

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

HCP No. 94/2023

Reserved On: 7th of April, 2025.
Pronounced On: 23rd of May, 2025.

Jan Nisar Khaliq Ganie

... Petitioner(s)

Through: -

Mr Wajid Mohammad Haseeb, Advocate.

V/s

Union Territory of J&K and Anr.

... 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. Also perused the detention record relating to the petitioner produced by the learned counsel for the respondents.
03. This writ petition came to be filed on 16th of September, 2023 by the petitioner-Jan Nisar Khaliq Ganie, acting through his brother-Irfan Khaliq Ganie, thereby seeking quashment of his preventive detention

which came to take place in terms of impugned detention order No. 39/DMB/PSA/2023 dated 22nd of May, 2023 passed by the respondent No.2-District Magistrate, Baramulla acting under the Jammu & Kashmir Public Safety Act, 1978 ordering detention and custody of the petitioner in order to prevent him from indulging in alleged activities prejudicial to the security of the State.

04. The petitioner came to be detained on 26th of May, 2023 by SI Abdul Qayoom No. 133/8 EXK-872193 of Police Station, Pattan and handed over to the Superintendent, Central Jail, Kot Bhalwal, Jammu where the petitioner was ordered to be kept in custody and is so held up.

05. Vide Government Order No. Home/PB-V/1131/2023 dated 26th of May, 2023, the order of detention so passed by the respondent No.2-District Magistrate, Baramulla against the petitioner came to be approved and the case forwarded to the Advisory Board for its opinion which came forward on file No. Home/PB-V/2084/2023 dated 12th of June, 2023 in which it came to be referred that the petitioner has not made any representation against his preventive detention.

06. Vide Government Order No. Home/PB-V/1347 of 2023 dated 19th of June, 2023, the preventive detention

of the petitioner was confirmed w.e.f. 26th of May, 2023 and the petitioner directed to be detained for a period of six months at the first instance which later on came to be extended in terms of Government Order No. Home/PB-V/2635 of 2023 dated 20th of November, 2023.

07. The petitioner came to submit a written representation to the respondent No.2-District Magistrate, Baramulla duly received in the office of the respondent No.2-District Magistrate, Baramulla on 30th of August, 2023.

08. The petitioner's detention is meant to last its full two years' tenure which is coming to expire on 25th of May, 2025.

09. The petitioner has assailed his preventive detention on number of grounds, one of which being non-consideration of his representation by the respondent No.2-District Magistrate, Baramulla as well as by the respondent No.1/Home Department, Government of Union Territory of Jammu & Kashmir.

10. Counter Affidavit to the writ petition came to be filed on 22nd of October, 2023 by the respondent No.2-District Magistrate, Baramulla where there is not even a whisper to the fact as to the fate of the petitioner's written

representation duly received in the office of the respondent No.2-District Magistrate, Baramulla vide receipt No. 3983 dated 30th of August, 2023 meaning thereby that the petitioner's very constitutional right to have his representation considered and answered by the detaining authority was let to go waste.

11. Even from the perusal of the detention record produced, there is no document forthcoming to show as to what came to be the fate of the representation of the petitioner.

12. This omission on the part of the respondents is a serious flaw which renders the preventive detention of the petitioner illegal even if not from the inception but surely from 30th of August, 2023 onwards when the petitioner's representation remained unattended and unanswered by the respondents.

13. In the light of the aforesaid facts and circumstances of the case, the preventive detention of the petitioner is held to be illegal.

14. Resultantly, the preventive detention order No. 39/DMB/PSA/2023 dated 22nd of May, 2023 passed by respondent No.2-District Magistrate, Baramulla read with 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.

15. 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.

16. **Disposed** of.

17. The detention record is in photostat form, as such, retained.

(Rahul Bharti)
Judge

SRINAGAR
May 23rd, 2025
"TAHIR"

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