

HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT SRINAGAR

HCP No. 196/2024

Reserved on: 20.03.2025

Pronounced on: 25.03.2025.

**Ikhlaq Imtiyaz Sheikh, Age: 21 Years
S/o Imtiyaz Ahmad Sheikh
R/o Wattergam, Rafiabab
Through his father
Imtiyaz Ahmad Sheikh
S/o Gh. Nabi Sheikh
R/o Wattergam, Rafiabab, Baramulla.**

... Petitioner(s)

Through: Mr. Syed Sajad Geelani, Advocate.

Vs.

- 1. UT of J&K through Financial Commissioner (Addl. Chief Secretary), Home Department, J&K, Jammu/ Srinagar.**
- 2. District Magistrate, Baramulla.**
- 3. Superintendent, District Jail, Kupwara.**

...Respondent(s)

Through: Mr. Jehangir Ahmad Dar, GA with
Ms. Shaila Shameem, Assisting Counsel.

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

JUDGMENT

- 1.** Heard learned counsel for both the sides.
- 2.** Perused the writ pleadings and the documents therewith.

Also perused the detention record produced by Mr. Jehangir Ahmad Dar, learned Government Advocate for the respondents.

3. The petitioner is aggrieved of loss of his personal liberty having taken place on account of his preventive detention ordered by the respondent No.2-District Magistrate, Baramulla under the Jammu & Kashmir Public Safety Act, 1978 and for the purpose of reclaiming his said personal liberty the petitioner has come to petition this Court through his father thereby seeking writ jurisdiction of this Court under article 226 of the Constitution of India by issuance of a writ of *habeas corpus*.
4. The institution of present writ petition came to take place on 28th of May, 2024.
5. The respondent No.2-District Magistrate, Baramulla by virtue of an order No. 18/DMB/PSA/2024 dated 6th of April, 2024 came to hold the petitioner's activities prejudicial to the security of the Union Territory of Jammu & Kashmir and so in order to curb the continuation of his said alleged activities, the petitioner's personal liberty was intended to be curtailed under section 8 of the Jammu & Kashmir Public Safety Act, 1978.
6. The process for subjecting the petitioner to suffer preventive custody under the Jammu & Kashmir Public Safety Act, 1978 was, in fact, set into motion by the Senior Superintendent of Police (SSP), Sopore who, by virtue of

his communication No. PROSS/PSA-/2024/12983 dated 30th of March, 2024, submitted a dossier with respect to petitioner to the respondent No.2-District Magistrate, Baramulla for seeking exercise of jurisdiction under section 8 of the Jammu & Kashmir Public Safety Act, 1978 to detain the petitioner.

7. The dossier so submitted by the Senior Superintendent of Police (SSP), Sopore projected the petitioner, born in the year 2002 as a 10th class pass student from the Government High School, Wattergam who in the year 2019 came to develop contact with one OGW namely Rameez Ahmad Malla of Hizbul Mujahideen (HM) outfit who further introduced the petitioner to a foreign terrorist Maz Bahi of Hizbul Mujahideen (HM) outfit who motivated the petitioner towards terrorism and worked for terrorists, thus, making the petitioner to start providing logistics and other support to the said terrorist as well as other terrorists to carry out terror activities in the area.

8. In the dossier, the petitioner was referred to be found in conflict with law with his involvement in FIR No. 161/2019 dated 7th of November, 2019 registered by the Police Station Dangiwacha for alleged commission of offences under sections 18 and 39 of the Unlawful Activities

(Prevention) Act, 1967 read with section 7/25 of the Arms Act, 1959.

9. In this FIR, the petitioner along with three other accused persons were booked bearing the allegations that one (01) pistol with magazines and five (05) cartridges were recovered from the possession of co-accused Rameez Ahmad Malla, one (01) chinese hand grenade recovered from second co-accused Reyaz Khaliq Parray, one (01) chinese hand grenade recovered from other third co-accused Waseem Manzoor Gazi and whereas twelve (12) pages of posters of Hizbul Mujahideen outfit from the possession of petitioner.

10. By reference to the said FIR, it came to be mentioned in the dossier that final police report/ challan stood submitted before the criminal court of law for trial wherein the petitioner came to be admitted to bail, on which date and vide which order no mention in the dossier nor any bail order document accompanying the said dossier was made.

11. The petitioner was second time found involved in alleged criminal acts with respect to FIR No. 151/2020 dated 24th of December, 2020 registered again by the Police Station Dangiwachha for alleged commission of

offence punishable under section 307 Indian Penal Code (IPC) read with 4/5 Explosive Substances Act, 1908.

12. In this case also, the petitioner came to be arrested and implicated with other co-accused on the allegation of having lobbed grenade on SSB Coy camped at Mini Secretariat, Wattergam. In this case also, the final police report/ challan is said to have been presented before the competent court of law for subjecting the petitioner to stand trial. In this criminal case also, reference about the petitioner having been granted bail came to be mentioned but without reference to any order or date of release on bail.

13. Petitioner's third time involvement in a criminal case under FIR No. 20/2021 dated 12th of April, 2021 registered by the Police Station Kralgund for alleged commission of offences under section 7/25 Arms Act, 1959 read with sections 13/16/18/20/39 Unlawful Activities (Prevention) Act, 1967 came to be referred without any reference as to whether in the said case any final police report/ challan has come to be submitted against the accused person/s or not but a fact came to be mentioned that even in this FIR the petitioner stood bailed out but without any reference to the date of bail and order of bail.

14. It is on the basis of the said dossier related to the petitioner that the respondent No.2-District Magistrate, Baramulla had formulated grounds of detention literally following the text of the dossier to draw his subjective satisfaction that the petitioner was a case deserving slapping of preventive detention custody upon him and that is how the preventive detention order No. 18/DMB/PSA/2024 dated 6th of April, 2024 came to be passed against the petitioner.

15. This detention order came to be executed upon petitioner by ASI Saranpal Singh No. 187/Spr EXK 981910 of District Police Lines (DPL), Sopore who took the petitioner into custody on 9th of April, 2024 and handed over him the grounds of detention comprising of three (03) leaves and other documents twenty seven (27) leaves, besides purportedly explaining the order and grounds of detention to the petitioner before getting him lodged in the District Jail, Kupwara.

16. The detention order No. 18/DMB/PSA of 2024 dated 6th of April, 2024 came to be approved by the Government of Union Territory of Jammu & Kashmir by virtue of a Government Order No. Home/PB-V/754 of 2024 dated

15th of April, 2024 forwarding the preventive detention case of the petitioner for opinion of the Advisory Board.

17. The petitioner, acting through his father, came to submit a written representation dated 19th of April, 2024 seeking recalling of the preventive detention against him for the reasons as set out in the representation.

18. The petitioner's preventive detention case was referred to the Advisory Board for its opinion which came to be tendered on file No. Home/PB-V/207/2024 dated 24th of April, 2024 with respect to which the petitioner was extended an opportunity of personal hearing on 23rd of April, 2024. As per the Advisory Board's opinion, the preventive detention of the petitioner was for a sufficient cause which, thus, paved way for the Government of Union Territory of Jammu & Kashmir to issue a Government Order No. Home/PB-V/937 of 2024 dated 2nd of May, 2024 confirming the petitioner's preventive detention initially for a spell of six months' period from 9th of April, 2024 till 8th of October, 2024.

19. The petitioner in his writ petition has assailed his preventive detention on number of grounds as set out in paragraph No. 10 (A) to (F).

20. The petitioner has highlighted the fact that the FIRs in which he came to be implicated were of the time when the petitioner was a juvenile and after having attained the age of majority there is not even a single incident of bad antecedent reported from the end of the petitioner so as to suffer the rigor of preventive detention order upon his personal liberty.

21. The petitioner has also referred to the fact that his alleged incidents which came to be cited and highlighted against him, besides being related to him when he was a juvenile, are of stale nature which could not have found a live link for the petitioner to suffer loss of his personal liberty.

22. The petitioner has further emphasized that his written representation filed through his father has gone unattended and un-responded thereby wasting his constitutional right.

23. The respondents in their counter affidavit, filed on 1st of October, 2024, have come up with the literal repeat of the tone and tenor of the dossier as well as the grounds of detention. The counter affidavit has been filed by the District Magistrate, Baramulla wherein there is no whisper

of reply as to what fate the representation of the petitioner has been subjected to

24. Upon expiry of the first six months' period of preventive detention of the petitioner, the Home Department, Government of Union Territory of Jammu & Kashmir came forward with a Government Order No. Home/PB-V/1915 of 2024 dated 4th of October, 2024 thereby extending the petitioner's detention for another period of six months w.e.f. 9th of October, 2024 till 8th of April, 2025 with continuation of his lodgment in District Jail, Kupwara.

25. Upon perusal of the facts and circumstances of the case, this Court has a number of grounds open and available with equal emphasis to quash the preventive detention of the petitioner. Even when in any given case only one ground is available for setting aside the preventive detention of a detainee as against non-availability of other grounds even that suffices the purpose for restoring a detainee to his/ her personal liberty by terminating his/ her preventive detention through judicial intervention.

26. The case of the present petitioner is on a better footing.

27. First of all, it defies very common sense understanding as to what was the constraint for the sponsoring agency i.e., law and enforcement authority of District Baramulla, which in the present case is the Senior Superintendent of Police (SSP), Sopore, not to come up with full disclosure of facts in the dossier related to a detainee which in the present case is the petitioner.

28. By reference to all the three FIRs alleged against the petitioner to be contributory factors for preventive detention to be slapped upon the petitioner, the Senior Superintendent of Police (SSP), Sopore has made a very muted reference that the petitioner has been granted bail but without fetching the copy of the bail order from the concerned criminal court so as to not only for his own understanding of the facts and circumstances of the case leading to the grant of bail in favour of the petitioner but also for facilitating the detention order making authority to know that notwithstanding the grant of bail in favour of the detainee a case for his preventive detention is still made out and thereupon leaving the detention order making authority to take a call at its own discretion. In the case of the present petitioner, not even a full one line whisper with

respect to grant of bail is there except passing few words that the petitioner is on bail.

29. If the petitioner by his alleged reported activities was such a serious threat to the security of the Union Territory of Jammu & Kashmir, then his alleged activities were potentially cognizable even when he got bailed out in the first criminal case related to FIR No. 161/2019 followed by second FIR No. 151/2020 when the law and enforcement agency of District Baramulla had the opportunity to seek cancellation of bail granted in favour of the petitioner by the criminal court in relation to FIR No. 161/2019 but nothing of that sort was bothered to be done at the end of the law and enforcement agency or for that matter the Prosecution agency as if the preventive detention was a pre-conceived mindset reserved for the authorities to be resorted to against the petitioner at any given point of time at the sweet will of the law and enforcement agency.

30. The detention authority of District Magistrate, Baramulla and the Home Department of the Government of Union Territory of Jammu & Kashmir acted with sheer non-application of mind without bothering to pause and pose a query to the Senior Superintendent of Police (SSP), Sopore as to why the bail orders related to the

petitioner in the context of the FIRs referred in the dossier have not been submitted for the appreciation of the detention order making authority.

31. This is where the non-application of mind on the part of the District Magistrate, Baramulla as well as the Home Department, Government of Union Territory of Jammu & Kashmir came to set in vitiating the preventive detention of the petitioner.

32. On another front, the preventive detention of the petitioner is rendered vitiated with an illegality as the petitioner's written representation remained un-responded to the petitioner and instead became subject matter of *intra* Government circulation without bothering that the said representation is by the petitioner, of the petitioner and for the petitioner to know from the end of the detaining authority/ Government as to what is the final outcome of his said representation.

33. There is no escape from the fact that the petitioner's representation was actually received in the hands of the District Magistrate, Baramulla as well as in the hands of the Home Department, Government of Union Territory of Jammu & Kashmir which became subject matter of to and fro reference and even to the extent a recommendation for

its rejection was made and which actually was conveyed by the Home Department to the District Magistrate, Baramulla vide communication No. Home/PB-V/207/2024 (7453750) dated 9th of August, 2024 but the District Magistrate, Baramulla bothered least to convey the said rejection to the petitioner and so much so even in his counter affidavit filed on 1st of October, 2024, the District Magistrate, Baramulla did not deem it appropriate to share the said fact of rejection of the petitioner's representation with this Court. Nothing can explain better the casualness on the part of the District Magistrate, Baramulla in dealing with the preventive detention of the petitioner than this aspect.

34. The cumulative effect of all the aforesaid facts and circumstances and inferences borne out therefrom is that the preventive detention of the petitioner is seriously vitiated with illegality and, therefore, liable to be set aside.

35. Accordingly, the preventive detention order No. 18/DMB/PSA/2024 dated 6th of April, 2024 passed by the respondent No.2-District Magistrate, Baramulla read with confirmation/ approval Order No. Home/PB-V/937 of 2024 dated 2nd of May, 2024 read with subsequent extension order/s passed by the Home Department, Government of

Union Territory of Jammu & Kashmir with respect to the preventive detention of the petitioner are also held to be illegal and the same, as such, are quashed. The petitioner is held entitled to restoration of his personal liberty forthwith. The petitioner is, thus, directed to be released from the confinement of concerned Jail and for the said purpose, the Superintendent of Police concerned Jail to carry out the compliance of the writ of *habeas corpus* hereby issued by this Court and release the petitioner.

36. Disposed of.

37. Detention record be returned

**(RAHUL BHARTI)
JUDGE**

Srinagar
25.03.2025
TAHIR

Whether the Judgment/Order is reportable: Yes / No