baramulla perceived the petitioner to possess a subversive mindset and, therefore, his liberty being prejudicial to the maintenance of Public Order warranting his preventive detention and that led to the passing of detention order No. 37/DMB/PSA/2024 dated 13th of September, 2024 directing preventive detention of the petitioner in order to stop him from indulging in activities prejudicial to the maintenance of Public Order under the J&K Public Safety Act, 1978.

10. Upon his detention, the petitioner came to be directed to be lodged in Central Jail, Srinagar.

11. The Petitioner came to be detained on 14th of September, 2024.

12. The petitioner came forward with the institution of the present writ petition on 17th of October, 2024 throwing challenge to his preventive detention on the grounds as mentioned in paragraph No. 15 (A) to (L).

13. In the grounds of challenge, the petitioner impugns the detention on the ground that the only criminal antecedent related to him is his implication in criminal case bearing FIR No. 39/2024 in which he came to earn bail on 10th of August, 2024 and complied with all the terms and conditions of the bail and this aspect was kept undisclosed by the Senior Superintendent of Police (SSP), Baramulla from being shared in full with the respondent No.2-District Magistrate, Baramulla.

14. In the grounds of challenge, the petitioner refers to the fact that by a detailed order dated 10th of August, 2024, the Court of the Additional Sessions Judge [Designated Special Court for Offence Under ULA (P) Act], Baramulla had granted bail to the petitioner not as a matter of charity but on the basis of the merits of the case and that rendered the order dated 10th of August, 2024 by the Additional Sessions Judge, Baramulla to be shared compulsively by the Senior Superintendent of Police (SSP),

Baramulla with respondent No.2-District Magistrate, Baramulla when the dossier was put forth for seeking preventive detention of the petitioner.

15. The petitioner has assailed his detention by terming the order of detention without any basis, much less factual, as no material linking the petitioner with the alleged activities came to be mentioned in the grounds of detention by the respondent No.2-District Magistrate, Baramulla thereby rendering the grounds of detention as vague, stale and without any incident reference.

16. The grounds of detention have been referred to be *replica* of the dossier. The petitioner has very emphatically denied his association with the said Hilal Ahmad Dar in any manner and for any purpose whatsoever.

17. The respondents, in their counter affidavit filed on 30th of December, 2024, are dismissing the challenge of the petitioner to his preventive detention by repeat of the tone and tenor of the dossier as well as the grounds of detention.

18. The petitioner is said to have been detained on 14th of September, 2024 and confined to the Central Jail, Srinagar.

19. Upon detention of the petitioner, the approval of the detention order No. 37/DMB/PSA/2024 dated 13th of September, 2024 of the respondent No.2-District Magistrate, Baramulla came to take place by issuance of Government Order No. Home/PB-V/1818 of 2024 dated 19th of September, 2024 and the case for determination of period of detention of the petitioner made subject to the opinion of the Advisory Board which came to be tendered on file No. Home/PB-V/486/2024 dated 14th of October, 2024 holding the preventive detention of the petitioner for a sufficient cause which paved way for issuance of Government Order No. Home/PB-V/2047 of 2024 dated 22nd of October, 2024 thereby directing the detention of the petitioner for a period of three months w.e.f. 14th of September, 2024 till 13th of December, 2024 at the first instance followed by issuance of Government Order No. Home/PB-V/2322 of 2024 dated 10th of December, 2024 extending the period of detention of the petitioner for next three months from 14th of December, 2024 to 13th of March, 2025.

20. Upon expiry of the first extension of the period of detention, the petitioner's detention came to be further extended upto 13th of June, 2025 vide Government Order No. Home/PB-

V/423 of 2025 dated 11th of March, 2025 and this period of detention is in currency when the present petition has been heard for adjudication.

21. When this Court examines the detention record produced by Mr Hakeem Aman Ali, learned Deputy Advocate General there is found nothing accompanying the dossier of Senior Superintendent of Police (SSP), Baramulla in terms whereof the projection of the petitioner in the manner as set out in the dossier came to be projected.

22. The only material found available on the file related to the petitioner's preventive detention is FIR No. 39/2024 and the police challan pursuant thereto.

23. Instead of bail order passed by the Additional Sessions Judge, Baramulla, a copy of the docket was found sufficient to apprise the respondent No.2-District Magistrate, Baramulla about the fact of bailing out of the petitioner in the criminal case based upon FIR No. 39/2024.

24. This Court has repeatedly held and maintained the position of law that furnishing of bail orders related to a person whose preventive detention is being sought becomes essential and

indispensable on the part of the sponsoring authority i.e., the Law and Enforcement agency of the District to be procured and placed along with the dossier before the detention order making authority so as to apprise it about the facts and circumstances which led to the bail of the prospective detenu in the criminal case being referred in the dossier to project a prospective detenu to be falling within the scope of mischief of Section 8 of the Jammu & Kashmir Public Safety Act, 1978. Despite *ad nauseum* reiteration of position of law in this respect through the judgments of this Court, the message of law is being lost to the sponsoring authority as well as to the detention order making authority resulting in repeat of preventive detention taking place on insufficient material and getting quashed through the indulgence of this Court. The present case is no different than what the pool of said cases has been suffering quashment from this Court.

25. The preventive detention of the petitioner in the present case is, thus, held to be vitiated with suppression and withholding of documents related to the petitioner and, therefore, the preventive detention of the petitioner being made a device to overreach the criminal court which came to grant bail in favour of

the petitioner and, thus, imposing a punitive imprisonment upon the petitioner through preventive detention mode.

26. For the aforesaid reasons, a case is made out for quashment of the preventive detention of the petitioner. Accordingly, preventive detention order bearing No. 37/DMB/PSA/2024 dated 13th of September, 2024 passed by respondent No.2-District Magistrate, Baramulla read with consequent approval/ confirmation Government Order No. Home/PB-V/2047 of 2024 dated 22nd of October, 2024 as also extension orders No. Government Order No. Home/PB-V/2322 of 2024 dated 10th of December, 2024 and Government Order No. Home/PB-V/423 of 2025 dated 11th of March, 2025 are hereby quashed. The petitioner is directed to be restored to his personal liberty by release from the Jail by its concerned Superintendent.

27. **Disposed of.**

28. Detention record be returned.

(Rahul Bharti)
Judge

SRINAGAR

April 21st, 2025

"TAHIR"

i. Whether the Judgment is approved for reporting? Yes/ No.