

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

HCP No. 123/2023

Reserved On: 21st of April, 2025.
Pronounced On: 24th of April, 2025.

Shakir Nabi Gojri @ Shakir.

... Petitioner(s)

Through: -

Mr S. T. Hussain Senior Advocate with
Ms Nida Nazir, Advocate.

V/s

Government 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 petitioner-Shakir Nabi Gojri @ Shakir, aged 19 years, acting through his sister-Mst. Saima Bano, has come to

petition this Court seeking a writ of *habeas corpus* for securing his lost personal liberty because of ongoing operation of preventive detention order No. 32/DMB/PSA/2023 dated 8th of May, 2023 passed by the respondent No.2-District Magistrate, Baramulla in exercise of power under section 8 (1) (a) (i) of the Jammu & Kashmir Public Safety Act, 1978 subjecting the petitioner to preventive detention custody on account of his alleged activities being reckoned prejudicial to the security of the State.

05. The petitioner is serving two years' detention period which though is fast approaching to its end on coming 9th of May, 2025 but is still retaining hope in the judicial system of the Country to vindicate his honour and safeguard his fundamental right by adjudicating his writ petition on merits to restore him his most cherished fundamental right of personal liberty rather than by default mode of disposal of his writ petition on account of expiry of two years of maximum detention period.

06. The petitioner is a resident of Syed Kareem village in District Baramulla and has studied upto 10th class from Government Boys Higher Secondary School, Baramulla and

leaving schooling so as to start earning for his self and parents by occupation as a street vendor at bus stand Baramulla.

07. The Senior Superintendent of Police (SSP), Baramulla, vide his letter No. Lgl/PSA/2023/1061-64 dated 3rd of May, 2023 submitted a dossier to the respondent No.2-District Magistrate, Baramulla with respect to the petitioner thereby portraying and projecting the petitioner to be a person with activities being prejudicial to the security of the State in order to check which preventive detention of the petitioner warranted under the Jammu & Kashmir Public Safety Act, 1978.

08. Acting upon the said dossier, the respondent No.2-District Magistrate, Baramulla formulated grounds of detention to generate purported subjective satisfaction so as to hold that a case was made out before him to direct the preventive detention of the petitioner in order to prevent him from acting in a manner prejudicial to the security of the State and that is how issuance of Order No. 32/DMB/PSA/2023 dated 8th of May, 2023 came to take place in terms whereof the petitioner was to be detained and kept in Central Jail Kot Bhalwal, Jammu.

09. Pursuant to the detention order No. 32/DMB/PSA/2023 dated 8th of May, 2023, the petitioner came to be held up and detained on 10th of May, 2023. ASI Surjeet Singh No. 4131/S EXK.911542 of Police Station Baramulla carried out the execution of the detention warrant upon the petitioner and handed over to him one leaf of detention order, one leaf of notice of detention and two leaves of grounds of detention as the material for the petitioner to know all about his detention so as to apprise him about the nature and basis of his preventive detention and to make a representation upon that basis against his preventive detention.

10. The detention order No. 32/DMB/PSA/2023 dated 8th of May, 2023 came to be approved by the Home Department, Government of Union Territory of Jammu & Kashmir vide Government Order No. Home/BPV/1101/2023 dated 18th of May, 2023 when the case was submitted for opinion of the Advisory Board constituted under the Jammu & Kashmir Public Safety Act, 1978 which opinion came forward in terms of a report dated 14th of June, 2023 as per requirement of sections 15 and 16 of the Jammu and Kashmir Public Safety Act, 1978 holding sufficient

cause for subjecting the petitioner to preventive detention which led to the issuance of Government Order No. Home/PB-V/1403 of 2023 dated 20th of June, 2023 confirming the preventive detention of the petitioner and ordering detention for a period of six months at the first instance and thereafter periodic extension orders came to be passed to last for prescribed full two years term of preventive detention of the petitioner. The last detention extension of the petitioner was effected vide Government Order No. Home/PB-V/2126 of 2024 dated 7th of November, 2024 directing detention of the petitioner w.e.f. 10th of November, 2024 till 9th of May, 2025 in Central Jail Varanasi, Uttar Pradesh.

11. The petitioner at his end came to submit a written representation dated 8th of August, 2023 against proper receipt from the office of the respondent No.2-District Magistrate, Baramulla.

12. The petitioner came to institute the present writ petition on 17th of October, 2023 when he had spent almost five months of his preventive detention custody.

13. In his writ petition, the petitioner has submitted that by no stretch of reference he has any criminal antecedents related to

him and cited against him so as to be projected in bad and adverse light by the Senior Superintendent of Police (SSP), Baramulla and made to suffer loss of his personal liberty by the order of respondent No.2-District Magistrate, Baramulla. The petitioner has stated that he is the only son of his parents and, as such, their caretaker.

14. The petitioner has set up a plea that he was never supplied with the alleged dossier of the Senior Superintendent of Police (SSP), Baramulla on the basis of which the respondent No.2-District Magistrate, Baramulla acted upon to pass the preventive detention order.

15. The grounds of challenge to the preventive detention are set up in paragraph No. 7 (A) to (O) of the writ petition and were supposed to be replied by the respondents para wise.

16. The petitioner in his writ petition has termed his preventive detention illegal being in violation of the judgments of the Hon'ble Supreme Court of India in the cases of: (i) '**D. K. Basu v. State of West Bengal, 1997 (1) SCC 416**'; (ii) '**Dilip K. Basu v. State of West Bengal and Ors., 2015 AIR SC 2887**'; (iii) '**Tariq Ahmad Dar v. State of Jammu & Kashmir and**

Ors., 2017 (3) JKJ 684’; and (iv) ‘Kamleshwar Eshar Patel v. Union of India, 1995 (4) SCC 51’.

17. The petitioner in his grounds of detention has very categorically stated that his representation made against his preventive detention has remained unconsidered by the respondent No.2-District Magistrate, Baramulla.

18. In the counter affidavit filed on behalf of the respondents to the writ petition supported by an affidavit of the respondent No.2-District Magistrate Baramulla-Dr. Syed Sehrish Asgar (IAS), the petitioner’s detention has been justified on the tone and tenor of the grounds of detention so formulated by the respondent No.2-District Magistrate Baramulla.

19. It is in this context that this Court is constrained to reproduce the contents of the grounds of detention supporting the order of detention of the petitioner. The grounds of detention, thus, read as under:

“Grounds of Detention

Name: Shakir Nabi Gojri @Shakir
Son of: Ghulam Nabi Gojri
Address: Syed Kareem Baramulla
Tehsil: Baramulla

District: Baramulla

Age: 21 Years approximately.

You were reportedly born at Mohalla Syed Karim, Baramulla and is about 21 years old. You received education up to 10th Class from Government Boys Higher Secondary School Baramulla and thereafter left the studies. You started working as street vendor at bus stand Baramulla. The reliable and credible information/reports received by various agencies reveals that you have voluntarily developed contacts with various terrorists/secessionist organizations to carry out the activities of secessionism and terrorism. Your activities have emerged as a threat to the national security and integrity of the Union of India. It has been further mentioned in the dossier that you have deep rooted connections with the terrorist outfits. You are one of such youth who at the behest of terrorists and handlers across the border is providing all logistic support including transportation/inputs availed by the police/security agencies clearly suggests that you are in touch with anti-national elements and has been taking instructions from them for making the job of carrying out terrorist activities. The inputs further suggested that these instructions are being received through a variety of recently available communication technologies that are encrypted and very difficult to decipher. However, after putting in strenuous efforts, various agencies through co-ordinated efforts have been able to identify you and un-earthen your linkages with anti-national elements. If you are given a free hand, there is every apprehension that State might find it difficult to reign in on the terror outfits operating in J&K as you are an important identified arm of the terror ecosystem currently in operation in J&K.

Your activities referred above to are highly prejudicial to the maintenance of security of the state. If you are allowed to remain at large, you may turn a potent threat to the security of the state. Normal law has not been proved sufficient to stop you from indulging in the activities which are highly anti-national and threat to the security and sovereignty of the country.

Taking a wholesome view of the likely impact of your activities at this point of time upon the overall scenario and in case you remain at large, it can be safely said it will have an adverse impact so far as the security of the state is concerned in order to ensure the maintenance of the security of the state your detention under the provisions of public safety act at this stage has become imperative.

In view of the above, you are hereby detained under the provisions of J&K Public Safety Act, 1978, you have a right of making representation before the Government in the Home

Department or before the undersigned within prescribed time period against your detention, if you so choose.”

20. It is in the aforesaid background facts and circumstances of the case that the adjudication of the petitioner’s writ petition is to take effect as to whether the preventive detention against the petitioner deserves to be quashed or let to run its full course which would bring petitioner to his release from the jail either by the intervention of the Court or by default.

21. The first anomaly which vitiated the preventive detention of the petitioner from the very outset is that the grounds of detention and dossier are mirror image of each other making no distinction as to whether the Senior Superintendent of Police (SSP), Baramulla has generated the grounds of detention or the respondent No.2-District Magistrate, Baramulla has prepared the dossier text. There is no shade of distinction between the dossier and the grounds of detention. The grounds of detention are as fact blank as the dossier itself as the petitioner was and is having no trace of a criminal antecedent is subjectivize to be anti-national without any overt or covert act worth factual reference being made in the dossier for the respondent No.2-District Magistrate, Baramulla to make reference in his grounds of detention.

22. Thus, this Court has no *iota* of doubt to say and observe that the dossier as well as the grounds of detention are *ipsi dixit* on the part of the Senior Superintendent of Police (SSP), Baramulla and the respondent No.2-District Magistrate, Baramulla and the preventive detention of the petitioner right from the inception was misconceived and baseless amounting to abuse of jurisdiction of preventive detention on the part of the Senior Superintendent of Police (SSP), Baramulla and the respondent No.2-District Magistrate, Baramulla.

23. The very fact that the petitioner was not served with a copy of the dossier is a pointer that the respondent No.2-District Magistrate, Baramulla did not intend to enable the petitioner to bear an insight into the dossier otherwise the petitioner in his representation would have lost no occasion to say that there are no reported acts of omission or commission on his part so as to brandish the petitioner in a negative character.

24. The petitioner's effective right of representation was seriously compromised by handing over him four leaves compilation comprising of detention order (one leaf), notice of detention (one leaf) and grounds of detention (two leaves) leaving

it for the petitioner to stay in guess as to what led to his preventive detention at the end of the respondent No.2-District Magistrate, Baramulla.

25. The petitioner's representations made both to the District Magistrate, Baramulla as well as to the Commissioner/Secretary to Home Department, Government of Union Territory of Jammu & Kashmir have gone begging for consideration and response except to suffer to and fro reference on the detention file of the petitioner at the end of the Home Department, Government of Union Territory of Jammu & Kashmir and respondent No.2-District Magistrate, Baramulla. In the counter affidavit, not even a whisper of word has been stated for the notice to this Court as to what fate the representations of the petitioner came to be subjected to and that is another vitiating factor with respect to preventive detention of the petitioner.

26. In the light of the aforesaid facts and circumstances of the case, the preventive detention of the petitioner right from its very inception in terms of its basis and objective was malice in law, misconceived and baseless which warrants quashment without further loss of time.

27. Accordingly, preventive detention order No. 32/DMB/PSA/2023 dated 8th of May, 2023 passed by the respondent No.2-District Magistrate, Baramulla read with consequent approval/ confirmation and extension orders with respect to the detention of the petitioner are hereby quashed. The petitioner is directed to be restored to his personal liberty. Superintendent Central Jail Varanasi, Uttar Pradesh is directed to release the petitioner forthwith.

28. The respondent No.2-District Magistrate, Baramulla is directed to ensure that a docket is sent immediately from the end of his office by or before 25th of April, 2025 so as to ensure the release of the petitioner from Central Jail, Varanasi, Uttar Pradesh without loss of time.

29. **Disposed of.**

30. The detention record is in scanned form and is, thus, retained.

(Rahul Bharti)
Judge

SRINAGAR

April 24th, 2025

"TAHIR"

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