

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

HCP No. 48/2025

Pronounced on: 30.06.2026

Shabir Ahmad Rather

...Petitioner(s)

Through: Mr. Zahid Khan, Advocate

Vs.

Union Territory of J&K and Ors.

...Respondent(s)

Through: Mr. Furqan Sofi, Government Advocate

CORAM:

HON'BLE MR. JUSTICE RAHUL BHARTI, JUDGE

JUDGMENT

- 1.** Heard learned counsel for the petitioner as well as learned counsel for the respondents.
- 2.** Perused the writ pleadings and the documents therewith. Also perused the detention record.
- 3.** Petitioner-Shabir Ahmad Rather acting through his brother Sajad Ahmad Rather instituted the present writ petition on **10.03.2025** after he had come to

suffer preventive detention custody under Jammu and Kashmir Public Safety Act, 1978 and, thus, sought restoration of his personal liberty through the medium of writ of habeas corpus under article 226 of the Constitution of India.

4. Case for preventive detention of the petitioner originated from the Senior Superintendent of Police (SSP) Awantipora, who, vide his letter No. **Conf/PSA/2024/238-41** dated **30.08.2024**, submitted a dossier to the respondent No.2-District Magistrate, Pulwama, reporting the alleged state of activities of the petitioner purportedly prejudicial to the security of the State and warranting preventive detention of the petitioner.

5. Acting on said dossier, the respondent No.2-District Magistrate, Pulwama formulated grounds of detention in which the petitioner has been referred to as a hardcore Over Ground Worker (OGW) of the terrorist organization Jaish-e-Mohammad (JeM), object of which is to secede UT of J&K from the Union of India and annex it with Pakistan. The petitioner is

alleged to have been rendering assistance to the terrorists as such facilitating their movement with weapons through unconventional passages.

6. By reference to said context, an incident of **24.05.2022** is finding mention in the grounds of detention in which an OGW network is claimed to have been busted by a Police component of Tral during course of interrogation of the terrorists apprehended in the said operation disclosure of names of Ishfaq Ahmad Dar, Manzoor Ahmad Dar coming forth. It, thus, came to be divulged that two were in a close contact with the active terrorists namely Asif Ahmad Sheikh and Aijaz Ahmad Bhat of JeM who were eliminated during an encounter with Security Forces which took place on **28.02.2023** at Padgampora Awantipora.

7. An incident relatable to a terrorist activity by one OGW-Ishfaq Ahmad Dar also finds mention in the grounds of detention with respect to petitioner who, as is being reiterated, was working as an active OGW and

was in close contact with Asif Ahmad Sheikh and his associates.

8. Criminal involvement of the petitioner is said to have resulted in **FIR No. 76 of 2022** of Police Station Tral in which the petitioner came to be arrested and booked for the trial. The petitioner is said to have been enlarged on bail by the competent criminal court of law but despite that the petitioner is said to have been continuing with his subversive activities by re-establishing his contact with local terrorist Asif Ahamd Sheikh.

9. It is in the aforesaid scenario projected in the grounds of detention that respondent No.2-District Magistrate, Pulwama reckoned the petitioner's alleged activities to be prejudicial to the security of State, thus, paving way for issuance of detention order No.**30/DMP/PSA/24** dated **04.09.2024** ordering the detention of the petitioner and his confinement in Central Jail Jammu (Kotbhalwal).

10. Upon issuance of aforesaid detention order, the arrest and detention of the petitioner came to take place on **06.09.2024** when SI-Farooq Ahmad No. **216/CID (EXK-961424)** of Police Station Tral had carried out the execution of the detention warrant in the process handing over a compilation of 36 leaves to the petitioner which included detention order, notice of detention, grounds of detention, dossier of detention and other attending documents. The petitioner is said to have been explained order of detention, notice of detention and grounds of detention in the language that was fully understood by him.

11. By virtue of a Government Order No. **Home/PB-V/1765 of 2024** dated **09.09.2024**, approval to the detention order No. **30/DMP/PSA/24** dated **04.09.2024** came to be granted and the case forwarded for the opinion of the Advisory Board which came to be tendered in the form of Opinion Report dated **26.09.2024**, whereby the Advisory Board held the preventive detention of the petitioner to be on justifiable grounds.

12. Acting on the basis of the Advisory Board's opinion, the confirmation of the petitioner's preventive detention came to be accorded by virtue of a Government Order No. **Home/PB-V/1885 of 2024** dated **03.10.2024** with period of detention at first instance fixed from **06.09.2024** till **05.03.2025** which later on came to be extended from time to time and petitioner is now serving last phase of maximum detention period in the course of which this writ petition come up for hearing with its adjudication purpose.

13. The petitioner in his writ petition has assailed his preventive detention custody on the grounds as set out in para 4 (I) to (IX).

14. The petitioner submits that the entire exercise starting from the generation of the dossier and ending with the passing of the detention order against the petitioner was without awareness of the fact that the petitioner was on bail in connection with criminal case/s and petitioner had not breached any terms and conditions of the bail order/s and still the petitioner

came to be picked up for being subjected to preventive detention custody actuated with a punitive mind set operating at the end of the District Police Awantipora and supplemented by respondent No.2-District Magistrate, Pulwama. The petitioner assails the grounds of detention as being a mirror image of the dossier which demonstrates a total non-application of mind on the part of respondent No.2-District Magistrate, Pulwama who simply acted as a passive recipient of the dossier and lend to it legitimacy by mere renaming it as Grounds of detention so as to pass detention order in a mechanical motion of course/routine. The Learned Counsel for the petitioner further argued that he would not have been granted bail by the ordinary criminal court of law without having due concern to the merits of the case and thus the basis for subjecting the petitioner to preventive detention custody pressed into service is more by scandalizing the alleged fact of the petitioner's association with the alleged terrorists Asif Ahmad Sheikh and Aijaz Ahmad Bhat. The petitioner has

further alleged that he was not provided with copy of the detention order including the dossier and grounds of detention and that he was never made to understand the contents of the documents handed over to him including the notice of the detention order and the grounds of detention, rendering the entire exercise illegal in the face of the judgement of the Hon'ble Supreme Court of India in **Lallubhai Jogibhai Patel vs. Union of India and Ors, 1981(2) SCC 427.**

15. The major thrust of the petitioner's challenge is that there is no proximate link between the grounds of detention and the alleged prejudicial activities of the petitioner.

16. The respondents led by the respondent No.2 in their counter affidavit have come forward defending the course of action leading to the preventive detention of the petitioner by emphasizing that all procedural formalities were done meticulously and, therefore, the petitioner cannot be heard to agitate against his detention.

17. When this Court evaluates the facts and circumstances of the case in light of the detention record produced, this Court cannot resist from concurring with the plea of the petitioner's counsel that the imposition of preventive detention custody upon the petitioner is more of a vindictive nature rather than for the purpose as meant to be portrayed. The petitioner is right in saying that while being on bail in a serious case without having indulged in any act of breach of terms and conditions of bail, acting just on the mere *ipse dixit* of the Senior Superintendent of Police (SSP), Awantipora that the petitioner is not desisting from carrying out subversive activities re-establishing contact with a terrorist named Asif Ahmad Sheikh and clandestinely working with the terrorist in such a manner as to leave no scope for security forces /police to ascertain evidence to book the petitioner under normal laws, is literally a draconian like situation for any citizen to suffer having nothing at his or her disposal to defend against such types of vague and wild impressions and assumptions

of District Police. This Court cannot lend its acceptance that mere opinion given fact colouration can form a basis for subjecting a person to preventive detention custody under J&K Public Safety Act. There has to be some hardcore reportable and demonstrable factual content to sustain the suspicion of the District Police that a particular individual in terms of his/her activity/ies is prejudicial to the security of the State. In the absence of that material, a simpliciter self entertained opinion resting purely on doubt cannot afford basis for subjecting a person to preventive detention custody and this is exactly what has happened in the present case. Therefore, this Court is inclined to accept the present writ petition. Detention Order No.**30/DMP/PSA/24** dated **04.09.2024** read with the approval/ confirmation/extension orders passed by the respondent No.1 with respect to preventive detention of the petitioner are hereby quashed.

18. The petitioner is directed to be released from his preventive detention custody from the concerned

Jail wherever the petitioner is being detained and the Superintendent of the concerned Jail shall release the petitioner forthwith.

(RAHUL BHARTI)
JUDGE

SRINAGAR:

30.06.2026

“Manzoor”

Whether the judgment is speaking : Yes / No

Whether the judgment is reportable : Yes / No

