

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

HCP No. 215/2024

Reserved On: 3rd of April, 2025.
Pronounced On: 26th of May, 2025.

Waseem Shafi Mir

... Petitioner(s)

Through: -

Mr Syed Ashiq Hussain, 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 record relating to the detention of the petitioner as produced by the learned counsel for the respondents.
03. Before proceeding ahead with the adjudication of the present writ petition, this Court highlights a factual error in the writ petition. In the cause title of the writ petition, the petitioner-Waseem

Shafi Mir is stated to be purportedly acting through his father-Mohd. Shafi Mir whereas in paragraph No.1 of the writ petition, the petitioner is said to be acting through his brother. Affidavit in support of the writ petition is by Mohd. Shafi Mir identifying himself to be the father of the petitioner-Waseem Shafi Mir meaning thereby that the petitioner-Waseem Shafi Mir is actually acting through his father-Mohd. Shafi Mir in the matter of maintaining this writ petition for *habeas corpus* under Article 226 of the Constitution of India.

04. The respondent No.3-Senior Superintendent of Police (SSP), Anantnag, vide his communication No. CS/71/2024/10799-805 dated 14th of May, 2024, came to submit a dossier to the respondent No.2-District Magistrate, Anantnag with respect to the petitioner-Waseem Shafi Mir S/o Mohd. Shafi Mir R/o Magray Mohalla, Achabal, District Anantnag thereby reporting his activities being reckoned prejudicial to the maintenance of security order of the Union Territory of Jammu & Kashmir, particularly the District of Anantnag. Said dossier comprised of 16 leaves with 02 leaves of dossier, 07 leaves of

Interrogation Report (IR), 03 leaves of FIR and 04 leaves of statements.

05. In the dossier, the respondent No.3-Senior Superintendent of Police (SSP), Anantnag came to introduce and project the petitioner having studied upto 12th standard and then started working as a Carpenter in his native village. Acting upon suspicion that the petitioner was providing logistic support to terrorists, the petitioner is said to have been brought to PC Anantnag on 26th of January, 2024 and during questioning he is said to have admitted that in the year 2020 he had a chat with Pakistan based group (Kashmir Tigers) *via* WhatsApp, later deleted.

06. It is further stated in the dossier that in FIR No. 49/2024 registered by the Police Station, Anantnag for alleged commission of offences punishable under sections 18 and 20 of the Unlawful Activities (Prevention) Act, 1967 read with section 7/25 of the Indian Arms Act, 1959 and sections 3 & 4 of the Explosive Substances Act, 1908, the petitioner's alleged involvement had surfaced in the terror ecosystem but the evidence collected in the case was not found to be sufficient to book the petitioner in the

case and, therefore, the petitioner was bound down and released on furnishing of surety bond.

07. The petitioner is alleged to be deeply influenced with false anti-national narratives allegedly patronized by handlers sitting across the border as well as the terrorists operating within the district who are bent upon destabilizing the security order of the Union Territory of Jammu & Kashmir through anti-national elements like individuals thereby hatching conspiracy with like minded to carry out terrorist activities in the Union Territory of Jammu & Kashmir, including district Anantnag.

08. By reference to the past record of the petitioner that despite having furnished surety bond, the petitioner is alleged to be continuously in contact with OGWs as well as terrorists and handlers across the border and that was the basis for framing of dossier against the petitioner in order to deter him from indulging in activities prejudicial to the security order of the Union Territory of Jammu & Kashmir.

09. The Interrogation Report (IR) furnished along with the dossier is in tabulated form which reflects in

column No. 18 that the petitioner was apprehended in Magray Mohalla, Achabal on 26th of April, 2024. On the contrary, the recital in the dossier is that the petitioner was brought in PC Anantnag on 26th of January, 2024. In column No. 18 of said Interrogation Report (IR) against “FIR No. related to the arrest of the petitioner” is written ‘Nil’. In column No. 19 of the Interrogation Report (IR) bearing subject “particulars of previous conviction with case details” it is mentioned ‘24 days at Police Station, Anantnag in connection with chat with Pakistan based group Kashmir Tigers’. In the dossier, it is nowhere mentioned as to whether in relation to said FIR No. 49/2024, any final Police Report (Challan) came to be put up before the Court of law or the said case is still under stage of investigation with petitioner being a continuing suspect.

10. Acting upon the said dossier, the respondent No.2-District Magistrate, Anantnag, by borrowing the text and context of the dossier received from the end of respondent No.3-Senior Superintendent of Police (SSP), Anantnag, came to formulate purported grounds of detention so as to draw out subjective

satisfaction that the personal liberty of the petitioner was warranted to be curtailed under the Jammu & Kashmir Public Safety Act, 1988 in order to prevent the petitioner from acting in activities prejudicial to the security of the State.

11. Thus, by virtue of an order No. 18/DMA/PSA/DET/2024 dated 20th of May, 2024, the respondent No.2-District Magistrate, Anantnag came to order preventive detention of the petitioner and his detainment in Central Jail, Kot Bhalwal, Jammu.

12. Vide a communication No. DMA/JC/PSA/2024/104-109 dated 20th of May, 2024, the respondent No.2-District Magistrate, Anantnag intended to notify the petitioner about passing of order of detention with respect to his intended preventive detention.

13. Said preventive detention order came to be executed against the petitioner on 24th of May, 2024 by ASI-Mohd. Maqbool of the Police Station, Achabal, District Anantnag who came to detain and deliver the person of the petitioner to the Assistant

Superintendent, Central Jail, Kot Bhalwal, Jammu by simultaneously handing over to the petitioner 22-leaves compilation and also apprising the petitioner about his right to make a representation to the Government as well as to the respondent No.2-District Magistrate, Anantnag. The petitioner is said to have been informed of the contents of detention warrant and grounds of detention.

14. Vide Government Order No. Home/PB-V/1155 of 2024 dated 28th of May, 2024, the detention order of the petitioner came to be approved by the Home Department, Government of Union Territory of Jammu & Kashmir and the case forwarded to the Advisory Board for its opinion.

15. At his end, the petitioner, acting through his father, came to submit a written representation dated 3rd of June, 2024 thereby seeking revocation/ recall of his preventive detention. This representation was submitted to respondent No.2-District Magistrate, Anantnag in his office vide receipt No. 2309/R and 2450 dated 7th of June, 2024.

16. The petitioner came forward with the institution of the present writ petition on 5th of June, 2024.

17. On 7th of June, 2024, on its very first hearing date, the writ petition came to be admitted for final hearing by putting the respondents on notice for appearance and filing Counter Affidavit.

18. The respondent No.2-District Magistrate, Anantnag, at his end, vide communication No. DMA/Judicial/Gen/ 2024/8095-8098 dated 24th of June, 2024 addressed to the Principal Secretary to Government, Home Department, Union Territory of Jammu & Kashmir, came to forward the written representation of the petitioner submitted through his father.

19. The Home Department, Government of Union Territory of Jammu & Kashmir, acting through its Deputy Secretary, in turn, vide communication No. Home/PB-V/392/2024 (7483186) dated 25th of June, 2024, came to forward the written representation of the petitioner to the Advisory Board before whom the

detention case of the petitioner had been submitted for its opinion.

20. The Advisory Board, acting under the Jammu & Kashmir Public Safety Act, 1978, by virtue of its opinion report dated 26th of June, 2024 on its file No. Home/PB-V/392/2024, came to render its opinion holding the detention of the petitioner for a sufficient cause and also stating that the representation submitted by the petitioner upon being considered was found to be without any substance.

21. On the basis of the Advisory Board's opinion, the preventive detention order of the petitioner came to be confirmed by virtue of Government Order No. Home/PB-V/1385 of 2024 dated 1st of July, 2024 thereby ordering six months detention of the petitioner at first instalment w.e.f. 24th of May, 2024 to 23rd of November, 2024.

22. In the meantime, the Home Department, Government of Union Territory of Jammu & Kashmir, vide letter No. Home/PB-V/392/2024/7483186 dated 1st of July, 2024 addressed to the respondent No.2-District Magistrate, Anantnag, came to apprise him

(the District Magistrate, Anantnag) about the rejection of the petitioner's representation.

23. The petitioner came to seek an amendment of his writ petition which came to be allowed in terms of an order dated 22nd of July, 2024 as in the writ petition originally filed an inadvertent mistake/ error on the part of the counsel for the petitioner in typing out the name of the petitioner as Younis Ahmad Wani came to be corrected to be Waseem Shafi Mir and that led to the presentation of amended writ petition on 30th of July, 2024.

24. Upon expiry of first instalment of six months detention, the petitioner's detention period came to be extended w.e.f. 24th of November, 2024 to 23rd of May, 2025 vide Government Order No. Home/PB-V/2193 of 2024 dated 20th of November, 2024 for another period of six months during the currency of which the hearing of this writ petition came to take place and being reserved for judgment.

25. The petitioner has assailed his preventive detention on the grounds as set out in paragraph Nos.8 (i) to (xiv) of the writ petition.

26. In his grounds of detention, the petitioner has stated that he was already in custody allegedly in connection with FIR No. 49/2024 and had not even applied for bail and during that stage the detention order came to be passed with the sponsoring as well as detaining authority not being aware of the fact that the petitioner was already in custody.

27. There are a host of other grounds highlighted in paragraph No.8 of the writ petition seeking quashment of the preventive detention of the petitioner, including the ground that the dossier being a dry dossier having no iota of factual content in it and, thus, purely proceeding on the *ipsi dixit* of respondent No.3-Senior Superintendent of Police (SSP), Anantnag and acted blindly upon on the part of the respondent No.2-District Magistrate, Anantnag.

28. In the counter affidavit filed on behalf of the respondents through respondent No.2-District Magistrate, Anantnag, whatsoever has been set out in the dossier as well as in the grounds of detention attending the preventive detention of the petitioner has been reiterated along with denials to the assertions made by the petitioner in his writ petition.

The sum and substance of the counter affidavit filed by the respondents is that the petitioner is a fit case whose personal liberty deserved to suffer curtailment so as to check him from indulging in activities prejudicial to the security of the State.

29. In the facts and circumstances of the case, when this Court examines the legality of the petitioner's preventive detention, this Court is constrained to edit out the entire factual reference and connect related to FIR No. 49/2024 in which criminal case the petitioner at no point of time was ever booked to suffer criminal trial which in the eyes of law would thus amount reckoning the petitioner being as innocent as any ordinary citizen of the country bearing no criminal accusation against him/her. Minus reference to FIR No. 49/2024, what remains as being the content part of the dossier against the petitioner is nothing but chaff having no underlying factual basis whatsoever worth the name.

30. In addition, this Court's attention is drawn to the Interrogation Report (IR) which came to be handed over to the petitioner along with the dossier in which without there being any FIR attending upon him, the

petitioner is still said to have been subjected to 24 days' confinement at the Police Station, Anantnag which is a pointer to the fact that the petitioner was picked up for suffering preventive detention with a prejudiced mind by the local police.

31. It appears that the petitioner has been wronged twice by the District Police, firstly, by his 24 days' confinement in the Police Station, Anantnag and, second time by setting up a case for his preventive detention which came to take place in terms of the impugned detention order. In this view of the matter, this Court holds that the petitioner's preventive detention is misconceived and baseless which ought not to have taken place on the basis of phony dossier served to the respondent No.2-District Magistrate, Anantnag who, at his own end, ought to have been vigilant enough in terms of his application of mind to sift the chaff from the grain. 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. 18/DMA/PSA/DET/2024 dated 20th of May, 2024 passed by respondent No.2-District Magistrate,

Anantnag read with consequent 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 26th, 2025
"TAHIR"

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