

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

HCP No. 1/2025

Reserved On: 25th of March, 2025.
Pronounced On: 16th of May, 2025.

Rameez Ahmad Itoo

... Petitioner(s)

Through: -

Mr Asif Ali, Advocate.

V/s

Union Territory of J&K and Ors.

... Respondent(s)

Through: -

Mr Zahid Qais Noor, Government Advocate.

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.
03. The petitioner has come forward with the institution of the present writ petition taking place on 30th of December, 2024 thereby seeking a writ of *habeas corpus* for quashing the preventive detention order No. 23/DMK/PSA/2024 dated 29th of November, 2024 passed by the respondent No.2-District Magistrate, Kulgam in terms whereof the petitioner came to be detained and subjected to

preventive detention custody for the purpose of preventing him from acting in a manner prejudicial to the security of the State which meant two years' maximum preventive detention custody.

04. The petitioner is, thus, seeking quashment of said detention order so as to retrieve his lost personal liberty as being his fundamental right under article 21 of the Constitution of India feeling aggrieved that he has been subjected to preventive detention custody without any basis and without any application of mind on the part of the respondent No.2-District Magistrate, Kulgam.

05. This case presents a very sorry state of affairs reflecting the casual manner in which an authority, not less than that of District Magistrate, as also of the Home Department, Government of Union Territory of Jammu & Kashmir, acting at the same casual application of mind, have come to subject the petitioner to preventive detention against a patent and pronounced illegality in the very detention order with respect to the petitioner.

06. Before coming to the impugned detention of the petitioner, the petitioner was previously subjected to preventive detention under the Jammu & Kashmir Public Safety Act, 1978 involving the same set of players i.e., District Police, Kulgam and the District Magistrate, Kulgam.

07. There is no doubt to the fact that the petitioner has criminal antecedents in the sense that the petitioner is an accused in criminal cases based upon FIR No. 199/2016 of the Police Station, Kulgam, FIR No. 58/2017 of the Police Station, Kulgam and FIR No. 106/2017 of the Police Station, D. H. Pora, all of which involve commission of serious penal offences as well as offences under the Unlawful Activities (Prevention) Act, 1967 but all related to years 2016 and 2017 which came to form basis for the preventive detention of the petitioner first time vide order No. 02/DMK/PSA/2018 dated 11th of June, 2018 under section 8 (1) (a) (i) of the Jammu and Kashmir Public Safety Act, 1978.

08. The petitioner came to challenge his said preventive detention by filing a writ petition HCP No. 183/2018 which came to be allowed by this Court vide judgment dated 31st of December, 2018.

09. The petitioner's detention pursuant to order No. 02/DMK/PSA/2018 dated 11th of June, 2018 had come to take place on 14th of June, 2018 meaning thereby that he had almost spent six months in state of preventive detention custody before getting restored to his freedom in terms of judgment dated 31st of December, 2018.

10. The purported basis for the issuance of first detention order No. 02/DMK/PSA/2018 dated 11th of June, 2018 with respect to the petitioner was by reference to two

FIRs i.e., FIR No. 199/2016 of the Police Station, Kulgam and FIR No. 106/2017 of the Police Station, D. H. Pora.

11. Following the dotted lines of the previous detention order exercise, the Superintendent of Police, Kulgam came forward to generate a repeat dossier vide communication No.Legal/PSA-/ 2024/1363-66 dated 2nd of November, 2024 seeking preventive detention of the petitioner identically scripting the pretext as was for the basis of preventive detention order No. 02/DMK/PSA/2018 dated 11th of June, 2018.

12. On the basis of the repeat dossier of the Superintendent of Police, Kulgam, the respondent No.2-District Magistrate, Kulgam came forward with the purported grounds of detention making reference to the petitioner's involvement in FIR No. 199/2016 of Police Station, Kulgam, FIR No. 106/2017 of Police Station D. H. Pora with the introduction of reference to FIR No. 58/2017 of Police Station, Kulgam which otherwise was not mentioned in the first dossier and the grounds of detention which had led to passing of previous detention order No. 02/DMK/PSA/2018 dated 11th of June, 2018 with respect to the petitioner.

13. With the criminal antecedents so referred, the petitioner came to be reckoned, being in a hub of separatist leaders, from where the petitioner is said to have drawn the ideology and mindset of those who are actively participating in

unlawful activities again and again making the petitioner as an Over Ground Worker (OGW) providing logistic support to terrorists operating in the district. On these grounds, the petitioner has come to be subjected to second time preventive detention vide order No. 23/DMK/PSA/2024 dated 29th of November, 2024.

14. The petitioner is said to have been taken into custody on 4th of December, 2024 when the detention warrant came to be executed through ASI Syed Rasool No. 962150/ARP of Police Station, Kulgam and handed over to the Superintendent, District Jail Rajouri.

15. The petitioner is said to have been informed by the detention warrant executing officer about the order and grounds of detention, besides being handed over the documents in connection therewith and also apprising the petitioner about his right of representation against his preventive detention, either to the District Magistrate, Kulgam or to the Government.

16. The petitioner came to assail his preventive detention order on the grounds as set out in paragraph No. 8 (i) to (xxiii) of the writ petition.

17. In response to the writ petition, counter affidavit came to be filed from the end of the respondent No.2-District Magistrate, Kulgam on 12th of March, 2025, wherein it has come to be pleaded that all procedural formalities and

compliances in connection with preventive detention of the petitioner came to be carried with due diligence and the petitioner cannot be heard to assail his preventive detention. It has been highlighted in the counter affidavit that as the petitioner has been named in three FIRs, with FIR No. 106/2017 being the last one, and the petitioner acting as an Over Ground Woker (OGW) for some of the militants of the area rendering himself a case for preventive detention.

18. When this Court places in juxtaposition the petitioner's present preventive detention under challenge in this writ petition *vis-à-vis* the petitioner's previous detention under the Jammu & Kashmir Public Safety Act, 1978 which had taken place in June, 2018, this Court finds that in the dossier which formed the basis for previous preventive detention of the petitioner in June, 2018 pursuant to order No. 02/DMK/PSA/2018 dated 11th of June, 2018 passed by the District Magistrate, Kulgam, a reference to FIR No. 106/2017 of Police Station, D. H. Pora and FIR No. 199/2016 of the Police Station, Kulgam came to be made whereas FIR No. 58/2017 of Police Station, Kulgam was missing a mention in the said first dossier, but in the dossier which has led to the second time preventive detention of the petitioner mention of FIR No. 58/2017 of Police Station, Kulgam comes in between mention of FIR No. 199/2016 of Police Station, Kulgam and FIR No. 106/2017 of Police Station, D. H. Pora.

19. Rest of the format of the two dossiers text-wise is found to be replica of each other thereby exposing the deficiency of factual basis at the end of the Superintendent of Police, Kulgam in putting up a case for preventive detention of the petitioner second time on some live adverse material and not on ghost story.

20. The respondent No.2-District Magistrate, Kulgam in his grounds of detention which came to support passing of impugned detention order is least aware of the fact that the petitioner had been subjected to preventive detention under the Jammu & Kashmir Public Safety Act, 1978 earlier in 2018 by virtue of order No. 02/DMK/PSA/2018 dated 11th of June, 2018 passed by none else than the District Magistrate, Kulgam getting quashed in writ petition HCP No. 183/2018 dated 31st of December, 2018. This omission of mentioning the previous preventive detention of the petitioner in the grounds of detention formulated by the respondent No.2-District Magistrate, Kulgam is a pointer to the fact that Superintendent of Police, Kulgam in his dossier kept the fact of petitioner's previous detention undisclosed.

21. In fact, only hint of any scanty material against the petitioner being latest in point of time to form basis for ordering preventive detention of the petitioner is that the petitioner was bound down many times and given opportunity to mend his so-called objectionable activities but not proving fruitful thereby constraining his preventive detention.

22. There may be some plausibility in this aspect of the case that the petitioner was subjected to preventive proceedings for keeping peace/good behaviour under the Code of Criminal Procedure, 1973 but without any corresponding factual reference that the petitioner indulged in breach of terms and conditions of the bond of keeping good behavior, no justification can be extended to the respondent No.2-District Magistrate, Kulgam to resort to preventive detention of the petitioner.

23. In the light of the aforesaid facts and circumstances of the case pointing out a glaring deficiency of live basis/material for ordering the petitioner's detention under the Jammu & Kashmir Public Safety Act, 1978, his preventive detention is held to be misconceived and unwarranted rendering him entitled to be restored to his personal liberty.

24. Resultantly, the preventive detention order No. 23/DMK/PSA/2024 dated 29th of November, 2024 passed by respondent No.2-District Magistrate, Kulgam read with approval/ confirmation order(s) passed by the Home Department, Government of Union Territory of Jammu & Kashmir are hereby set aside.

25. The Superintendent, District Jail, Rajouri, or for that matter Superintendent of any other jail wherever the petitioner may have come to be lodged pursuant to the second detention order No. 23/DMK/PSA/2024 dated 29th of

November, 2024, is directed to release the petitioner forthwith on furnishing of a personal bond by the petitioner for an amount of Rs. One lac with one surety of like amount to the Superintendent, District Jail, Rajouri that the petitioner will appear before the District Magistrate, Kulgam as and when called to appear in person by the District Magistrate, Kulgam in relation to proceedings for keeping good behavior under the Bharatiya Nagarik Suraksha Sanhita, 2023 within a period of six months from the date of his release from District Jail, Rajouri pursuant to this judgment.

26. The Superintendent, District Jail, Rajouri to forward the personal bond and surety bond to be so furnished by the petitioner and his surety to the District Magistrate, Kulgam for the sake of record at the end of the District Magistrate, Kulgam.

27. **Disposed** of.

(Rahul Bharti)
Judge

SRINAGAR
May 16th, 2025
"TAHIR"

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