

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

HCP No. 70/2023

Reserved On: 13th of March, 2025.
Pronounced On: 25th of March, 2025.

Bilal Ahmad Malla

... Petitioner(s)

Through: -
Mr Wasim Shamas, Advocate.

V/s

UT of J&K and Ors.

... Respondent(s)

Through: -
Mr Jehangir Ahmad Dar, Government Advocate.

CORAM:

Hon'ble Mr Justice Rahul Bharti, Judge

(JUDGMENT)

01. Heard learned counsel for the parties.
02. Perused the pleadings and the record therewith. Also perused the detention record produced from the end of the respondents.
03. Acting through his wife-Bilques, the petitioner-Bilal Ahmad Malla has invoked writ jurisdiction of this court under article 226 of the Constitution of India for seeking issuance of a writ of habeas corpus for quashment of his preventive detention

and restoring his personal liberty by release from the Central Jail Jammu, Kotbhalwal.

04. The preventive detention of the petitioner is sourced to an order No. DMS/PSA/75/2022 dated 28th of June, 2022 passed by the District Magistrate, Srinagar acting in exercise of power under section 8 of the Jammu & Kashmir Public Safety Act, 1978 in terms whereof the petitioner was ordered to be detained and to be kept in confinement in the Central Jail Jammu, Kotbhalwal.

05. A case for curbing the personal liberty of the petitioner was sponsored by the Senior Superintendent of Police (SSP), Srinagar by submitting a dossier vide letter No. Lgl/Det-PSA/2022/12876-79 dated 27th of June, 2022 wherein it came to be reported that the petitioner is a hard core OGW involved in harbouring, promoting, aiding and abetting terrorism in Kashmir Valley particularly in Srinagar by being found involved in providing food/ shelter and logistic support to the terrorists.

06. The petitioner came to be referred as an incorrigible secessionist of his area promoting/ instigating/ abetting/ aiding local youth of the area for unlawful activities by motivating them to join terrorist ranks so as to wage war against the security and

sovereignty of India and to secede the Union Territory of J&K from the Union of India. The petitioner was alleged to have been indulging in disturbing the public tranquility besides endangering human life causing impediments in the smooth economic development of the Union Territory. The referred alleged activities of the petitioner were reported to be a great threat to the security of the Union Territory of Jammu & Kashmir as the people of the area are highly terrorized by the petitioner.

07. In order to bad caricature him, the petitioner's involvement and implication in FIR No. 192/2021 under section 307 IPC read with section 7/27 Indian Arms Act and sections 13, 16, 19 of the Unlawful Activities (Prevention) Act, 1967 registered by the Police Station Safa Kadal came to be referred.

08. Acting upon the said dossier, the respondent No.2- District Magistrate, Srinagar borrowed the text and context of the dossier verbatim so as to constitute the same as grounds of detention for drawing a purported subjective satisfaction that the petitioner is a person whose activities are highly prejudicial to the maintenance of security of the State and, therefore, warranted his preventive detention, thus leading to the issuance of detention order No. DMS/PSA/75/2022 dated 28th of June, 2022.

09. The execution of the detention warrant upon the petitioner came to take place when the executing officer ASI Tariq Ahmad No. 2723/S EXK-872787 of the Police Post Noorbagh came to detain the petitioner on 1st of August, 2023 by handing over his person to the Superintendent, Central Jail Jammu, Kotbhalwal.

10. The detention order No. DMS/PSA/75/2022 dated 28th of June, 2022 came to be approved by the Home Department, Government of Union Territory of Jammu & Kashmir by passing a Government Order No. Home/PB-V/1534 of 2022 dated 5th of July, 2022. At the time of approving of the detention order, the arrest and detention of the petitioner had not been carried out which came to take place on 1st of August, 2023 after a gap of almost one year one month from the month and year of order of detention.

11. The execution of the detention warrant is said to have been accompanied by handing over of detention order (one leaf), notice of detention (one leaf), grounds of detention (two leaves) and other document (one leaf) as per execution report, whereas as per receipt of grounds of detention and other relevant record, eight (08) leaves compilation is said to have been handed over to the

petitioner by the Executing Officer at the time of taking the petitioner into detention.

12. The petitioner is said to have been read over and explained the contents of the detention warrant and grounds of detention in Kashmiri language by simultaneously apprising him about the right to make a representation to the Government as well as to the detaining authority against his detention.

13. Upon his arrest and detention, the preventive detention of the petitioner was referred to the Advisory Board constituted under the Jammu & Kashmir Public Safety Act, 1978 for its opinion which came on file No. Home/PB-V/585/2022 dated 23rd of August, 2023 holding the petitioner's detention to be justifiable and the representation made by the petitioner through his wife being without any substance in the reasons and grounds on which the detention of the petitioner has been questioned and thus the representation was also rejected by the Advisory Board.

14. Pursuant to the Advisory Board's opinion report dated 23rd of August, 2023, the preventive detention of the petitioner came to be confirmed by the Home Department, Government of Union Territory of Jammu & Kashmir vide Government Order

No. Home/PB-V/1952 of 2023 dated 29th of August, 2023 and subjecting the petitioner to undergo preventive detention for a period of six months at the first instance and to stay lodged in Central Jail Jammu, Kotbhalwal but without specifying in express manner from which date to which date six months detention period to run.

15. The petitioner in his written representation against his preventive detention made through his wife urged upon the Commissioner/ Secretary, Home Department, Government of Union Territory of Jammu & Kashmir that the petitioner was already in judicial custody since 2001 (which appears to be mistyped instead of 2021) as an accused/ under trial in connection with an ongoing criminal case in which maximum material prosecution witnesses have been examined and that while in the state of custody the detention order was passed just in order to frustrate the filing of application for grant of bail sought by the petitioner before the designated NIA court.

16. The petitioner in his writ petition filed on 25th of August, 2023 i.e. within a period of next 24 days from the date of his arrest and detention came to question the detention on the grounds that the passing of detention order is malice, both in law

and fact, ridden in the sense that the petitioner was already in judicial custody in connection with his trial related to FIR No. 192/2021 set up by the Police Station Safa Kadal and the passing of the detention order was to pre-empt the possibility of the petitioner's seeking bail in connection with the criminal case in which he was in judicial custody from the year 2021 onwards.

17. Upon expiry of first six months period of detention, the petitioner's detention came to be extended for another period of six months while continuing to be lodged in Central Jail, Kotbhalwal, Jammu in terms of a Government Order No. Home/PB-V/184 of 2024 dated 22nd of January, 2024. In this Government Order also, the six months' extension was not expressly stated as to last from which date to which date.

18. Thus, the sum and substance of the grounds of challenge of his detention by the petitioner is that the exercise of jurisdiction by the Senior Superintendent of Police (SSP), Srinagar and the District Magistrate, Srinagar is colourable exercise of power and authority at their respective end.

19. The respondents in their counter affidavit to the writ petition have come forward defending the preventive detention of

the petitioner. In their counter affidavit, the respondents have cited the position of law related to the preventive detention jurisdiction and on that basis seeking dismissal of the writ petition filed by the petitioner. The counter affidavit came to be filed on 6th of November, 2023.

20. Upon hearing the submissions made by both sides, this court is left to wonder as if the Senior Superintendent of Police (SSP), Srinagar was even aware of the date of arrest of the petitioner in connection with his implication in FIR No. 192/2021 as the same was kept undisclosed in the entire dossier and the objective was obvious so as to downplay the fact of him being already in custody for the last more than seven-eight months. In the dossier, it was nowhere mentioned as to whether the petitioner had applied for bail and if applied then whether likely to earn it thereby impelling the Senior Superintendent of Police (SSP), Srinagar to foresee a scenario of the petitioner being out from his custody and resorting and resuming indulgence in his alleged objectionable activities reckoned to be detrimental to the security of the Union Territory of Jammu and Kashmir.

21. The Senior Superintendent of Police (SSP), Srinagar cannot be heard to say that he was handicapped or ignorant to

know about true and full set of facts with respect to the petitioner's arrest and detention in custody in connection with FIR No. 192/2021 so as to spell out the facts in fullness in his dossier for the notice and consumption of the District Magistrate, Srinagar for enabling the application of mind on the part of the detaining authority on the fullness of facts.

22. This is where the entire preventive detention case set up against the petitioner from its very inception got vitiated with an illegality and that is indicative of the fact that the objective was oblique as if to checkmate any criminal court from considering the petitioner entitled to earn bail in connection with criminal case borne out of FIR No. 192/2021.

23. The District Magistrate, Srinagar at his end acted as if wearing blinders so as to not to let his own independent application of mind to be at work to discern from the dossier as to from which date the petitioner was in the state of arrest and custody in connection with FIR No. 192/2021 so as to weigh the discretion making at his end as to whether there was a justifiable cause for subjecting the petitioner to preventive detention custody when the petitioner was already in a state of custody as an accused/ under-trial in a criminal case.

24. From the detention record file produced for the perusal of this court, this court has not come across with any fact as to the reason why the detention order No. DMS/PSA/75/2022 dated 28th of June, 2022 remained un-executed upon the petitioner till 1st of August, 2023. It is not from the Government but from the petitioner's end that the cause came to be disclosed that since he was already in custody as an under trial so the execution of the detention warrant was deferred till the petitioner comes out on bail and, thus, the *malafide* of mind at the end of the Law Enforcement Authorities/ Agency of District Srinagar was at play.

25. This time gap from the date of issuance of detention order and actual apprehension of the petitioner exposes itself to a possible interpretation as to whether the Law Enforcement Authorities/ Agency of District Srinagar resorted to procurement of preventive detention order as a part of cat and mouse game to be played for the petitioner.

26. Preventive detention jurisdiction is too pure in its intent and purpose to be left to be polluted by anything else at the end of Law Enforcement Authorities/ Agency. Therefore, the preventive detention of the petitioner is seriously vitiated by this time lag.

27. Another reason which comes to vitiate the continuing preventive detention of the petitioner is that neither the District Magistrate, Srinagar nor the Government of Union Territory of Jammu & Kashmir has bothered to apprise the petitioner about the fate of his representation against his preventive detention. There is nothing on the record to confirm that the petitioner came to be apprised about the fact of rejection of his representation which was processed for consideration at the end of the Government by addressing communication No. Home/PB-V/585/2022 (220090) dated 17th of August, 2023 to the Special D. G. of Police, CID, J&K and communication No. Home/PB-V/585/2022 (220090) dated 1st of February, 2024 addressed to the District Magistrate, Srinagar stating therein that the representation, upon being considered, has been found to be without merit.

28. Not only delay came to take place in the matter of consideration of the representation of the petitioner but the petitioner remained uninformed about the fact of his said representation as well which vitiates the continuing preventive detention of the petitioner warranting it to be checked.

29. In the light of the aforesaid facts and circumstances, the preventive detention of the petitioner effected vide

Government Order No. DMS/PSA/75/2022 dated 28th of June, 2022 read with approval/ confirmation order No. Home/PB-V/1952 of 2023 dated 29th of August, 2023 passed by the Home Department of Government of Union Territory of Jammu & Kashmir is held to be illegal and, as such, the aforesaid order/s is/are hereby **quashed**. The petitioner is directed to be restored to his personal liberty forthwith.

30. The Superintendent of Central Jail Kotbhalwal, Jammu to release the petitioner unless and until his custody in any pending or registered criminal case is warranted, then to hand over the petitioner to the court(s)/ authority concerned.

31. **Disposed of.**

32. Detention record be returned.

(Rahul Bharti)
Judge

SRINAGAR

March 25th, 2025

"TAHIR"

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