

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

HCP No. 387/2024

Reserved On: 2nd of April, 2025.
Pronounced On: 28th of May, 2025.

Abdul Rehman Bhat

... Petitioner(s)

Through: -

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

V/s

Union Territory of J&K and Ors.

... Respondent(s)

Through: -

Mr Mohsin-ul-Showkat Qadri, Sr. AAG with
Ms Nadiya Abdullah, Assisting Counsel.

CORAM:

Hon'ble Mr Justice Rahul Bharti, Judge.

(JUDGMENT)

01. Heard learned counsel for the parties.
02. Perused the pleadings of the writ petition and the record therewith. Also perused the record relating to the detention of the petitioner as produced by the learned counsel for the respondents.
03. Through the medium of present writ petition, the petitioner is seeking this Court to issue a writ of *habeas corpus* under article 226 of the Constitution of

India for restoring personal liberty to the petitioner deprived and denied by operation of an order No. DMS/PSA/44/2024 dated 3rd of December, 2024 passed by the respondent No.2-District Magistrate, Srinagar under the aegis of Jammu & Kashmir Public Safety Act, 1978 which resulted in the petitioner getting detained on 4th of December, 2024 and confined to prison in the District Jail, Poonch wherein he is serving his detention custody.

04. The institution of the present writ petition took place on 16th of December, 2024 being filed through Mst. Nayeem Bano, the wife of the petitioner.

05. The respondent No.2-District Magistrate, Srinagar came to exercise jurisdiction under Section 8 of the Jammu & Kashmir Public Safety Act, 1978 in ordering the preventive detention of the petitioner when the Senior Superintendent of Police (SSP), Srinagar, by virtue of a communication No. LGL/Det-PSA/2024/29877-80 dated 12th of November, 2024, came to serve a dossier against the petitioner thereby seeking the preventive detention of the petitioner on the basis of the purported facts and circumstances spelled out in the said dossier.

06. In his two-and-a-half-page dossier, the Senior Superintendent of Police (SSP), Srinagar came to say that as per reports received from reliable sources, the petitioner from his very early age became influenced by radical ideology and came into contact with active terrorists and Over Ground Workers (OGWs) of TRF who motivated him to work for the outfit as an Over Ground Worker (OGW) for providing logistic support. In this alleged state of engagement, the petitioner is said to have started sharing all sensitive information regarding movement of police and security forces in the area and in a short span of time becoming a staunch Over Ground Worker (OGW) of the area, besides preaching/ spreading/ propagating terrorist ideology in the area and motivating youth for joining unlawful activities in the area.

07. In order to showcase the petitioner in the said profile, the petitioner's involvement in FIR No. 127/2022 registered by the Police Station, Parimpora under Sections 153-A, 153-B and 505 of the Indian Penal Code read with Sections 16/18/20/39 of the Unlawful Activities (Prevention) Act, 1967 came to be

highlighted and referred with a simultaneous mention that in the said case, the petitioner stood bailed out without disclosing the context and contents of the bail order.

08. Keeping in view the assembly elections of 2024 in the Union Territory of Jammu & Kashmir, the petitioner is said to have been subjected to proceedings under Sections 170/126 of the Bhartiya Nagarik Suraksha Sanhita (BNSS), 2023 by the Police Station, Sangam. The petitioner is said to have been bound down on 3rd of August, 2024 and 6th of September, 2024 notwithstanding which the petitioner was still reckoned to be indulgent in prejudicial activities related to the security of the Union Territory of Jammu & Kashmir warranting his detention under the Jammu & Kashmir Public Safety Act, 1978.

09. Following the script so served by the Senior Superintendent of Police (SSP), Srinagar in terms of his dossier, the respondent No.2-District Magistrate, Srinagar penned down the purported grounds of detention wherefrom a subjective satisfaction was drawn by him to pass the detention order No.

DMS/PSA/44/2024 dated 3rd of December, 2024 which came to be executed on 6th of December, 2024.

10. The preventive detention order so issued by the respondent No.2-District Magistrate, Srinagar came to be approved by the Home Department, Government of Union Territory of Jammu & Kashmir by issuance of Government Order No. Home/PB-V/2297 of 2024 dated 6th of December, 2024 while forwarding the case for opinion of the Advisory Board.

11. On the same very day, i.e., 6th of December, 2024, the petitioner had come to be detained by Parvaiz Ahmad, ASI of Police Station Nowhatta, Srinagar who delivered 45-leaves compilation to the petitioner comprised of detention warrant (01 leaf), grounds of detention (02 leaves), notice of detention (01 leaf), dossier (03 leaves) and other record (34 leaves).

12. The petitioner is said to have been explained the grounds of detention and the contents of the detention warrant and also apprised about his right of making representation to the Government as well as

to the respondent No.2-District Magistrate, Srinagar against his preventive detention.

13. On behalf of the petitioner, his son-Dawood Ahmad Bhat came to address a written representation to the Deputy Commissioner, Shaheed Gunj, Srinagar seeking revocation of the preventive detention order against his father.

14. As the said representation was also addressed to the Divisional Commissioner, Kashmir, so from the office of the Divisional Commissioner, Kashmir, vide a communication No. DivCom/RA/Misc/7617315/2024 dated 11th of December, 2024, copy of said written representation came to be forwarded to the respondent No.2-District Magistrate, Srinagar thereby inviting the attention of the respondent No. 2 -District Magistrate, Srinagar to look into the matter and take necessary action under the relevant provisions of the law governing the field meaning thereby that in first half of December, 2024, the respondent No.2-District Magistrate, Srinagar was very much possessed of the representation so made by the petitioner through his son.

15. The petitioner, through the medium of the present writ petition, has assailed his preventive detention alleging it to be sheer abuse of preventive detention jurisdiction vested with the respondent No.2-District Magistrate, Srinagar.

16. In response to the writ petition, the respondents came to submit the counter affidavit by way of ritual like reply submitted on 18th of March, 2025.

17. In terms of an order dated 24th of March, 2025, this Court came to direct Mr Jehangir Ahmad Dar, learned Government Advocate to produce the record related to alleged issuance of orders dated 13th of August, 2024 and 6th of September, 2024 on the basis of which the petitioner is said to have been bound down under Sections 170/126 of the Bhartiya Nagarik Suraksha Sanhita (BNSS), 2023 as mentioned in the dossier as well as in the grounds of detention.

18. Despite repeated opportunities, said record did not come forward in terms of its production meaning thereby that there was no such record

available at the end of the concerned Magistrate in terms whereof the recital of the fact was made that the petitioner was bound down under Sections 170/126 of the Bhartiya Nagarik Suraksha Sanhita (BNSS), 2023 on 13th of August, 2024 and 6th of September, 2024, otherwise were serving as pretext for initiating preventive detention jurisdiction against the petitioner eventually resulting in issuance of preventive detention order against the petitioner thereby depriving him of his personal liberty.

19. It is in the aforesaid backdrop that the adjudication of the present writ petition is coming to take place.

20. Upon examination of the detention record produced from the end of the respondents, a fact came out aloud that by reference to the petitioner's involvement in FIR No. 127/2022 dated 28th of May, 2022, the petitioner had been granted bail in terms of an order dated 31st of July, 2024 by the Court of learned Additional Sessions Judge (TADA/POTA), Srinagar on the terms and conditions as set out in the said order. The grand of bail in favour of the petitioner

by the Court of learned Additional Sessions Judge (TADA/POTA), Srinagar was merit based.

21. In his dossier, the Senior Superintendent of Police (SSP), Srinagar least bothered to call for a certified copy of the bail order dated 31st of July, 2024 passed by the Court of learned Additional Sessions Judge (TADA/POTA), Srinagar to examine as to under which facts and circumstances the Court of learned Additional Sessions Judge (TADA/POTA), Srinagar felt persuaded to grant bail in favour of the petitioner. So much so, from the text of the dossier, it is not even forth coming as to whether in reference to FIR No. 127/2022 any final police report under Section 173 of the Code of Criminal Procedure (Cr. P. C.), 1973 came to be presented before the competent court of law or not.

22. The most patent anomaly which comes forth staring at the preventive detention of the petitioner is the omission on the part of the respondent No.2-District Magistrate, Srinagar in forwarding the representation made by the son of the petitioner which had landed in the hands of the respondent No.2-District Magistrate, Srinagar through the

medium of Divisional Commissioner, Kashmir in terms of communication No. DivCom/RA/Misc/7617315/2024 dated 11th of December, 2024.

23. It defies common sense that as against the said communication No. DivCom/RA/Misc/7617315/2024 dated 11th of December, 2024 of the office of Divisional Commissioner, Kashmir addressed to respondent No.2-District Magistrate, Srinagar forwarding the written representation related to the petitioner, the respondent No.2-District Magistrate, Srinagar took more than one and a half month to address a communication No. DMS/JUD/MISC/2024/2277 dated 6th of February, 2025 to the Principal Secretary to Government, Home Department, Union Territory of Jammu & Kashmir thereby apprising the Home Department, Government of Union Territory of Jammu & Kashmir about the written representation received on behalf of the petitioner relating to his plea for revocation of the detention order.

24. Thus, for sure the Advisory Board was taken for a ride by suppression of fact that there was no representation made on behalf of the petitioner

against his preventive detention for the purpose of enabling the Advisory Board to consider the representation.

25. This singular omission on the part of the respondent No.2-District Magistrate, Srinagar is nothing but a blatant negation of the constitutional right of the petitioner in the matter of representation against his preventive detention literally knocking down the said right of the petitioner as if it was meant to be of no urgency for the respondent No.2-District Magistrate, Srinagar to act with due dispatch and forward the same to the Government or for that matter to the Advisory Board.

26. Another factor vitiating the preventive detention of the petitioner is that the preventive detention against the petitioner seems to have been resorted only to out-manuever the indulgence of the Court of learned Additional Sessions Judge (TADA/POTA), Srinagar in granting bail to the petitioner in terms of order dated 31st of July, 2024.

27. In his dossier, the Senior Superintendent of Police (SSP), Srinagar is found missing to mention

that in case if the petitioner was being found indulgent in alleged activities, post his release on bail, then why condition No.(b) in the bail order was not cited to seek cancellation of the bail so granted in favour of the petitioner. Condition No. (b) of the said bail order related to the petitioner is reproduced herein next: “the accused person/ applicant shall not in any way misuse his liberty nor shall he get in touch with any of the witnesses or try to influence the course investigation”.

28. So much so, condition Nos. (f) and (g) were of equal weight placed by the Court of learned Additional Sessions Judge (TADA/POTA), Srinagar to ensure that the bail granted in favour of the petitioner is not subjected to any abuse. The said two conditions are reproduced hereinbelow:

“(f) That the accused person/ applicant shall disclose/ provide his mobile numbers issued in his name along with telecom network to Investigating Officer/ SHO of concerned police station; and

(g) That the accused person/ applicant shall neither use any secret/

encrypted messaging apps or any proxy network (viz. VPNS) to remain anonymous and circumvent provisions of Indian Telegraph Act and Indian Wireless Act and orders/ restrictions issued thereunder nor provide any type of telecommunication facility from his number or device to other persons through hotspot, Wi-Fi, etc.”

29. In the light of the aforesaid facts and circumstances of the case, the preventive detention of the petitioner in the present case is, thus, held to be an illegal exercise of jurisdiction on the part of the Senior Superintendent of Police (SSP), Srinagar as well as on the part of respondent No.2-District Magistrate, Srinagar, consequently, rendering it unsustainable deserving to be set aside.

30. Resultantly, the preventive detention order No. DMS/PSA/44/2024 dated 3rd of December, 2024 passed by respondent No.2-District Magistrate, Srinagar read with consequent approval/confirmation/extension order(s) passed by the Home Department, Government of Union Territory of

Jammu & Kashmir with respect to the petitioner are hereby set aside.

31. The petitioner is directed to be restored, without loss of any further time, to his personal liberty by his immediate release from the concerned Jail and to that effect the Superintendent of the concerned Jail detaining the petitioner to act in compliance of the directions hereby being issued with respect to the release of the petitioner from preventive detention custody.

32. **Disposed** of.

33. The detention record is in photostat form, as such, retained.

(Rahul Bharti)
Judge

SRINAGAR
May 28th, 2025
"TAHIR"

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