

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

**Reserved on: 10.11.2023
Pronounced on : 20.12.2023**

Case No. WP(Crl) no. 207/2023

Adil Manzoor Bhat (aged 22 years) S/o Manzoor
Ahmad Bhat R/o Malikpora tehsil and district
Pulwama through his brother Fayaz Ahmad Bhat.

.....Petitioner(s)

Through: Mr. Wajid Haseeb, Advocate.

Vs

1. Union Territory of J&K through
Financial Commissioner, Home
Department Civil Secretariat,
Srinagar/Jammu.
2. District Magistrate, Pulwama.
3. Senior Superintendent of Police
District Pulwama.
4. Superintendent Central Jail,
Jammu.

..... Respondent(s)

Through: Mr. Zahid Qais Noor, GA

Coram: HON'BLE MR. JUSTICE RAHUL BHARTI, JUDGE

JUDGMENT

1. Heard learned counsel for the petitioner and perused the pleadings.
2. The petitioner, in prime of his youth being in twenty two years age and being a free citizen of India, has come to suffer loss of fundamental right of personal liberty at the hands of the respondents no. 2 and 3 i.e., District Magistrate,

Pulwama and Senior Superintendent of Police (SSP), Pulwama by reference to preventive detention effected under the Jammu and Kashmir Public Safety Act, 1978 (in short, **'Act of 1978'**) and is now seeking restoration of his personal liberty from this Court under article 226 of the Constitution of India by a writ of habeas corpus.

3. A writ petition has been preferred by the petitioner acting through his brother-Fayaz Ahmad Bhat.
4. The respondent no. 3-Senior Superintendent of Police (SSP), Pulwama profiled the petitioner with every possible reference of a trouble maker to the extent of venturing in providing logistic support and lead to the banned terrorists for which the petitioner even came to be proceeded under section 107/151 of the Code of Criminal Procedure, 1973 for his alleged involvement in subversive activities and produced before the Executive Magistrate Ist Class, Pulwama.
5. By reference to discreet reports received from sister agencies revealing that the petitioner is in contact with the terrorists operating in District Pulwama and neighboring areas and the petitioner has been radicalized to the extent that there is every likelihood of his joining terrorist ranks, therefore, a

case warranting curtailment of the petitioner's personal liberty under the Act of 1978 was put forth through dossier.

6. The dossier came to be forwarded by the respondent no. 3-Senior Superintendent of Police (SSP), Pulwama to the respondent no. 2-District Magistrate, Pulwama vide communication no. CS/PSA/23/4906-09 dated 08.05.2023 for enabling the respondent no. 2-District Magistrate, Pulwama to frame satisfaction with respect to the case set up against the petitioner for his preventive detention.
7. The dossier so served by the respondent no. 3-Senior Superintendent of Police (SSP), Pulwama was able to earn the subjective satisfaction at the end of the respondent no. 2-District Magistrate, Pulwama resulting in issuance of Order no. 24/DMP/PSA/2023 dated 12.05.2023 by the respondent no. 2-District Magistrate, Pulwama thereby directing preventive detention of the petitioner to curtail his personal liberty so as to deter him from acting in any manner prejudicial to the Security of the State actionable under Section 8 of the Act of 1978.
8. The impugned detention order is based upon the purported grounds of detention accompanying it and came to be

executed thereby getting the petitioner detained and lodged in the Central Jail, Kote Bhalwal, Jammu.

9. The petitioner challenges his detention on the grounds set out in the writ petition terming his preventive custody as being illegal with dossier as well as grounds of detention being imaginary based on assumptions, presumptions and conjectures.
10. The respondents through their stand in response to the writ petition have tried to vindicate the course of action at their respective end in getting the petitioner detained under the preventive detention jurisdiction of the Act of 1978.
11. From the perusal of the order of detention, this Court is under no iota of doubt that the impugned order of detention suffers a technical disqualification on the very face of it.
12. Before the Jammu and Kashmir Re-organization Act, 2019, one of the grounds for subjecting a person in the then obtaining State of Jammu and Kashmir was referable to the activities of a prospective detenu being found prejudicial to the Security of the State. However, with coming into being of the Jammu and Kashmir Re-organization Act, 2019 and also making of State of Jammu and Kashmir into two separate Union Territories i.e., UT of Jammu and Kashmir

and UT of Ladakh, the Jammu and Kashmir Public Safety Act, 1978 came to be amended by following the course as set out in the Jammu and Kashmir Re-organization Act, 2019 in terms whereof the statutory prescribed ground of detention under section 8(1)(a)(i) from Security of the State came to be replaced by Security of the UT of Jammu and Kashmir in terms of S.O 1229 (E) of 2020 dated 31.03.2020 issued under Jammu and Kashmir Re-organization (Adaptation of State Laws) Order, 2020. Thus, for a person to be detained under the Act of 1978 on the pretext that his alleged activities are prejudicial to the Security of the UT of Jammu and Kashmir, the Security of the State is no more a serviceable basis and ground.

13. However, in the present case, the respondent no. 2-District Magistrate, Pulwama being vested with preventive detention ordering jurisdiction of such a serious nature has fallen in manifest error of law in saying and stating that the preventive detention of the petitioner is required to prevent him from acting in any manner prejudicial to the Security of the State and that renders the preventive detention order *ex facie* illegal because Security of the State in the context of the UT of Jammu and Kashmir is not a ground envisaged under the Act of 1978 to subject a person to suffer

preventive detention and, therefore, the preventive detention order no. 24/DMP/PSA/23 dated 12.05.2023 is *per se* bad in the eyes of law on the basis of which the detention of the petitioner right from inception was illegal and continuous to be so notwithstanding the confirmation of the said detention order by the Govt. of UT of Jammu and Kashmir and, therefore, deserves to be quashed.

14. Accordingly, this writ petition is allowed. Preventive detention order no. 24/DMP/PSA/2023 dated 12.05.2023 whereby the petitioner has been subjected to preventive detention is hereby quashed as a consequence whereof the petitioner is ordered to be restored to his personal liberty by the respondent no. 4-Superintendent, Central Jail, Kot Bhalwal Jammu.

15. **Disposed of** accordingly.

(Rahul Bharti)
Judge

SRINAGAR
20.12.2023
Naresh, Secy.

Whether the order is speaking:	Yes/No
Whether the order is reportable:	Yes/No