

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

WP (Crl) No. 208/2023

Reserved On: 2nd of April, 2025.
Pronounced On: 24th of April, 2025.

Suhaib Ahmad Malik

... Petitioner(s)

Through: -

Mr Vaseem Aslam, Advocate.

V/s

Union Territory of J&K and Ors.

... Respondent(s)

Through: -

None.

CORAM:

Hon'ble Mr Justice Rahul Bharti, Judge.

(JUDGMENT)

01. Heard learned counsel for the petitioner.
02. Perused the pleadings of the writ petition and the record therewith.
03. The petitioner-Suhaib Ahmad Malik, who is a 26 years old person, acting through his brother namely Suhail Ahmad Malik, has petitioned this Court through the medium of the present writ petition filed on 6th of June, 2023 thereby seeking

quashment of his preventive detention effected under the Jammu & Kashmir Public Safety Act, 1978 meant to prevent him from indulging in activities prejudicial to the security of the State.

04. The Senior Superintendent of Police (SSP), Bandipora submitted a communication No. Lgl/PSA-11/2023/14899-905 dated 4th of May, 2023 accompanied with a dossier to the respondent No.2-District Magistrate, Bandipora thereby soliciting the respondent No.2-District Magistrate, Bandipora to exercise jurisdiction under Jammu & Kashmir Public Safety Act, 1978 by ordering detention of the petitioner so as to prevent him from indulging in activities reckoned prejudicial to the security of the State.

05. In the dossier, the petitioner has come to be referred to be having affiliation with *Lashkar-e-Toiba* outfit (OGW). The petitioner was referred to be well-educated having developed relationship with terrorist organization namely *Lashkar-e-Toiba* (LeT) and started working as its Over Ground Worker (OGW). The petitioner is referred to be instrumental in propagating/ instigating *Lashkar-e-Toiba* (LeT) ideology in Bandipora and its adjacent areas being an admirer of *Lashkar-e-Toiba* (LeT)

ideology and petitioner himself participating in various unlawful/ anti-national activities in District Bandipora and its adjacent areas.

06. Insofar as petitioner's criminal antecedents are concerned by reference to the said dossier, it came to be mentioned that petitioner was implicated in a criminal case born out of FIR No. 26/2021 under sections 468/471 IPC read with 7/25 Indian Arms Act, 1959 of the Police Station Aragam. Upon his arrest in connection with said FIR during his interrogation, the petitioner is said to have revealed that he is working with banned *Lashkar-e-Toiba* (LeT) outfit for the last three months and was involved in efforts of criminal conspiracy with his two co-accused persons namely Tawseef Ahmad Sheikh and Aijaz Ahmad Hajam to issue sim cards for being used in subversive activities. The petitioner was said to be in touch with his handlers across the border namely Babar (Operational Commander/ FT) and Sharik (LT) located in PoK. The petitioner was alleged to be in close contact with Sharik through Social Media Apps like CONION and FB MESSENGER. The petitioner is said to have received clear directions about a group infiltrating in Kashmir and, as such, was directed to collect local terrorists and other foreign terrorists in

order to provide every possible and logistic support and shelter in the interiors of Bandipora jurisdiction.

07. It came to be further highlighted in the dossier that the petitioner was earlier subjected to preventive detention under the Jammu & Kashmir Public Safety Act, 1978 vide order No. 05/DMB/PSA dated 29th of July, 2021 which is said to have been quashed by this Court resulting in his release on 17th of April, 2022.

08. It is pursuant to his release that the petitioner is said to have been put again on close surveillance which led to inputs that the petitioner was indulging in prejudicial activities by developing contacts with various terrorists/ secessionist organizations. The petitioner came to be referred as educated, die-hard and staunch associate of anti-national gang bent upon promoting violence and disturbances in the Kashmir valley. In view of the then forthcoming events like G-20 and Sanjay-2023, it was reckoned to bring the petitioner under preventive detention so as to ensure public order as well as security of State. The petitioner was referred to be a trustworthy OGW of *Lashkar-e-Toiba* (LeT) terrorist outfit. The activities of the petitioner were said to have

been observed objectionable by beat officer of Gundpora, Rampora along with report of Police Station, Aragam.

09. In the light of long drawn dossier, the respondent No.2-District Magistrate, Bandipora came to draw out grounds of detention so as to generate subjective satisfaction unto himself to order the detention of the petitioner and that led to the issuance of detention order No. 06/DMB/PSA of 2023 dated 9th of May, 2023.

10. The petitioner came to be detained and brought under preventive detention on 13th of May, 2023 and was handed over to the custody of the Central Jail Kot Bhalwal, Jammu.

11. The petitioner's case was referred to the Advisory Board which confirmed the preventive detention of the petitioner holding sufficient ground for subjecting the petitioner to preventive detention which led to issuance of Government Order No. Home/PB-V/1250 of 2023 dated 6th June, 2023 from which moment onwards the petitioner's detention in terms of its period came to be prescribed and extended periodically so as to last for the maximum two years' period.

12. The petitioner came forward with the institution of the present writ petition on 6th of June, 2023.

13. In his writ petition, the petitioner has very intriguingly referred that upon issuance of detention order No. 06/DMB/PSA of 2023 dated 9th of May, 2023 passed by the respondent No.2-District Magistrate, Bandipora, it is he who had approached the office of the respondent No.2-District Magistrate, Bandipora and unofficially obtained the photostat copies of the impugned order of detention and grounds of detention. In the backdrop of this averment made in paragraph No.4 of the writ petition, the petitioner has assailed his detention in terms of grounds set out in the writ petition in paragraph No. 7 (a) to (k).

14. The petitioner submits that the grounds of detention supporting the impugned detention order are identical with the grounds of detention which had led to the previous detention order against him and that is reflective of non-application of mind on the part of the detaining authority. The petitioner has submitted that the impugned order of detention could not have been made when the grounds of detention in the previous detention order had been quashed.

15. The petitioner submits that his implication in FIR No. 26/2021 of the Police Station, Aragam has again been borrowed in

the dossier and also in the grounds of detention which has led to his second time preventive detention.

16. The grounds of detention have been assailed to be vague, bereft of specific details and non-existent. The petitioner has alleged procedural non-compliance on the part of the District Magistrate, Bandipora as well as on the part of the Government in the matter of subjecting the petitioner to preventive detention.

17. Intriguingly, the petitioner has not made any averment to the effect that he has made any representation against his preventive detention more particularly when he came to be delivered the order of detention and notice of detention bearing a recital that he was entitled to make a representation to the Government/ Detention Order making Authority. The grounds of detention and the dossier submitted by the Senior Superintendent of Police (SSP), Bandipora are in sync with each other.

18. The counter affidavit on behalf of the respondents filed on 2nd of August, 2023 mentions that the detention of the petitioner is justified for the serious acts of omission and commission on the part of the petitioner.

19. While the petitioner is an educated person and, as such, he cannot be heard to say that he was ignorant of the fact and that he was not apprised of the fact that he was entitled to make a representation to the Government as well as to the Detention Order making Authority against his preventive detention.

20. Now, if the second time preventive detention of the petitioner is identically placed as that of his first previous detention, then the petitioner should have been prompt enough to address a representation either to the District Magistrate, Bandipora or to the Home Department, Government of Union Territory of Jammu & Kashmir to agitate that he was being victimized without any basis. The reasons are best known to the petitioner as to why he avoided exercising his right of representation against his preventive detention. In his writ petition, the petitioner has not spelt out any reasons for the same which could have enabled this Court to appreciate that the act of non-representing by the petitioner against his preventive detention cannot be reckoned to be prejudicial to the petitioner's right to challenge his current preventive detention.

22. Insofar as the plea of the petitioner that his present preventive detention is bad on account of the fact that his previous

detention was quashed and in both cases the preventive detention is based on identical grounds, the said plea of the petitioner is misplaced. The petitioner has annexed along with his writ petition a copy of judgment dated 12th of April, 2024 passed by the writ court in his writ petition WP (Crl) No. 112/2021 in which the previous preventive detention of the petitioner came to be quashed on the ground that the petitioner was not supplied with the dossier on the basis of which the preventive detention of the petitioner was solicited and warranted and that was a technical snag in the previous preventive detention of the petitioner which resulted in its quashment.

23. In the present case, the petitioner cannot be heard to say that he has not been supplied with the copy of the dossier as the petitioner himself has annexed not only copy of the dossier but also of the communication of the Senior Superintendent of Police (SSP), Bandipora addressed to the District Magistrate Bandipora whereby the dossier came to be submitted. The presence of this dossier being in the hands of the petitioner and the petitioner abandoning his right to make a representation against his preventive detention is a pointer to the fact that the petitioner perhaps was and is having nothing in his defense to allege that the

dossier was misconceived and so is his preventive detention in the present case.

24. In the light of the aforesaid facts and circumstances of the case, the petitioner's preventive detention cannot be held to be vitiated with any illegality, much less procedural one and, therefore, the present petition is **dismissed**.

SRINAGAR

April 24th, 2025

"TAHIR"

(Rahul Bharti)
Judge

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