

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

HCP No. 321/2024

Reserved On: 3rd of April, 2025.

Pronounced On: 30th of April, 2025.

Zahoor Ahmad Dar

... Petitioner(s)

Through: -

Mr Wajid Mohammad Haseeb, Advocate.

V/s

Union Territory 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 of the writ petition and the record therewith.
03. The petitioner-Zahoor Ahmad Dar, acting through his father namely Ghulam Nab Dar, being in state of preventive custody, came to petition this Court with the present writ petition filed on 1st of October, 2024 thereby seeking a writ of *habeas corpus* in order to retrieve his lost personal liberty curtailed by virtue of detention order No. 19/DMB/PSA of 2024 dated 11th of

September, 2024 passed by the respondent No.2-District Magistrate, Bandipora.

04. The case for seeking preventive detention of the petitioner was sponsored by district law and enforcement authority of Bandipora when the Senior Superintendent of Police (SSP), Bandipora, vide his communication No. Lgl/PSA-52/2024/39381-88 dated 5th of September, 2024, came to submit a dossier to the respondent No.2-District Magistrate, Bandipora wherein the petitioner's alleged activities, drawn predominantly by reference to FIRs mentioned therein, came to be highlighted to claim that in order to prevent the petitioner from further indulging in activities prejudicial to the maintenance of public order personal liberty of the petitioner is warranted to be curtailed.

05. The respondent No.2-District Magistrate, Bandipora at his end by applying his mind to the dossier came to formulate grounds of detention wherein the petitioner's involvement in the FIRs came to be referred upfront.

06. In this regard, the following FIRs came to be mentioned in the grounds of detention:

- i. FIR No. 267/2005 under section 5 of the Explosive Substances Act registered by Police Station Sumbal;
- ii. FIR No. 03/2012 under section 7/25 of the Indian Arms Act registered by Police Station Hajin;
- iii. FIR No. 231/2014 under section 13 of the Unlawful Activities Act read with section 5 of the Explosive Substances Act registered by Police Station, Bijbehara;
- iv. FIR No. 81/2015 under section 7/25 of the Indian Arms Act registered by Police Station Rajbagh;
- v. FIR No. 208/2010 under sections 341/148/323 of the Ranbir Penal Code (RPC) registered by Police Station Sumbal;
- vi. FIR No. 80/2011 under sections 341/336/427 of the Ranbir Penal Code (RPC) registered by Police Station Sumbal;
- vii. FIR No. 14/2016 under sections 447/452/354/336/427 of the Ranbir Penal Code (RPC) registered by Police Station Sumbal;
- viii. FIR No. 122/2016 under sections 148/149/336/353/152 of the Ranbir Penal Code (RPC) registered by Police Station Sumbal;
- ix. FIR No. 127/2016 under sections 148/149/336/307 of the Ranbir Penal Code (RPC) registered by Police Station Sumbal;

- x. FIR No. 09/2022 under sections 348/323/354 of the Indian Penal Code (IPC), Police Station Sumbal; and
- xi. FIR No. 51/2022 under sections 148/151/336 of the Indian Penal Code (IPC) registered by Police Station, Sumbal.

07. On the basis of the purported involvement of the petitioner in the aforementioned FIRs out of which criminal cases came to be instituted, the petitioner was reckoned to be a prolonged agitator, nuisance, recidivist, being associated with every kind of anti-national activities including acting as an OGW, stone pelter, bad character and history sheet. The petitioner was said to be affiliated with anti-national forces working against the interests of the nation.

08. The petitioner's previous preventive detention having taken place on 11th of April, 2022 for a period of two years came to be highlighted with respect to which he came to get out of preventive detention custody on 10th of April, 2024 after serving full two years preventive custody.

09. On the basis of the grounds of detention so formulated, the respondent No.2-District Magistrate, Bandipora came to draw subjective satisfaction now this time holding the petitioner's

activities to be prejudicial to the maintenance of public order and, thus, passing the detention order No. 19/DMB/PSA of 2024 dated 11th of September, 2024 directing petitioner's detention and detainment in the Central Jail Kotbhalwal, Jammu.

10. The petitioner came to be taken into custody on 12th of September, 2024 and handed over to the Superintendent, Central Jail, Kotbhalwal, Jammu from which date onwards the petitioner is in preventive detention custody.

11. The institution of the present writ petition came to take place on 1st of October, 2024 while the petitioner was in state of custody.

12. The preventive detention order No. 19/DMB/PSA of 2024 dated 11th of September, 2024 passed by the respondent No.2-District Magistrate, Bandipora came to be confirmed by the Government of Union Territory of Jammu & Kashmir vide Government Order No. Home/PB-V/1976 of 2024 dated 11th of October, 2024 after the Advisory Board came up with its opinion report that there was sufficient cause for detention of the petitioner under the Jammu & Kashmir Public Safety Act, 1978.

13. This order of confirmation, thus, meant that the petitioner is bound for preventive detention for a full period of one year out of which he has served more than seven months and is now left with just around four months and a few days of remainder of custody.

14. Against his preventive detention, the petitioner, acting through his wife namely Rubeena, submitted a written representation to the respondent No.2-District Magistrate, Bandipora duly received against receipt No. 2534 dated 19th of September, 2024.

15. The petitioner has come to assail his preventive detention on the grounds as set out in paragraphs No. 3 (i) to (xvi) of the writ petition.

16. A perusal of the two preventive detention orders earlier one and present one with respect to the petitioner would reveal that on the very same operative set of facts and circumstances, the petitioner second time has been subjected to suffer preventive detention on the pretext of maintenance of Public Order as against the pretext of Security of State in the first detention order.

17. The petitioner has assailed his preventive detention being vitiated with illegality on the ground that his representation duly received by the respondent No.2-District Magistrate, Bandipora has gone begging for consideration and response. Paragraph No. 3 (xii) of the writ petition is addressed on this aspect of the matter.

18. Counter affidavit to the writ petition came to be filed on 26th of November, 2024 from the end of the respondent No.2-District Magistrate, Bandipora.

19. In his counter affidavit, the respondent No.2-District Magistrate, Bandipora is found short of facts and obviously on account of deficiency of facts with respect to the grounds of detention itself that within a period of five months from his release on 10th of April, 2024, after having spent two years' preventive detention custody, which further reported acts of omission or commission came to be documented and reported against the petitioner to render him now a case as prejudicial to the maintenance of Public Order.

20. If there would have been facts so reported, then the respondent No.2-District Magistrate, Bandipora would not have

fallen back upon the assistance and reference of FIRs and the criminal antecedents of the petitioner on the basis of which the petitioner had come to be first detained under the Jammu & Kashmir Public Safety Act, 1978 on 11th of April, 2022 being then prejudicial to the security of the State.

21. The petitioner is, thus, right in his submission that without any factual basis and on the very same set of stale grounds, the petitioner has been subjected to suffer second time preventive detention by changing the pretext from security of State to maintenance of Public Order. Read between the lines, the petitioner is meaning to say that his first preventive detention custody is actually being extended by an interlude of just four months.

22. With respect to the consideration of the petitioner's representation, the respondent No.2-District Magistrate, Bandipora has come forward with a crafty response that the result and outcome of the consideration of petitioner's representation was conveyed back to the applicant without clarifying the fact as to whether the applicant so referred is the wife of the petitioner or the petitioner himself. The result was supposed to be passed onto the petitioner and none else. There is also no specific reference of

the communication vide which the consideration of the petitioner's representation was said to have been communicated to so called applicant.

23. The cumulative effect of the aforesaid facts and circumstances of the case is that the petitioner's preventive detention is, in fact, just an extension of his previous preventive detention by mirage of words and pretext by the Senior Superintendent of Police (SSP), Bandipora complemented by the respondent No.2-District Magistrate, Bandipora and, therefore, the same is held to be misconceived and unwarranted.

24. The preventive detention custody of the petitioner is, thus, held to be illegal and liable to be quashed.

25. Accordingly, preventive detention order No. 19/DMB/PSA of 2024 dated 11th of September, 2024 passed by respondent No.2-District Magistrate, Bandipora read with confirmation/ approval orders with respect to the preventive detention of the petitioner are hereby quashed. The petitioner is directed to be restored to his personal liberty by his release from the concerned Jail and to that effect Superintendent concerned Jail to act in compliance of the directions hereby being issued with

respect to the release of the petitioner from preventive detention custody.

26. **Disposed of.**

(Rahul Bharti)
Judge

SRINAGAR
30.04.2025
"TAHIR"

Whether the judgment is reportable : Yes / No
Whether the judgement is speaking : Yes / No

