

Serial No. 27
Reg. Cause List

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

HCP 268/2024

ABID MUSHTAQ NAIK

... Petitioner(s)

Through: Ms. GAZALA AHAMAS, Advocate

Vs.

GOVERNMENT OF J AND K AND ANR.

...Respondent(s)

Through: Mr. ZAHID NOOR, GA

CORAM:

HON'BLE MR. JUSTICE JAVED IQBAL WANI, JUDGE

ORDER
09.10.2025

1. The petitioner in the instant petition filed under Article 226 of the Constitution has challenged detention order No. 11/DMK/PSA/2024 dated 16.04.2024 passed by respondent-2 herein under and in terms of J&K Public Safety Act, 1978.
2. The petitioner has challenged the impugned order upon multiple grounds urged in the instant petition.
3. Reply to the petition has been filed by the respondents wherein the petition is being opposed on the grounds that the petitioner has been working as an Over Ground Worker for terrorist and

on account of his said activities, a dossier was prepared and forwarded along with the other material to the detaining authority by the sponsoring authority recommending the preventive detention of the petitioner consequent to which the petitioner was detained and ordered to be lodged in Central Jail, Srinagar.

It is further stated that the order of detention was executed on 18.04.2024 by the Executing Officer and that the contents of the warrant, the order of detention, the notice of detention and grounds of detention were read over to him, besides furnishing him a copy thereof and also came to be informed about making of a representation against his detention to the Government as well as to the detaining authority.

It is further stated that the case of the petitioner was examined by the Advisory Board as well in terms of Section 14 of the Act of 1978, which opined about the continued detention of the petitioner, whereupon the order of detention came to be confirmed by the Government.

It is further stated that the petitioner was involved in case FIR No. 01/2023 registered with Police Station D.H. Pora for commission of offences under sections 13, 18 & 38 UAP Act, in

respect whereof a charge sheet was also laid before the Competent Court upon completion of the investigation therein in the said FIR.

It is also stated that the detaining authority being satisfied on the basis of the material furnished to it that the activities of the petitioner are prejudicial to the security of the State and normal law of the land is not sufficient to deter the petitioner from indulging in his nefarious activities, the detaining authority ordered preventive detention of the petitioner strictly in accordance with the provisions of the Act of 1978 as also while adhering to the procedural safeguards and the constitutional guarantees.

Heard counsel for the parties and perused the detention record produced by the counsel for the respondents.

4. A closer examination of the detention record produced by the counsel for respondents would tend to show that the detaining authority in the opening words of the order of detention has specifically mentioned that the petitioner has been detained on the basis of grounds of detention placed before him by the Superintendent of Police, Kulgam vide letter dated 30.03.2024,

thus suggesting that the detaining authority has not framed the grounds of detention itself in terms of the Act of 1978.

However, assuming that the grounds of detention have been framed by the detaining authority itself yet deeper examination of the detention record in general and the grounds of detention as well as the dossier in particular would reveal that the grounds of detention are in essence the replica of the dossier drawn and prepared by the sponsoring agency, in that the expression appearing in the grounds of detention like **“that You have studied up 8th class from Government Middle school Mirhama, Kulgam and left your studies and started working as Driver and you were “playing” your Auto Rickshaw in the local routes of Kulgam”**. The same spelling of the expression **“playing”** has even been used in page 1 of the dossier.

5. The non-application of independent mind by the detaining authority also lends support from the fact, that in the dossier, the sponsoring agency has referred to the provisions of Section 107 and 151 of Cr PC, claimed to have been invoked against the petitioner same as well has also been referred in the grounds of detention by the detaining authority, however, a deeper

examination of the detention record suggests that no proceedings under section 151 Cr PC have had been undertaken against the petitioner after the initiation of proceedings under section 107 Cr PC.

6. The aforesaid factual position obtaining in the matter thus manifestly reveal that the detaining authority has shown complete non-application of mind while detaining the petitioner under the Act of 1978.
7. Besides above, it is also noticed that the petitioner has been bailed out in the FIR referred in the grounds of detention being FIR No. 01/2023 on 15.04.2023 and qua the said fact, both the detaining authority as well as the sponsoring agency have shown complete non-awareness thereof, and otherwise also perusal of the said bail order available on the file reveals that the bail has been granted to the petitioner besides other accused subject to various conditions imposed therein the said order, one being that the Investigating Officer shall keep a watch and surveillance upon the activities of the petitioner who had been found to be juvenile at that point of time and to ensure that during the period of interim bail, the petitioner is not involved or attracted towards any kind of illegal, anti-social or anti-national activities and that in case any credible information is

being received in this regard, the IO shall immediately bring the same to the notice of the Board so that appropriate orders in the matter are passed.

However, nothing is forthcoming from the detention record produced by the counsel for the respondents that after availing the aforesaid concession of bail, the petitioner was found to be involved in any activity prejudicial to the security of the State, or that an information in this regard was placed before the Court which granted bail to the petitioner and appropriate orders were solicited.

Seemingly, the respondents instead of taking recourse to the liberty provided to them in the bail order *supra*, have chosen to detain the petitioner under the provisions of the Act of 1978, by adopting a shortcut method which is impermissible in law.

8. Having regard to the aforesaid position obtaining in the matter, the only inescapable conclusion that could be drawn is that the instant petition would succeed.
9. Thus, the instant petition succeeds and is accordingly **allowed** and impugned order No. 11/DMK/PSA/2024 dated 16.04.2024 passed by respondent-2, is quashed with a direction to the concerned Jail Authority to release the petitioner from the

preventive detention, unless the petitioner is required in any other case.

10. The detention record produced by the counsel for the respondents is returned back in the open Court.

(JAVED IQBAL WANI)
JUDGE

SRINAGAR:

09.10.2025

"S.Nuzhat"