

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

Reserved on : 03.04.2025.

Pronounced on : 05.05.2025.

HCP No. 125/2024

**Rouf Ahmad Sheikh aged 26 years,
S/o Ghulam Nabi Sheikh,
R/o Rampora, Tehsil Qaimoh and District Kulgam, Kashmir
through his wife Rafia Maqbool aged 30 years,
D/o Mohd. Maqbool Sheikh,
R/o Rampora, Tehsil Qaimoh and District Kulgam, Kashmir**

.....Petitioner

Through: Mr. Asif Maqbool, Advocate

Vs

- 1. UT of Jammu & Kashmir through Principal Secretary to Government,
Home Department, J&K, Civil Secretariat, Srinagar, Kashmir.**
- 2. District Magistrate, Kulgam Kashmir.**
- 3. Superintendent of Police Central Jail, Srinagar, Kashmir.**

..... Respondents

Through: Mr. Zahid Qais Noor, GA

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

JUDGMENT

01. Heard learned counsel for the petitioner.

02. Perused the writ pleadings and the documents therewith. Also perused the detention record produced from the end of the respondents.

03. The petitioner – Rouf Ahmad Sheikh, a 26 years aged person, who acting through his wife – Rafia Maqbool came forward with institution of the present writ petition on 29.04.2024 thereby seeking a writ of habeas corpus to set aside the preventive detention imposed upon him by virtue of an order

passed by the respondent No. 2 – District Magistrate, Kulgam acting in jurisdiction under section 8 of the Jammu & Kashmir Public Safety Act, 1978.

04. The impugned preventive detention order is No.08/DMK/PSA/2024 dated 29.03.2024 issued by the respondent No. 2 – District Magistrate, Kulgam thereby directing the preventive detention of the petitioner and his detainment in Central Jail, Srinagar in order to prevent the petitioner from acting and indulging in activities prejudicial to the security of the State.

05. Pursuant to the preventive detention order so passed, the petitioner came to be detained on 30.03.2024 and ever since then the petitioner is serving his preventive detention custody which has run its period of one year and is now in the second year of custody.

06. A case for seeking preventive detention of the petitioner was generated by the Superintendent of Police (SP), Kulgam who vide his communication No.Legal/PSA/2024/4950-53 dated 26.03.2024 served a dossier against the petitioner to the respondent No. 2 – District Magistrate, Kulgam thereby reporting the alleged state of activities of the petitioner reckoned prejudicial to the security of the State.

07. In the dossier, the petitioner came to be presented in two aspects in terms of his credentials & character on one hand and other in terms of his activities & antecedents.

08. One aspect from the point of view of his involvement in reported criminal activities and his antecedents in the form of FIR No. 183/2016 u/s 13 of Unlawful Activities (Prevention) Act, 1967 read with 7/25 of Arms Act, 1959 registered by the Police Station Kulgam; FIR No. 196/2016 u/s 13 of Unlawful Activities (Prevention) Act, 1967 by the Police Kulgam & FIR No. 313/2017 u/s 302, 307 Ranbir Penal Code read with 7/27 Arms Act, 1959 and 13/18/20/38/39 of Unlawful Activities (Prevention) Act, 1967 by the Police Station Qazigund, Srinagar.

09. In other aspect, the petitioner's credentials and character came to be referred and highlighted as being one brother of Shabir Ahmad Sheikh who joined terrorist outfit (Hizb-ul-Mujahideen) in the year 1999 crossing over to Pakistan to achieve illegal arms training from Pakistan and till date having not returned back. The petitioner's brother-in-law Mohd. Abass Sheikh is said to be an active militant of HM banned terrorist outfit. The petitioner is alleged to be drawn to and driven by ideal of his brother and brother-in-law so as to work as an over ground worker (OGW). The petitioner is said to have reportedly developed contacts with one Basit Ahmad Dar, a proclaimed terrorist of LeT/ TRF outfit.

10. For his past objectionable activities, the petitioner is said to have been detained in the year 2018 under the Jammu & Kashmir Public Safety Act, 1978 but that detention did not prove to be reformatory for the petitioner to refrain from indulging and continuing with the alleged objectionable activities thereby becoming pain in the neck of the security apparatus and system of UT of Jammu & Kashmir so as to reckon him prejudicial to the security of the State by his personal liberty available to him.

11. Acting upon the said dossier, the respondent No. 2 – District Magistrate, Kulgam came to generate and formulate the grounds of detention so as to entertain a subjective satisfaction to hold that the petitioner is a case whose personal liberty needs to be curtailed in order to prevent him from acting and indulging in activities prejudicial to the security of the State.

12. Thus, the respondent No. 2 – District Magistrate, Kulgam was left to pass the impugned Order No.08/DMK/PSA/2024 dated 29.03.2024 which brought the petitioner in preventive detention custody with effect from 30.03.2024.

13. Vide a communication No. DMK/JC/2023-24/505-10 dated 29.03.2024 issued by the respondent No. 2 – District Magistrate, Kulgam addressed to the petitioner, the fact about passing of the preventive detention order against him was meant

to be conveyed to the petitioner with a reminder to him being entitled to make a representation against his preventive detention meant to be carried out upon him.

14. Upon his being taken into preventive detention custody on 30.03.2024, the detention order Executing Officer - ASI Noor Mohammad, No. 110/IRP, 16th Battalion, ARP-873124 handed over six (6) leaves compilation of detention order comprised of detention warrant (one leaf), notice of detention (one leaf) and grounds of detention (four leaves), all being said to have been read over to the petitioner to enable him to understand the cause and basis of his preventive detention and also to be handed over with the said documents. The petitioner is said to have been expressly informed that he has a right of filing a representation to the Govt. against his preventive detention order if he so desires.

15. After the execution of the detention warrant upon the petitioner resulting in his custody in the Central Jail, Srinagar, the detention order came to be approved by the Govt. of UT of Jammu & Kashmir, through its Home Department, vide a Govt. Order No. Home/PB-V/634 of 2024 dated 04.04.2024 by forwarding the case to the Advisory Board for its opinion.

16. The Advisory Board, at its end, came forward with its opinion on file No. Home/PB-V/135/2024 dated 18.04.2024 thereby holding that sufficient cause was available for subjecting

the petitioner to preventive detention custody. The Advisory Board came to observe that no representation against his preventive detention has been submitted by the petitioner for its consideration.

17. The Advisory Board's opinion so tendered led to the issuance of Govt. Order No. Home/PB-V/880 of 2024 dated 30.04.2024 thereby confirming the detention of the petitioner and fixing the first spell of detention period with effect from 30.03.2024 to 29.09.2024 and the place of lodgment in the Central Jail, Srinagar.

18. The petitioner's first detention period is said to have earned second extension with effect from 30.09.2024 to 29.03.2025 in terms of Govt. Order No. Home/PB-V/1839 of 2024 dated 25.09.2024 and which is now supposed to be in the third extension meaning thereby the petitioner's detention is bound to last for full two years lasting upto 29.03.2026.

19. The petitioner has come to challenge his preventive detention in terms of the grounds set out in para 9(a) to (m). The petitioner has assailed his prevention detention order on the ground that it is a repeat and extension of his first preventive detention effected vide detention Order No. 07/DMK/PSA/2018 dated 26.07.2018 which was questioned by him in a writ petition HCP No. 245/2018 which resulted in quashment of his preventive

detention order by virtue of a judgment dated 28.11.2018. A copy of the said judgment dated 28.11.2018 is annexed with the writ petition as Annexure-II.

20. The petitioner further challenges the preventive detention on the ground that by using the stale material against him, second time preventive detention order has been carried out by repeat reference of FIR No. 196/2016 of Police Station Kulgam & FIR No.313/2017 of Police Station Qazigund, with mention of FIR No.183/2016 which otherwise was missing out in relation to the first preventive detention order of the petitioner.

21. The petitioner, thus, assails his present preventive detention custody being an outcome of sheer plastic like application of mind on the part of the respondent No. 2 – District Magistrate, Kulgam. The petitioner alleges that last adverse activities alleged and attributed to the petitioner is of 14.11.2017 and thereafter there is no inter-connecting factual material which could have enabled the second time preventive detention of the petitioner.

22. The petitioner further assails that his right to representation against his preventive detention has been seriously prejudiced as he was not supplied with the material which was relied upon in passing the preventive detention order against the petitioner. The fact of grant of bail in favour of the

petitioner by reference to the FIRs mentioned in the grounds of detention was overlooked with an impunity in processing a case against the petitioner for his second time preventive detention.

23. The petitioner has denied his connection as an over ground worker (OGW) with banned organization like HM/Let/TRF. The petitioner submits that he is a father of three minor children and, as such, is a lone bread earner of the family and was meant to provide for his family and by that sense of responsibility could not conceive of indulging in activities being prejudicial to the security of the State.

24. In the counter affidavit filed on 13.08.2024, the respondents have countered the challenge posed by the petitioner to his preventive detention custody. The averments in the counter affidavit proceeds bearing the text and texture of the grounds of detention as well as the dossier.

25. The respondents in their counter affidavit have referred to the cases of Gautam Jain Vs Union of India and another, AIR 2017 SC 230 & Senthamilselvi Vs State of Tamil Nadu and another, (2006)5 SCC 676 besides drawing reliance from Haradhan Saha Vs State of West Bengal, (1975)3 SCC 198 & Union of India and another Vs Dimple Happy Dhakad, AIR 2019 SC 3428 and, therefore, seek dismissal of the writ petition.

26. Upon hearing learned counsel for both sides, this Court is left to examine the legality of the preventive detention of the petitioner by posing a question as to whether post judgment dated 28.11.2018 in writ petition HCP No.245/2018 which had resulted in quashment of first preventive detention custody of the petitioner otherwise effected vide the Order No.07/DMK/PSA/2018 dated 26.07.2018 under the Jammu & Kashmir Public Safety Act, 1978 then reckoning the petitioner's reported activities to be prejudicial to the security of the State, any fresh feed of facts came to arrest the concern of district law and enforcement authority/agency to sponsor a case for preventive detention of the petitioner by reckoning him in terms of his alleged activities to be prejudicial to the security of the State.

27. There is no escape from the fact that the dossier submitted by the Superintendent of Police (SP), Kulgam, vide his letter No. No.Legal/PSA/2024/4950-53 dated 26.03.2024 on the basis of which the grounds of detention came to be based upon, borrows mention of two FIRs i.e. FIR No. 196/2016 and FIR No. 313/2017 of the Police Stations Kulgam and Qazi Gund respectively. These two FIRs formed the basis for first time preventive detention of the petitioner also which got quashed. Therefore, the petitioner's alleged indulgence and involvement in the cognizable activities related to said two FIRs were to be and are to be taken out from the purview of forming a reference and

basis to effect his second time preventive detention custody and that meant and leaves only FIR No. 183/2016 also registered by the Police Station Kulgam, as mentioned in the grounds of detention to be a purported basis on the basis of which the Superintendent of Police (SP), Kulgam could be heard to say that the preventive detention of the petitioner second time is based upon the petitioner's involvement in said FIR No. 183/2016. This Court is afraid that if this plea cum excuse can be heard to be sustained from the respondents' end.

28. FIR No. 183/2016 is prior in time of its registration to FIR No. 196/2016 and FIR No. 313/2017 both of which came to be mentioned in the first time preventive detention case of the petitioner. What led to the omission of mention of FIR No. 183/2016 in the first time preventive detention exercise relatable to the petitioner was supposed to have been then self explained by the Superintendent of Police (SP), Kulgam for the facility of proper and fair application of mind of the respondent No.2 - District Magistrate, Kulgam but since there is no such whisper of explanation, as such the respondent No. 2 - District Magistrate, Kulgam also had no occasion to apply his mind as to why FIR No. 183/2016 was missed out first time to be mentioned against the petitioner for soliciting his first time preventive detention custody.

29. Therefore, all the three FIRs are to be taken out of the purview from being counted as the supplier of purported basis for

the respondent No. 2 – District Magistrate, Kulgam to pass the detention order by drawing a subjective satisfaction there from.

30. The Court is, thus, left to consider by reading of the dossier as well as the grounds of detention as to what are the left over reported intervening acts of omission and commission on the basis of which the petitioner was reckoned to be a case for preventive detention custody under the Jammu & Kashmir Public Safety Act, 1978.

31. In this regard, this Court finds that neither in the dossier nor in the grounds of detention it has been stated as a matter of fact that the petitioner, as being an under trial in relation to the criminal cases related to the three FIRs, has indulged in breach of terms and conditions of bail granted in each of three criminal cases in his favour by the competent criminal court of law and that by indulging in such breaches of bail condition/s, the petitioner ventured in his objectionable activities posing an ongoing threat to the security of the State fed by his alleged ideology.

32. Upon examination of the detention record, this Court has come across with a fact that Station House Officer (SHO) Police Station Qaimoh, who had actually generated the case for seeking the preventive detention of the petitioner, in his report to the Superintendent of Police (SP), district Kulgam had referred to

an aspect that the petitioner had come to be detained on 20.02.2024 in terms of proceedings initiated under section 107 read with section 151 of the Code of Criminal Procedure, 1973 in which connection by virtue of an order of the Executive Magistrate Ist Class, before whom the case was submitted, the petitioner came to be released on 21.02.2024. In fact, on two later occasions also i.e. on 26.02.2024 & 27.02.2024 the petitioner is said to have been detained by recourse to section 107 read with section 151 of the Code of Criminal Procedure, 1973 and on both occasions the petitioner had come to be granted bail as averred in his report by SHO Police Station Qiamoh.

33. For the reasons best known to the Superintendent of Police (SP), Kulgam, he came to omit making reference in his dossier to said preventive proceedings effected on three occasions against the petitioner in terms of section 107 of the Code of Criminal Procedure, 1973.

34. Section 107 figures under chapter VIII of the Code of Criminal Procedure, 1973 which provides for provision and proceedings for security for keeping the peace in other cases. For the facility of reference, section 107 is reproduced herein under:-

107. Security for keeping the peace in other cases

- (1) When an Executive Magistrate receives information that any person is likely to commit a breach of the peace or disturb the public tranquility or to do any wrongful act that may probably occasion a breach of

the peace or disturb the public tranquility and is of opinion that there is sufficient ground for proceeding, he may, in the manner hereinafter provided, require such person to show cause why he should not be ordered to execute a bond [with or without sureties] for keeping the place for such period, not exceeding one year, as the Magistrate thinks fit.

- (2) Proceedings under this section may be taken before any Executive Magistrate when either the place where the breach of the peace or disturbance is apprehended is within his local jurisdiction or there is within such jurisdiction a person who is likely to commit a breach of the peace or disturb the public tranquility or to do any wrongful act as aforesaid beyond such jurisdiction.

35. Section 151 of the Code of Criminal Procedure, 1973 figures in chapter XI under heading “Preventive Action of the Police” which enables a police officer knowing of a design to commit any cognizable offence may arrest, without orders from a Magistrate and without a warrant, the person so designing the commission of a cognizable offence. Section 151 of the Code of Criminal Procedure, 1973 is also reproduced herein under:-

151. Arrest to prevent the commission of cognizable offence.

- (1) A police officer, knowing of a design to commit any cognizable offence may arrest, without orders from the Magistrate and without a warrant, the person so designing, if it appears to such officer that the commission of the offence cannot be otherwise prevented.

- (2) No person arrested under sub-section (1) shall be detained in custody for a period exceeding twenty-four hours from the time of his arrest unless his further detention is required or authorized under any other provisions of this Code or of any other law for the time being in force.

36. Since the Superintendent of Police (SP), Kulgam himself took away a possible live-link basis related to the preventive detention custody case of the petitioner from being mentioned in his dossier as against the reference so made by Station House Officer (SHO) Police Station Qaimoh with respect to booking the petitioner on three occasions for proceedings under section 107 read with section 151 of the Code of Criminal Procedure, 1973, therefore, from the very inception the dossier submitted by the Superintendent of Police (SP), Kulgam vide communication No. Legal/PSA/2024/4950-53 dated 26.03.2024 was nothing but a ritual like repeat of diluted dossier against the petitioner which had led to the first time preventive detention of the petitioner and same became the nature of second time grounds of detention generated in relation to passing of impugned preventive detention Order No.08/DMK/PSA/2024 dated 29.03.2024.

37. Therefore, the outcome of the first writ petition HCP No. 245/2018 ending in quashment of the then imposed preventive detention custody upon the petitioner, is going to have its determining effect on the outcome of the second time preventive detention custody of the petitioner under challenge.

38. In judgment dated 28.11.2018 passed by this Court in writ petition HCP No. 245/2018, the quashment of preventive detention of the petitioner had proceeded on the basis that the writ respondents in the said writ petition despite opportunity chose not to produce the detention record before the Court so as to show as to whether the relevant material had been supplied to the petitioner for enabling him to make an effective representation against his detention and that vitiated his first time detention resulting in its quashment.

39. In the present writ petition, the petitioner may not be heard to say that he has not been supplied the material for enabling him to make an effective representation on the count that the petitioner is admitting that he has been served with the order of detention and the grounds of detention which enabled him to submit written representation dated 29.04.2024 to the respondent No. 2 – District Magistrate, Kulgam and submitted through registered postal service on 29.04.2024 addressed to the District Magistrate, Kulgam against RLA RE831401411IN.

40. In the detention record produced from the respondents' end pursuant to an order dated 04.10.2024 for the perusal of this Court on 03.04.2025, this Court is not coming across with a copy of the said representation of the petitioner so sent through registered postal service mode.

41. The reasons for submission of a representation on behalf of the petitioner for seeking revocation of the petitioner's preventive detention through registered postal service mode is because the representation was sent on behalf of the petitioner by his wife Rafia Maqbool, otherwise if sent from the confines of the Central Jail, Srinagar through its Superintendent, then there would have been no scope for suspense as to whether the representation related to the petitioner addressed to the detention order making authority or to the Govt., has actually been received or not and, therefore, the suspense in the present case stays with this Court as to whether the registered postal letter sent representation by the petitioner's wife actually landed in the hands of/office of the respondent No. 2 – District Magistrate, Kulgam or not.

42. It has not been averred in the writ petition, particularly when the writ petition has been filed by the petitioner through his wife, as to whether she had enquired from the office of the District Magistrate, Kulgam about receipt of representation so sent by her through registered postal service mode.

43. Therefore, there is a miss on the part of the petitioner as well in the matter of his exercise of right of filing a representation which cannot be reckoned to have created any scope for vitiating the preventive detention of the petitioner.

44. Be that as it may, still this Court finds that the petitioner's second time preventive detention was rendered bad by the omission on the part of the Superintendent of Police (SP), Kulgam in omitting out the live-link which infact was intended to form the basis for second time preventive detention of the petitioner in terms of endeavour of the SHO Police Station Qaimoh in reporting that the petitioner has been subjected to preventive measure proceedings under section 107 of the Code of Criminal Procedure, 1973 on three occasions though it has not been reported as to what was the final outcome thereof.

45. Since the live-link came to go missing in the dossier of the Superintendent of Police (SP), Kulgam against the petitioner, so the second time impugned detention of the petitioner in the eyes of law becomes just a repeat of the first time detention of the petitioner as an extension thereof.

46. Therefore, the petitioner's detention in terms of the impugned detention Order No. 08/DMK/PSA/2024 dated 29.03.2024 issued by the respondent No. 2-District Magistrate, Kulgam read with consequent approval and confirmation orders vitiated with an illegality and the petitioner to be released from the preventive custody.

47. This Court, therefore, sets aside the preventive detention custody of the petitioner by quashing the aforesaid

detention order. However, the respondent No. 2 – District Magistrate, Kulgam is directed to revive the proceedings set into effect under section 107 of the Code of Criminal Procedure, 1973 as reported in his report by the SHO Police Station Qaimoh before the Executive Magistrate concerned and to take the said proceedings to its logical conclusion on merits be it in calling upon the petitioner to furnish the security bond for keeping peace or to relieve him from said proceedings.

48. The revival of the proceedings under section 107 of the Code of Criminal Procedure, 1973 (now in terms of corresponding sections of Bharatiya Nagrik Sureksha Sanhita BNSS 2023) in terms of the directions of this Court to be carried out by the District Magistrate, Kulgam to take effect within a period of four weeks from the passing of this judgment and the petitioner is directed to furnish the personal bond as well as the surety bond to the amount of Rs. One lac each to the satisfaction of the Superintendent Central Jail, Srinagar to the effect that the petitioner shall report himself in person before the District Magistrate, Kulgam as and when called upon during the next four weeks' period with respect to revival of proceedings under section 107 of the Code of Criminal Procedure, 1973 directed to be revived in terms of the directions of this Court hereby given.

49. The furnishing of personal bond as well as the surety bond by the petitioner is a *sine-qua-non* for his release from the

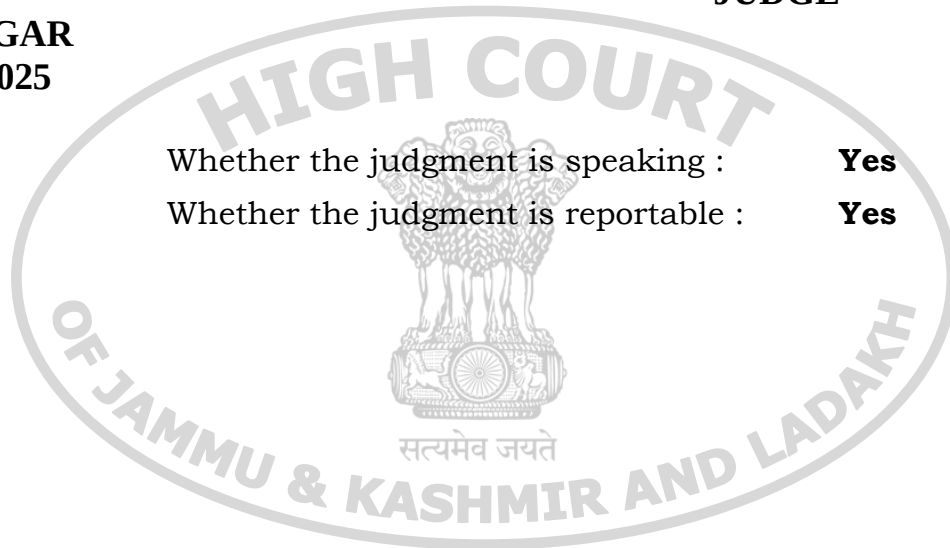
custody/confine of the Central Jail, Srinagar. The Superintendent Central Jail, Srinagar to ensure that the requisite bonds are submitted to him whereupon the same shall be forwarded to the District Magistrate, Kulgam for being taken on record.

50. The detention record submitted by the respondents is a scanned copy, as such, is to be retained on the file of this Court.

51. ***Disposed of.***

(RAHUL BHARTI)
JUDGE

SRINAGAR
05 .05.2025
Muneesh



Whether the judgment is speaking : **Yes**
Whether the judgment is reportable : **Yes**