

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

...

HCP No. 363/2024

Reserved on: 11.04.2025

Pronounced on: 27.08.2025

**Rayees Ahmad Thoker
S/o Mohd. Ayoub Thoker
R/o Shouch Tehsil Kulgam & District Kulgam**

...Petitioner(s)

Through: Mr. Wajid Mohammad Haseeb, Advocate.

VERSUS

**1. U T of Jammu & Kashmir
through Principal Secretary, Home Department
J&K Govt., Civil Sectt., Srinagar/Jammu.**

2. District Magistrate, Kulgam.

3. Superintendent of Police, Kulgam.

...Respondent(s)

Through: Mr. Zahid Qais Noor, GA.

CORAM:

HON'BLE MR JUSTICE RAHUL BHARTI, JUDGE

JUDGMENT

1. Through the medium of this writ petition preferred through his father Mohammad Ayoub Thoker, the petitioner Rayees Ahmad Thoker is seeking setting aside of his preventive detention custody affected vide an Order **No.20/DMK/PSA/2024 dated 10.09.2024**

passed by the respondent No.2-District Magistrate, Kulgam purportedly acting under section 8 of the J&K Public Safety Act 1978, thereby ordering the preventive detention of the petitioner for preventing him acting in any manner prejudicial to the security of the State.

2. The case for preventive detention of the petitioner was actually mooted by the Superintendent of Police Kulgam who vide his communication **No. Legal/PSA/2024/5598-5601 dated 03.04.2024** addressed to the respondent No.2-District Magistrate, Kulgam forwarded a dossier thereby purportedly highlighting the alleged state of activities, past and present, of the petitioner on the basis whereof the petitioner's personal liberty was sought to be curtailed in order to prevent him from indulging in alleged activities prejudicial to the security of the State.

3. The petitioner is referred to be a holder of Masters Degree in Political Science having done B.Ed from Pulwama. The petitioner came to be projected as a person involved in transportation, providing shelter and guiding terrorists from one place to another in the area in order to disturb public peace and tranquillity and also providing logistic support to the terrorists for carrying

out terrorists attacks on security forces/police as well as civilians.

4. The petitioner's antecedents in terms of his involvement in case **FIR No. 113/2019** under section 13 of Unlawful Activities (Prevention) Act, 1967 read with section 506 IPC registered by the Police Station, Kulgam and **FIR No. 73/2020** under section 307 IPC read with section 7/27 of Arms Act 1948 read with sections 16, 20 & 38 of Unlawful Activities (Prevention) Act, 1967 again by the Police Station Kulgam.

5. By reference to both said FIRs, the petitioner is said to have been booked and subjected to criminal prosecution going on before the competent courts of law.

6. In addition, the petitioner is also referred to have been bound down under preventive proceedings of the Code of Criminal Procedure, 1973.

7. In sum and circumstance, the petitioner is reckoned to be highly potential OGW (Over Ground Worker) of HM/LeT outfit capable of infusing the spirit in the minds of youth by motivating them to join terrorism.

8. By drawing the grounds of detention on the similar line as submitted in the dossier, the respondent No.2-District Magistrate, Kulgam purportedly drew subjective satisfaction to pass the order of detention against the petitioner, the opening line of which reads ***“Whereas, on the basis of grounds of detention placed before me by the Superintendent of Police Kulgam vide his No. Legal/PSA/2024/5598-5601 dated 03.04.2024...”***

9. In execution of the detention warrant issued against him, the petitioner came to be detained on **12.09.2024** when ASI Gh. Hassan of Police Station D.H.Pora came to detain the petitioner and lodge him in the Central Jail, Srinagar by allegedly handing over to the petitioner the copy of detention order, grounds of detention and the documents accompanied therewith by purportedly explaining to the petitioner the content and context of the detention order.

10. The petitioner came to submit a written representation through his wife Masooda Akhter addressed to the respondent No.2-District Magistrate, Kulgam stating therein that by reference to criminal case borne out of **FIR 73/2020** and **FIR 113/2019**,

the petitioner had on bail in terms of the orders dated **12.11.2020** and **28.06.2021** respectively although the trial of the petitioner is going on, and that his detention under J&K Public Safety Act 1978 was nothing else but punitive oriented.

11. The petitioner came to challenge his detention on the basis of the grounds as set out in Para 3 (i to xii) of the writ petition.

12. In the grounds of challenge, the petitioner came to assert that on stale grounds the petitioner has come to be detained unmindful of the fact that the petitioner was already undergoing trial in relation to two FIRs so mentioned in the grounds of detention wherein he was admitted to bail in due course of law without said bail being questioned by the prosecution. It has come to be asserted by the petitioner in his writ petition that in the intervening gap of four years of alleged last criminal activity attributed to him and date of passing of the detention order, no fresh material whatsoever of any kind much-less warranting exercise of jurisdiction under the J&K Public Safety Act 1978 was ever cited against the petitioner by the Superintendent of Police, Kulgam, and yet by a mechanical course of action at the

end of the Superintendent of Police and the respondent No.2-District Magistrate, Kulgam the petitioner came to be subjected to suffer loss of his personal liberty.

13. In the counter affidavit submitted to take on the writ petition filed by the petitioner, the respondent No.2-District Magistrate, Kulgam came to draw from the recitals of the detention order and the grounds of detention in support thereof and also drawing support from the fact that the detention order of the petitioner found to be for sufficient cause by the Advisory Board whereupon the order came to be confirmed in terms whereof the petitioner is supposed to spent two years time in detention custody with effect from 12.09.2024.

14. The outcome of this writ petition shall not engage this Court any longer in view of the fact that identically texted detention order(s) passed by none else than the respondent No.2-District Magistrate, Kulgam have come to be questioned and quashed by this Court by finding a fundamental flaw that the detention order opening with a recital that *“on the basis of the grounds of detention placed by S.P, Kulgam”*, the District Magistrate, Kulgam is exercising jurisdiction under J&K Public Safety Act, 1978 to order preventive detention is

nothing but acting on the dictate of Superintendent of Police.

15. This Court in its number of judgments in identical matters has censured the very tone and tenor of such like detention orders to be antithesis of exercise of jurisdiction by a District Magistrate who is supposed to act on his own mind in formulating grounds of detention to pass a detention order and not to act upon readymade grounds of detention served on a platter by a sponsoring authority i.e. District Police concerned. In this regard this Court in writ petition **WP (Cr1) No. 256/2021** titled **“Yasir Ahmad Rah Vs. UT of J&K & Ors.”** by reference to a preventive detention order No. **09/DMK/PSA/2021 dated 18.10.2021** also passed by the District Magistrate, Kulgam against one Yasir Fayaz Rah under the J&K Public Safety Act, 1978, wherein it came to be held that the text of the detention order in the said case opening with words “Whereas, on the basis of grounds of detention placed before me by the Superintendent of Police, Kulgam” renders the very basic detention order legally flawed and faulty and, thus, quashed the detention of the detenue-Yasir Fayaz Rah by virtue of a judgment dated **29.12.2021**.

16. Second time detention of very said Yasir Fayaz Rah by repeat of the text of the quashed detention order **No.22/DMK/PSA/2024 dated 25.12.2024** came to be challenged again in **HCP No. 12/2025** wherein also this Court has come to quash the second time detention order of very said detenue Yasir Fayaz Rah.

17. In the present case, the detention order is also opening with the identical text, i.e., **“Whereas, on the basis of grounds of detention placed before me by the Superintendent of Police, Kulgam”** and, therefore, the fate of the preventive detention of the petitioner in terms of challenge to it cannot be different to the one in the case of Yasir Fayaz Rah in **WP (CrI) No.256/2021** and **HCP No.12/2025**.

18. Thus, the preventive detention of the petitioner is, hereby, held to be based upon a flawed and faulty detention order rendering his preventive detention illegal right from its very inception, as such, requires to be set aside.

19. Resultantly, detention order No. **No.20/DMK/PSA/2024 dated 10.09.2024** passed by respondent No.2-District Magistrate, Kulgam read with any approval/confirmation or extension orders

whatsoever related to the preventive detention of the petitioner are hereby quashed.

20. The petitioner, who is detained in Central Jail, Srinagar, is directed to be released forthwith or in case if he is lodged in any other jail, upon being shifted from the said Central Jail, Srinagar, then from the very said jail.

21. Disposed of.

(RAHUL BHARTI)
JUDGE

SRINAGAR
27.08.2025
Muzammil.Q

Whether the Judgment /Order is reportable: Yes / No