

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

HCP No. 204/2024

Reserved On: 3rd of April, 2025.
Pronounced On: 22nd of May, 2025.

Mohammad Yaqoob Bhat

... Petitioner(s)

Through: -

Mr Syed Sajad Geelani, Advocate.

V/s

Union Territory of J&K and Ors.

... Respondent(s)

Through: -

Mr Ilyas Nazir Laway, 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. Also perused the detention record relating to the petitioner produced by the learned counsel for the respondents.
03. The institution of this writ petition came to take place on 28th of May, 2024 through the medium of which the petitioner-Mohammad Yaqoob Bhat, acting through his brother-Javeed Ahmad Bhat, has

come to seek a writ of *habeas corpus* under article 226 of the Constitution of India in order to secure his personal liberty otherwise curtailed by virtue of preventive detention slapped upon him under the Jammu & Kashmir Public Safety Act, 1978 and being in confinement w.e.f. 1st of April, 2024.

04. The respondent No.3-Senior Superintendent of Police (SSP), Baramulla vide communication No. Lgl/PSA/2024/528-31 dated 4th of March, 2024 read with letter No. Lgl/det/2024/595 dated 14th of March, 2024, submitted a dossier to the respondent No.2-District Magistrate, Baramulla on the basis of which the preventive detention of the petitioner was solicited for the purported purpose of preventing him from indulging in activities prejudicial to the security of the Union Territory of Jammu & Kashmir.

05. In the dossier, the respondent No.3-Senior Superintendent of Police (SSP), Baramulla came to mention that the petitioner is a 12th class drop-out who with the passage of time got involved with inimical elements to motivate him to work with the cadres of *Lashkar-e-Toiba* (LeT) outfit around Palhallan area. The petitioner is said to have been

readily motivated and started working with LeT/ TRF cadres by indulging in activities with a fair degree of success for a long period and evaded being noticed. The petitioner is alleged to have followed his brother-Ashiq Hussain Bhat's footsteps in joining the terrorist ranks and establishing a network in Pattan, getting involved and booked in criminal case under FIR No. 18/2019 for the commission of offence under section 7/25 of the Arms Act registered with Police Station, Pattan in which case he is alleged to have been arrested with two hand grenades recovered from his possession.

06. The petitioner is referred to be working as an Over Ground Worker (OGW) of active militant Hilal Ahmad of LeT and TRF outfit, who got killed later on, and of PoK based militant Usman. The petitioner is alleged to be involved in transportation of militants and their associates from one place to another along with arms and ammunition and motivating the youth to join militant ranks. The petitioner is referred to be having a history of threatening the PRIs/non-local laborers at the behest of LeT/ TRF outfit aiming to kill them in order to create panic in the society and

disturb peace in the area. The dossier further mentions about the petitioner's earlier preventive detention under the Jammu & Kashmir Public Safety Act, 1978 by virtue of an order No. 43/DMB/PSA/2022 dated 20th of April, 2022 under which he came to be detained in the Central Jail Kot Bhalwal, Jammu but the said detention of the petitioner later getting quashed in terms of a judgment of the High Court of Jammu & Kashmir and Ladakh said to be on technical grounds. Even in his said detainment, the petitioner is alleged to have propagated the secessionist ideology motivating the inmates of Jail to rise against the Government of India. The petitioner is alleged to have been involved in various criminal cases of District Baramulla being arrested and booked under the relevant provisions of law from time to time but always continuing with his criminal tendencies and activities thereby becoming a pain in the neck of the law enforcement agency and potential threat to the security of the State.

07. In the supplementary dossier submitted vide No. Lgl/det/2024/595 dated 14th of March, 2024, the respondent No.3-Senior Superintendent of Police

(SSP), Baramulla came to mention that the petitioner's earlier preventive detention was quashed by a judgment dated 24th of July, 2023 of the High Court of Jammu & Kashmir and Ladakh resulting in his release but later on the petitioner being booked under sections 107/151 of the Code of Criminal Procedure (Cr. P. C.) but getting released.

08. Acting upon the said dossier, the respondent No.2-District Magistrate, Baramulla came to formulate grounds of detention borrowing the version of the dossier and branding it as grounds of detention to provide subjective satisfaction to the respondent No.2-District Magistrate, Baramulla to hold that the petitioner's personal liberty deserved to be curtailed second time under the Jammu & Kashmir Public Safety Act, 1978 in order to prevent him from indulging in activities prejudicial to the security of the Union Territory of Jammu & Kashmir.

09. Vide an order No. 09/DMB/PSA/2024 dated 29th of March, 2024, the respondent No.2-District Magistrate, Baramulla came to order the preventive detention of the petitioner and his consequent detainment in the Central Jail Kot Bhalwal, Jammu.

10. Pursuant to the said detention order No. 09/DMB/PSA/2024 dated 29th of March, 2024, the petitioner came to be arrested and detained on 1st of April, 2024 when ASI Javed Ahmad, No. PID EXK-901956 of Police Station, Baramulla carried out the execution of the detention warrant against the petitioner and handed him over to the Superintendent, Central Jail, Kot Bhalwal, Jammu.

11. At the time of his detention, the petitioner is said to have been handed over a 13-leaves compilation comprising of detention order (one leaf), notice of detention (one leaf), grounds of detention (two leaves), dossier of detention (five leaves), copies of FIRs, statements of witnesses and other relevant documents (four leaves). The petitioner is stated to have been explained the order of detention and the grounds of detention.

12. The preventive detention order No. 09/DMB/PSA/2024 dated 29th of March, 2024 with respect to the petitioner came to be approved by the Home Department, Government of Union Territory of Jammu & Kashmir vide Government Order No. Home/PB-V/662 of 2024 dated 8th of April, 2024

awaiting the opinion of the Advisory Board with respect to the preventive detention of the petitioner.

13. In the meantime, the petitioner, acting through his brother- Javeed Ahmad Bhat, came to address a written representation dated 9th of April, 2024 to the respondent No.2-District Magistrate, Baramulla thereby seeking recall/ revocation of his preventive detention.

14. In his said written representation, the petitioner came to be referred as a handicapped person with FAI i.e., Femoroacetabular Impingement with crippled left rib with permanent disability of 45%.

15. In his written representation, the petitioner came to mention that he was detained in the year 2019 under the Jammu & Kashmir Public Safety Act, 1978 in terms of order No. 130/DMB/PSA/2019 dated 21st of February, 2019 which order was revoked by the Government on 31st of January, 2020 resulting in his release.

16. The petitioner further came to mention in his representation that in connection with his arrest in

FIR No. 18/2019, he came to be granted bail by the Court of learned Judicial Magistrate 1st Class, (Civil Judge Senior Division), Pattan on 19th of February, 2020 which bail was never questioned.

17. The petitioner further came to refer in his written representation that second time he came to be detained under the Jammu & Kashmir Public Safety Act, 1978 in terms of detention order No. 43/DMB/PSA/2022 dated 9th of April, 2022 on the same grounds as were used in his first preventive detention order, and the second time detention order getting quashed in terms of WP (Crl) No. 526/2022 resulting in judgment dated 24th of July, 2023.

18. The petitioner, in his written representation, has further mentioned that with respect to the proceedings under sections 107/151 of the Code of Criminal Procedure (Cr. P. C.), he came to furnish a bond and was restored to his liberty on 15th of December, 2023 by the Executive Magistrate, 1st Class, Pattan and the said bond has never been breached by him but despite that he came to be detained under the Jammu & Kashmir Public Safety Act, 1978 without any basis.

19. The Advisory Board, vide its opinion on file No. Home/PB-V/143/2024 dated 18th of April, 2024, came to render its opinion holding the preventive detention of the petitioner to be on justifiable basis. In its report, the Advisory Board came to make a specific reference that the petitioner has made no representation against his preventive detention as no such representation was found lying on the material placed before the Advisory Board.

20. The Advisory Board's opinion dated 18th of April, 2024, thus, facilitated confirmation of the petitioner's detention in terms of Government Order No. Home/PB-V/800 of 2024 dated 23rd of April, 2024 directing the petitioner's period of detention at first instance to be for a period of six months w.e.f. 1st of April, 2024 to 30th of September, 2024.

21. Immediately following issuance of Government Order No. Home/PB-V/800 of 2024 dated 23rd of April, 2024, the Home Department, Government of Union Territory of Jammu & Kashmir, acting through its Deputy Secretary, came to address a communication No. Home/PB-V/143/2024 (7448752) dated 30th of April, 2024 to the Special

Director General of Police, CID, Jammu & Kashmir thereby soliciting comments on the written representation of the petitioner, thus, confirming the fact that the petitioner's representation dated 9th of April, 2024 had landed in the hands of not only the respondent No.2-District Magistrate, Baramulla but also that of respondent No.1-Home Department, Government of Union Territory of Jammu & Kashmir and still the said representation was withheld from being forwarded to the Advisory Board for which reason in its opinion report the Advisory Board came to mention specifically that no representation was found along with the material submitted relating to the preventive detention of the petitioner.

22. The respondent No.2-District Magistrate, Baramulla, at his end, vide his communication No. DMB/ARA/1254-PSA/4034 dated 9th of May, 2024 addressed to the Financial Commissioner (ACS), Home Department, Government of Jammu & Kashmir came to forward the representation of the petitioner made through his brother-Javeed Ahmad Bhat thereby confirming the fact that the petitioner's representation dated 9th of April, 2024 was very much

in the hands of the respondent No.2-District Magistrate, Baramulla but still the same was kept withheld from being forwarded to the Advisory Board.

23. With respect to the petitioner's said representation, the Home Department, Government of Union Territory of Jammu & Kashmir came to recommend to reject the same and, consequently, in terms of letter No. Home/PB-V/143/2024/7448752 dated 7th of August, 2024, the Home Department, Government of Union Territory of Jammu & Kashmir came to apprise the respondent No.2-District Magistrate, Baramulla about the fact that the petitioner's representation was found to be without any merit at the said stage of consideration.

24. Upon expiry of petitioner's first installment of six months' detention against two years' maximum detention period, the Home Department, Government of Union Territory of Jammu & Kashmir came to pass Government Order No. Home/PB-V/1855 of 2024 dated 25th of September, 2024 thereby extending the petitioner's preventive detention period from 1st of October, 2024 to 31st of March, 2025.

25. In response to the present writ petition, the respondents came to submit the counter affidavit by way of ritual like reply submitted on 24th of October, 2024.

26. It is in the aforesaid facts and circumstances that the adjudication of the present writ petition is coming to take place.

27. The preventive detention of the petitioner is vitiated with singular flaw which is not of technical nature but of substantive nature for which the petitioner is not to be meant to suffer loss of personal liberty any more.

28. The said singular flaw is that when the written representation dated 9th of April, 2024 against his preventive detention came to be made on behalf of the petitioner thereby seeking revocation of his preventive detention order slapped against him and which written representation had duly landed in the hands of not only the respondent No.2-District Magistrate, Baramulla but also on the desk of the respondent No.1-Home Department, Government of Union Territory of Jammu & Kashmir, then why said

written representation was kept withheld from being forwarded to the Advisory Board has bothered none of the respondents to reply in the counter affidavit, more particularly when the petitioner in his writ petition, at para No. 3(c) has come forward with a specific averment that his written representation was left unattended and unconsidered even by the Advisory Board.

29. A bare perusal of the written representation so made by the petitioner through his brother would show that the petitioner came forward with mention of facts and circumstances which were least referred to in the dossier against him and that meant that the dossier was framed on edited version of facts for reasons best known to the respondent No. 3-Senior Superintendent of Police (SSP), Baramulla and, thus, the flaw attending the preventive detention of the petitioner has also been contributed to by the respondent No.3-Senior Superintendent of Police (SSP), Baramulla.

30. Even the respondent No. 2-District Magistrate, Baramulla did not act fairly at his end as the petitioner came to be provided five (05) leaves of

dossier but was deprived of the supplementary dossier submitted by respondent No.3-Senior Superintendent of Police (SSP), Baramulla vide his communication No. Lgl/det/2024/595 dated 14th of March, 2024. Had this supplementary dossier been supplied to the petitioner, then the number of leaves of the dossier would have been seven (07) and not five (05).

31. The Hon'ble Supreme Court of India and also this Court have repeatedly emphasized the fact that there cannot be any compromise with deviation from the procedure in connection with preventive detention jurisdiction being exercised aiming to deprive a person of his personal liberty. The preventive detention of the petitioner in the present case is, thus, seriously vitiated and is held to be illegal.

32. Resultantly, the preventive detention order No. 09/DMB/PSA/2024 dated 29th of March, 2024 passed by respondent No.2-District Magistrate, Baramulla read with 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.

33. 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.

34. **Disposed of.**

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

(Rahul Bharti)
Judge

SRINAGAR

May 22nd, 2025

"TAHIR"

i. *Whether the Judgment is approved for reporting?*

Yes/ No.