

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

HCP No. 111/2025

Pronounced on: 13.07.2026

Aqib Mushtaq Lone

...Petitioner(s)

Through: Mr. Wajid Mohammad Haseeb, Advocate

Vs.

Union Territory of J&K and Ors.

...Respondent(s)

Through: Mr. Bikram Deep Singh, Dy. AG

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 documents annexed therewith. Also examined the detention record produced from the end of the respondents relating to the petitioner's detention.
3. With a grievance that the preventive detention custody imposed against him is arbitrary and illegal,

the petitioner-Aqib Mushtaq Lone, acting through his father Mushtaq Ahmad Lone, came up with institution of present writ petition on **15.05.2025** seeking restoration of his personal liberty to be granted by this court by issuance of a writ of habeas corpus.

4. The situation preceding to present second time preventive detention of the petitioner is that the respondent No.3-Senior Superintendent of Police, (SSP), Shopian had prepared a dossier No. **CS/D-1/2022/6695** dated **24.08.2022** submitted to the respondent No.2-District Magistrate, Shopian for effecting preventive detention of the petitioner under J&K Public Safety Act, 1978.

5. In the dossier, the petitioner came to be projected and profiled in two shades.

6. One shade by reference to his criminal antecedents in terms of his involvement in criminal cases borne out of **FIR No. 14 of 2022** registered by the Police Station, Zainapora for alleged commission of offences under Section 18 & 39 of Unlawful Activities (Prevention) Act, 1967 and **FIR No. 15 of 2022** of

Police Station, Zainapora for offences under section 307 IPC read with section 7/27 Arms Act, 1959 and sections 16/19/20/38 Unlawful Activities (Prevention) Act, 1967.

7. The other shade of the petitioner's profile being that the petitioner is arrested by secessionist ideology for serving which the petitioner is said to be involved in misguiding the youth to join militancy and himself being an active OGW of a terrorist namely Abdul Qayoom Dar of LET outfit, who was killed in anti-militancy operation conducted in village Cheermarg Zainapora, Shopian on **19.02.2022**. As an OGW, the petitioner is said to be providing along with others all necessary support like guiding the militant movements through safe passages, carrying their weapons from one place to another, providing of transport facility as and when required so on so forth. Thus, in order to keep a cap on the alleged state of activities of the petitioner, the petitioner was recommended to be subjected to preventive detention custody by the

respondent No.3-Senior Superintendent of Police, (SSP), Shopian.

8. Acting upon the said dossier, the respondent No.2-District Magistrate, Shopian had come forward with the word to word reproduction of the dossier to formulate grounds of detention thereby drawing a subjective satisfaction that a case for preventive detention of the petitioner was made out resulting in issuance of detention order No. **148/DMS/PSA/2022** dated **25.08.2022** declaring petitioner's state of activities being prejudicial to the security of the State (UT) requiring his preventive detention and confinement in District Jail, Baramulla.

9. The petitioner came to serve full two years term of his first preventive detention custody notwithstanding the fact that he had questioned it in a writ petition **WP(Crl) No. 644/2022** which by efflux of time was rendered infructuous on account of the petitioner having served full two years detention custody w.e.f. **30.08.2022**.

10. By following the same route of a dossier against the petitioner with the repeat of the same narrative as set out in the aforesaid first dossier, the respondent No.3-Senior Superintendent of Police, (SSP), Shopian by virtue of a dossier No. **PSA-Cell/ SPN/ 2025/ 20513-15** dated **02.05.2025** again recommended slapping of a preventive detention custody upon the petitioner which came to be obliged readily by the respondent No.2-District Magistrate, Shopian by formulating purported grounds of detention and on that basis passing detention order No. **10/DMS/PSA of 2025** dated **03.05.2025**.

11. The preventive detention order came to be approved by the Home Department, Government of UT of J&K by issuance of a Government Order No. **Home/PB-V/850 of 2025** dated **08.05.2025** after the petitioner had come to be taken into custody on **06.05.2025** with the detention warrant executed by Inspector Showkat Ahmad of District Police Line, Shopian, who is said to have carried out due compliance of the directions as well as procedure and

not only handing over to the petitioner a 22 leaves compilation of documents containing detention order, grounds of detention, notice of detention and dossier but also reading over the same in English language and explaining it to the petitioner in Urdu/Kashmiri understood by the petitioner fully. The petitioner also came to be apprised of his right to make a representation against his detention order to the detention making authority as well as to the Government.

12. On behalf of the petitioner, his father Mushtaq Ahmad Lone, addressed a representation dated **09.05.2025** to the respondent No.2-District Magistrate, Shopian thereby seeking revocation of the petitioner's detention and said representation was duly acknowledged to have been received by ARA of District Magistrate Shopian's Office.

13. The petitioner's case was forwarded to the Advisory Board which came up with its Opinion Report dated **26.05.2025** stating therein that there was a

justifiable basis for subjecting the petitioner to preventive detention.

14. On the basis of the recommendation so made by the Advisory Board, the confirmation of the petitioner's detention came to take place with the issuance of Government Order No. **Home/PB-V/1099 of 2025** dated **03.06.2025** by prescribing first phase of petitioner's preventive detention custody for a period of six months w.e.f. **06.05.2025** till **05.11.2025** to remain lodged in the Central Jail Kot Bhalwal, Jammu.

15. The said representation of the petitioner so submitted was forwarded by the respondent No.2-District Magistrate, Shopian to the Principal Secretary to Government Home Department UT of J&K by virtue of a communication No. **DMS/ARA/2025/107** dated **13.06.2025**. In this communication, the respondent No.2-District Magistrate, Shopian is on record saying that the representation was received after confirmation order No. **Home/PB-V/850 of 2025** dated **08.05.2025** and, as such, was being forwarded from

his end to the end of Home Department to Government of UT of J&K.

16. The petitioner has come forward assailing his preventive detention on a number of grounds as set out in para 3 (i) to (xiv).

17. The respondents, on the other hand, through respondent No.2-the District Magistrate, Shopian have come forward with a counter affidavit to the writ petition defending the preventive detention imposed upon the petitioner by insisting that all the procedural compliances were meticulously carried out and defending the cause for slapping preventive detention upon the petitioner.

18. This case should not tax this court to refer to the grounds of challenge as set out in the writ petition and the response thereto by the respondents as there is a fundamental flaw which is so patent on the record that the fate of this writ petition of the petitioner cannot be otherwise than that of being allowed and setting the petitioner free to his personal liberty.

19. It is a settled position of law that before the consideration of the Advisory Board taking place in the form of its Opinion Report of a representation from a detenu's end comes to be in the hands of the detention order making authority or of the Government as the case may be, then the said representation needs to accompany the case file forwarded to the Advisory Board for its opinion so as to enable an Advisory Board a complete conspectus of the case before coming up with its opinion be it for or against the slapping of preventive detention custody upon a detenu.

20. In the present case, the Advisory Board tendered its opinion on **26.05.2025** whereas the representation from the end of the petitioner was in the hands of respondent No.2-the District Magistrate, Shopian on **09.05.2025** and still that representation in cause was never ever forwarded from the end of the respondent No.2-the District Magistrate, Shopain or for that matter by the Home Department, Government of Union Territory of Jammu and Kashmir to the Advisory Board for its consideration for the reasons

which are not forthcoming from the detention record produced for the perusal of this Court.

21. In fact, this Court is surprised to come across the mindset of respondent No.2-the District Magistrate, Shopian, who in his communication No. **DMS/ARA/2025/107** dated **13.06.2025** addressed to Principal Secretary to Government, Home Department J&K in the context of forwarding of the petitioner's representation is on record saying that the petitioner's representation was received after the confirmation order passed by the Advisory Board vide Government Order No. **Home/PB-V/850 of 2025** dated **08.05.2025** which is quite a misplaced fact by its own reference as there is no such order No. **Home/PB-V/850 of 2025** dated **08.05.2025** by the Advisory Board, and rather it is a Government Order whereby approval and not confirmation was granted to the detention order **No.10/DMS/PSA of 2025** dated **03.05.2025**.

22. Thus, wherefrom respondent No.2-the District Magistrate, Shopian was apprising the Principal

Secretary to Government, Home Department, Union Territory of J&K about the Advisory Board's said order is again a matter of suspense known only to respondent No.2-the District Magistrate, Shopian, but the fact remains that the representation was very much available to be forwarded to the Advisory Board for its consideration but the same was kept withheld from being so forwarded which has resulted in a manifest failure of procedural compliances at the end of the respondent No.2-the District Magistrate, Shopian as well as of the Home Department, Government of Union Territory of J&K, rendering the preventive detention of the petitioner seriously flawed, if not originally, but in the course of the process whereby legitimacy is earned by preventive detention custody effected against a given detenu.

23. In the light of the aforesaid serious flaw, this Court finds that the preventive detention of the petitioner is afflicted with an illegality which renders the very exercise a nullity.

24. Accordingly, the detention order No. **10/DMS/PSA of 2025** dated **03.05.2025** passed by the respondent No.2-the District Magistrate, Shopian read with approval/confirmation/extension order(s) passed by the respondent No.1 related to the petitioner are hereby quashed.

25. The petitioner is directed to be restored to his personal liberty by his release from the concerned Jail wherever he is kept confined and to said effect, the Superintendent concerned Jail to act in compliance by release of the petitioner from the Jail custody.

26. The detention record being in photostat form needs not be returned and is to be retained on the file.

27. Disposed of.

(RAHUL BHARTI)
JUDGE

SRINAGAR:

13.07.2026

"Manzoor"

Whether the judgment is speaking : Yes / No

Whether the judgment is reportable : Yes / No