

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

**HCP No. 372/2024**

Reserved On: 18<sup>th</sup> of April, 2025.

Pronounced On: 30<sup>th</sup> of April, 2025.

**Imtiyaz Ahmad Bhat**

**... Petitioner(s)**

**Through: -**

Mr Nissar Ahmad Bhat, Advocate.

**V/s**

**Union Territory of J&K and Ors.**

**... Respondent(s)**

**Through: -**

Mr Ilyas Nazir Laway, 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 Senior Superintendent of Police (SSP), Anantnag, by reference to the purported involvement of the petitioner in a criminal case registered vide FIR No. 54/2024 under sections 318, 61 (2) and 351 of the Bhartiya Nyaya Sanhita (BNS), 2023 registered by the Police Station, Pahalgam, came to reckon the petitioner deserving punitive punishment by preventive detention

custody and, thus, submitted a dossier vide his communication No. CS/71/2024/19194-19199 dated 10<sup>th</sup> of September, 2024 to the respondent No.2-District Magistrate, Anantnag stating therein that the petitioner be subjected to preventive detention custody as his alleged activities were prejudicial to the maintenance of Public Order.

04. On his part, the respondent No.2-District Magistrate, Anantnag came to formulate grounds of detention by *verbatim* repeat of text of the dossier and nursed a purported subjective satisfaction that the petitioner presented a case whose personal liberty warranted to be curtailed so as to prevent him from acting in any manner prejudicial to the maintenance of Public Order of the Union Territory of Jammu & Kashmir which led to issuance of order No. 28/DMA/PSA/DET/2024 dated 24<sup>th</sup> of October, 2024 directing the petitioner's detention and consequent detainment in Central Jail, Kotbhalwal, Jammu.

05. The petitioner came to be detained on 6<sup>th</sup> of November, 2024 and but handed over to the District Jail, Bhandarwah as has been stated in the counter affidavit filed on 14<sup>th</sup> of March, 2025 by the then District Magistrate, Anantnag.

06. The preventive detention order No. 28/DMA/PSA/DET/2024 dated 24<sup>th</sup> of October, 2024 with respect to the petitioner was followed by a Corrigendum issued vide endorsement No. DMA/JC/PSA/2024/200-05 dated 2<sup>nd</sup> of November, 2024. It is pertinent to mention here that the issuance of the said corrigendum had taken place before the petitioner came to be detained on 6<sup>th</sup> of November, 2024.

07. The preventive detention order dated 24<sup>th</sup> October, 2024 read with corrigendum dated 2<sup>nd</sup> of November, 2024 came to be approved by the Home Department of the Government of Union Territory of Jammu & Kashmir vide Government Order No. Home/PB-V/2098 of 2024 dated 29<sup>th</sup> of October, 2024 read with corrigendum issued under endorsement No. Home/PB-V/514-2024-(7591381) dated 5<sup>th</sup> of November, 2024 and the case was submitted to the Advisory Board for its opinion which is said to have been submitted vide report dated 18<sup>th</sup> of November, 2024 by holding that there was sufficient cause for the preventive detention of the petitioner.

08. On the basis of the Advisory Board's opinion, the preventive detention of the petitioner came to be confirmed vide

Government Order No. Home/PB-V/2201 of 2024 dated 21<sup>st</sup> of November, 2024 in terms whereof the petitioner was directed to be detained in District Jail, Bhaderwah initially for a period of three months w.e.f. 6<sup>th</sup> of November, 2024 till 5<sup>th</sup> of February, 2025 which is said to have been further extended.

09. It is after the confirmation of the petitioner's detention that the institution of the present writ petition came to take place on 3<sup>rd</sup> of December, 2024.

10. The petitioner has assailed his preventive detention in terms of grounds set out in paragraphs No. 4 (a) to (n).

11. The highlight ground in the grounds of challenge to the preventive detention is that the preventive detention was placed upon the petitioner by reference to a criminal case which by no stretch of reference and claim can be said to be enabling a case for preventive detention of the petitioner and further the petitioner was on bail by virtue of order passed by the concerned criminal court which fact was deliberately withheld from being notified to the District Magistrate, Anantnag.

12. In this regard, the petitioner has annexed with his writ petition order dated 19<sup>th</sup> of October, 2024 passed by the Court of

learned Additional Special Mobile Magistrate, Pahalgam in case titled '**UT of J&K v. Imtiyaz Ahmad Bhat & Anr.**' bearing file No. 37/M which was instituted on 17<sup>th</sup> of August, 2024 whereby the petitioner along with co-accused namely Mohd. Rafiq Shah had solicited grant of bail by reference to the said FIR as mentioned in the dossier which being FIR No. 54/2024.

13. A perusal of order dated 19<sup>th</sup> of October, 2024 would show that the petitioner and his co-accused had been admitted to interim bail vide an order dated 30<sup>th</sup> of August, 2024 whereas the Senior Superintendent of Police (SSP), Anantnag had submitted his dossier vide his communication No. CS/71/2024/19194-19199 dated 10<sup>th</sup> of September, 2024.

14. A bare perusal of the communication dated 10<sup>th</sup> of September, 2024 for forwarding the dossier by the Senior Superintendent of Police (SSP), Anantnag would show that it mentions that it is having 18 leaves as materials/ enclosures out of which three (03) leaves were of dossier, six (06) leaves IR, four (04) leaves FIR and five (05) leaves of statements meaning thereby that the bail order was just a mere piece of paper for reference to the Senior Superintendent of Police (SSP), Anantnag

not to be submitted along with dossier to the respondent No.2-District Magistrate, Anantnag.

15. The said omission on the part of the Senior Superintendent of Police (SSP), Anantnag was obviously with an intent to hide away a salient aspect related to the petitioner that the criminal court has admitted him to bail which is always meant to be on merits after the Prosecution is given an opportunity of opposing the bail plea. The Prosecution is as good part of the Government of Union Territory of Jammu & Kashmir as is the Police Station, Pahalgam which falls under the Police administration of the Senior Superintendent of Police (SSP), Anantnag.

16. Thus, the Senior Superintendent of Police (SSP), Anantnag was generating a preventive detention case against the petitioner on a note which was a mistaken one and the respondent No.2-District Magistrate, Anantnag fell into trap by abandoning an application of mind on his part from the reading of the dossier as to whether the petitioner had applied for bail or not by reference to FIR in reference. It is here where the very exercise related to the preventive detention of the petitioner conceived and

carried out got vitiated with an illegality rendering the preventive detention of the petitioner an abuse of process of law at the end of the Senior Superintendent of Police (SSP), Anantnag and respondent No.2-District Magistrate, Anantnag.

17. The preventive detention of the petitioner seems to be a beforehand punishment delivered by the Senior Superintendent of Police (SSP), Anantnag to the petitioner for a crime which at the relevant point of time was yet to be investigated to result in presentation of a final police report. The preventive detention custody of the petitioner is, thus, held to be illegal and liable to be quashed.

18. Accordingly, preventive detention order No. 28/DMA/PSA/DET/2024 dated 24<sup>th</sup> of October, 2024 passed by respondent No.2-District Magistrate, Anantnag read with confirmation/ approval/ extension 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.

19.           **Disposed of.**

**(Rahul Bharti)**  
**Judge**

**SRINAGAR**  
30<sup>th</sup> of April, 2025  
*"TAHIR"*

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

