

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

HCP No. 263/2024

Reserved On: 3rd of April, 2025.

Pronounced On: 5th of June, 2025.

Irfan Ahmad Malik

... Petitioner(s)

Through: -

Mr Younis Ahad, Advocate.

V/s

Union Territory of J&K and Ors.

... Respondent(s)

Through: -

Mr Hakeem Aman Ali, Dy. AG.

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.
03. The petitioner-Irfan Ahmad Malik is a detinue undergoing preventive detention custody on account of operation of the Jammu & Kashmir Public Safety Act, 1978 and has, thus, come to petition this

Court seeking a writ of *habeas corpus* to regain his lost personal liberty by getting the preventive detention order operating against him set aside by the indulgence of this Court.

04. Institution of the writ petition by the petitioner-Irfan Ahmad Malik has taken place through his brother-in-law-Zahid Manzoor on 22nd of July, 2024.

05. The respondent No.3-Senior Superintendent of Police (SSP), Anantnag, vide his letter No. CS/71/2024/10806-11 dated 14th of May, 2024, submitted a dossier to the respondent No.2-District Magistrate, Anantnag on the basis of which the petitioner's alleged activities were reported to be prejudicial to the security of the Union Territory of Jammu & Kashmir, thus, warranting his preventive detention to prevent him from continuing with the said prejudicial course of activities.

06. On the basis of the dossier so submitted by the respondent No.3-Senior Superintendent of Police (SSP), Anantnag, the respondent No. 2 – District

Magistrate, Anantnag came to formulate purported grounds of detention referring therein the profile of the petitioner being a student of Government Degree College, Khanabal, Anantnag pursuing his Bachelor's Degree and simultaneously running a Snooker Shop at General Bus Stand under the business name Black Pot.

07. In the grounds of detention, it is recited that on 21st of January, 2013, the petitioner was picked up by the Police Station, Anantnag for questioning in the matter of his alleged involvement in providing logistic support to terrorists in the month of July, 2022, when he had allegedly come in close contact with one person-Yasir Ahmad Bhat, who used to visit the petitioner at petitioner's run Snooker Shop. Said Yasir Ahmad Bhat is said to be a terrorist of TRT outfit who later got eliminated in an encounter in District Kulgam.

08. The petitioner's involvement in FIR No. 49/2024 registered by the Police Station, Anantnag for commission of offences punishable under sections 18/20 of the Unlawful Activities (Prevention) Act,

1967, section 7/25 Arms Act, 1859 and Section 3/4 of the Explosive Substances Act is also highlighted in which the arrest of hybrid terrorist of JeM outfit Waseem Ahmad Ganie, along with arms and ammunition and explosive material, on 24th of March, 2024 came to be revealed thereby leading to the apprehension of many Over Ground Workers (OGWs) active in District Anantnag.

09. The petitioner's involvement is said to have figured on the disclosure of Washif Fayaz Vaid who has disclosed to the Police of Anantnag that he and his associate, i.e., petitioner, along with Fayaz Ahmad Dar, Imtiyaz Ahmad Ganie, Ashiq Hussain Mir, Ishfaq Ahmad Wani, Wilayat Ajaz Dar, Mujeeb Iqbal, Wasif Fayaz Vaid, Zameer Ahmad Shah, Waseem Shafi Mir, Tufail Ahmad Zargar, Arif Ahmad Lone and Bilal Ahmad Ahanger are involved in anti-national activities.

10. It is admitted in the grounds of detention that there is insufficient evidence against the petitioner to book him in the said FIR, but his involvement could not be ruled out and, as such, the

petitioner was subjected to preventive measure proceedings under the Code of Criminal Procedure (Cr. P. C.).

11. It is in this backdrop that the petitioner was reckoned to be a case to be subjected to preventive detention custody in order to prevent him from acting in manner prejudicial to the security of the Union Territory of Jammu & Kashmir.

12. Thus, on the basis of a two-page dossier, backed up by two-page grounds of detention, three-pages of FIR, six pages of Interrogation Report (IR) and four pages of statements, the respondent No.2-District Magistrate, Anantnag came to draw subjective satisfaction to pass order No. 19/DMA/PSA/DET/2024 dated 20th of May, 2024 thereby ordering the preventive detention of the petitioner and consequent upon that his detainment in the Central Jail, Kot Bhalwal, Jammu.

13. Thereafter, pursuant to the aforesaid detention order, the petitioner came to be taken into

preventive custody on 24th of May, 2024 by ASI Mohd. Maqbool of Police Station, Mattan.

14. The detention order No. 19/DMA/PSA/DET/2024 dated 20th of May, 2024 came to be approved by the Home Department, Government of Union Territory of Jammu & Kashmir vide Government Order No. Home/PB-V/1157 of 2024 dated 28th of May, 2024 by forwarding the case for Advisory Board's opinion which is stated to have tendered its opinion that there was sufficient cause made out for imposing preventive detention upon the petitioner.

15. Acting upon the said Advisory Board's opinion, the Government of Union Territory of Jammu & Kashmir, through its Home Department, vide Government Order No. Home/PB-V/1352 of 2024 dated 21st of June, 2024, came to confirm the detention of the petitioner.

16. The petitioner came to challenge his preventive detention on the grounds as set out in paragraph Nos. 2 (I) to (VII) of the writ petition.

17. The frontal challenge to the preventive detention of the petitioner is that the respondent No.3-Senior Superintendent of Police (SSP), Anantnag as well as respondent No.2-District Magistrate, Anantnag acted upon sweeping and generalized assumptions relating to the petitioner without any iota of factual connect and, thus, the preventive detention of the petitioner is nothing but a self-framed opinion of the respondent No.2-District Magistrate, Anantnag as well as respondent No.3-Senior Superintendent of Police (SSP), Anantnag which is nothing but sheer and arbitrary exercise of jurisdiction under the Jammu & Kashmir Public Safety Act, 1978 under the garb of which the respondent No.2-District Magistrate, Anantnag as well as respondent No.3-Senior Superintendent of Police (SSP), Anantnag were reeling under an impression that the power was available at their end to be abused by subjecting any law-abiding citizen to suffer at their ends.

18. The counter affidavit to the writ petition came to be filed on behalf of respondent No.2-District

Magistrate, Anantnag who came to repeat the basis of the grounds of detention to meet the challenge posed by the petitioner to the preventive detention so imposed upon him.

19. From bare reading of the grounds of detention, this Court is left staring at the fact that when there is no FIR with the Police Station, Anantnag in January, 2023 relatable to the petitioner or hinting towards the involvement of the petitioner in any act of crime so as to render him liable to be booked for trial, then what for he was picked up by Police Station, Anantnag to make alleged disclosures that he was in close contact with Yasir Ahmad Bhat. In other words, if left to the respondent No.2-District Magistrate, Anantnag as well as respondent No.3-Senior Superintendent of Police (SSP), Anantnag, the petitioner self-incriminated by the confession within the confines of Police Station, Anantnag leading to the so-called disclosure of the petitioner's alleged connection with Yasir Ahmad Bhat and his TRF outfit.

20. Nothing can be more brazen a ground for being used as a basis for slapping preventive

detention against a person than as cited in the grounds of detention.

21. The FIR No. 49/2024 referred in the grounds of detention has not resulted in the booking of the petitioner as has been self-stated in the grounds of detention.

22. Minus these two references, there is nothing in the grounds of detention for any sane person to hold the petitioner bearing antecedents warranting his preventive detention custody.

23. So much so, not a whisper of factual reference is made that whether the petitioner was ever subjected to any proceedings under Section 107 read with Section 151 of the Code of Criminal Procedure (Cr. P. C.), 1973 so as to lend a basis for the respondent No.2-District Magistrate, Anantnag to assume that the petitioner has an antecedent to be booked for preventive detention custody.

24. The petitioner has been subjected to suffer two years of preventive detention custody of which petitioner has spent one year and but for adjudication

of this writ petition the petitioner is in his second year of preventive detention custody.

25. In the light of the aforesaid facts and circumstances of the case, the petitioner's preventive detention custody pursuant to impugned detention Order No. 19/DMA/PSA/DET/2024 dated 20th of May, 2024 passed by the respondent No.2-District Magistrate, Anantnag is, thus, seriously vitiated with illegality and is held to be illegal and void.

26. Resultantly, the preventive detention order No. 19/DMA/PSA/DET/2024 dated 20th of May, 2024 passed by the 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.

27. 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.

28. **Disposed** of.

(Rahul Bharti)
Judge

SRINAGAR
June 5th, 2025
"TAHIR"



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