

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

**Reserved on: 10.11.2022
Pronounced on : 20.12.2023**

Case No. WP(Crl) no. 245/2023

Rameez Ahmad Ganie (Aged 28 years) S/o Late Abdul Aziz Ganie R/o Akhoon Pora Hari Tar Sopore, District Baramulla through his Brother Mohammad Younis (Aged 32 years) S/o Late Abdul Aziz Ganie R/o Akhoon Pora Hari Tar Sopore, District Baramulla.

.....Petitioner(s)

Through: Syed Reyaz Khawar, Advocate.

Vs

1. Union Territory of Jammu and Kashmir through Principal Secretary to Government Home Department Civil Secretariat Srinagar/Jammu.
2. District Magistrate, Srinagar.
3. Superintendent Central Jail Kot Bhalwal, Jammu.

..... Respondent(s)

Through: Mr. Sajad Ashraf, GA.

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

JUDGMENT

1. Heard learned counsel for the petitioner and perused the pleadings.
2. The respondent no. 2-District Magistrate, Srinagar felt persuaded by a dossier submitted by the Senior Superintendent of Police (SSP), Srinagar forwarded by a letter no. LGL/Det-PSA/2023/15065-68 dated 01.06.2023

against the petitioner for subjecting him to suffer preventive detention to bring personal liberty of the petitioner under curtailment so as to prevent him for acting in any manner prejudicial to the maintenance of public order, and thus, came forward with a preventive detention order no. DMS/PSA/56/2023 dated 08.06.2023 passed by the District Magistrate, Srinagar under Section 8 of the Jammu and Kashmir Public Safety Act, 1978 (in short, '**Act of 1978**') directing detaining and lodging of the petitioner in the Central Jail, Kot Bhalwal, Jammu.

3. The profile of alleged activities on the basis of which the petitioner came to be reckoned as a prospect for preventive detention custody is referable to his involvement in the alleged commission of offences resulting in registration of three FIRs, namely, FIR no. 143/2022 under section 379/411 IPC, FIR no. 24/2023 under section 379/411 IPC and FIR no. 41/2023 under section 379/411 IPC, all the said three FIRs being registered by the Police Station, Nigeen. By reference to his alleged criminal activities, the petitioner was reckoned to be disturbing the social fabric and posing direct threat to public order.
4. The preventive detention of the petitioner on the said premise cannot be effected under the umbrella

‘maintenance of public order’ for the reason that by his alleged involvement in the aforesaid three FIRs, the petitioner may be a nuisance relatable to law and order maintenance in the locality falling within the jurisdiction of the Police Station, Nigeen but to hold, for the very said three FIRs, the petitioner’s personal liberty a challenge to maintenance of public order is nothing but subverting the punitive detention theory which attends the penal code of the country which is that for any alleged commission of crime by a person upon being tried and found guilty, the punitive detention of the petitioner in the form of sentence announced can take place and the sentence is imposed commensurating with the gravity of the offence found to have been committed by an accused person. However, a repetitive an offender a person may be in the eyes of Law and Enforcement agency, every time his alleged act of omission and commission is required to be dealt with under the ordinary criminal procedure law but it is not given to a Law and Enforcement agency to find a way out to switch over from the ordinary criminal procedure law to deal with a person with a mindset to make his person suffer detention under preventive detention jurisdiction just for the sake of personal satisfaction that even if the punitive punishment

for a given person is yet to take place, preventive punishment has come to be delivered by Law and Enforcement agency.

5. The present case is reflective of the said mindset of the Law and Enforcement agency headed by the Senior Superintendent of Police Srinagar in sponsoring the case of the petitioner for preventive detention by his alleged acts of theft and stolen property.
6. On the basis of the facts and circumstances of the case and bearing in mind the mandate of law obtaining with respect to preventive detention effected under maintenance of public order which is clearly distinguished from law and order problem which may be found to have been caused by a person, this Court holds that the preventive detention order no. DMS/PSA/56/2023 dated 08.06.2023 is misconceived and unwarranted and deserved to be quashed.
7. Accordingly, this writ petition is allowed. Preventive detention order no. DMS/PSA/56/2023 dated 08.06.2023 whereby the petitioner has been subjected to preventive detention is hereby quashed as a consequence whereof the petitioner is ordered to be restored to its personal liberty by

the respondent no. 3-Superintendent, Central Jail, Kot
Bhalwal Jammu.

8. **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

