

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

Reserved on: **26.02.2026**

Pronounced on: **02.04.2026**

HCP No. 143/2025

Hilal Ahmad Wagay

.....Petitioners

Through: Mr. M. Ayoub Bhat, Advocate.

Vs.

Union Territory of J&K and others

.....Respondents

Through: Mr. Furkan Yaqoob Sofi, GA.

Coram : HON'BLE MR. JUSTICE RAHUL BHARTI, JUDGE

JUDGMENT

1. Habeas Corpus petition is a petition of distress through the medium of which a person having lost his personal liberty is given a constitutional right of approaching a Constitutional Court with a deep seated belief and hope of seeking restoration of his personal liberty which is a most cherished of all fundamental right amongst all the fundamental rights figuring in Part-III of the Constitution of India.

2. The institution of present writ petition bears same distress call whereby the petitioner-Hilal Ahmad Wagay is seeking indulgence of this Court to restore him to his personal liberty by having petitioned this Court on **27.5.2025** adjudication whereof is taking place through the medium of this judgment.

3. Heard learned counsel for the petitioner as well as for the respondents. Perused the respective side pleadings and the documents available on the record of this File. Also perused the detention record.

4. By virtue of a dossier submitted by the Senior Superintendent of Police (SSP), Pulwama vide his letter No. **CS/PSA/25/25-28** dated **28.04.2025**, the respondent No.2-District Magistrate, Pulwama was solicited to take notice of the alleged reported activities of the petitioner being reckoned to be prejudicial to the security of the State so as to inflict a preventative detention order upon him under the J&K Public Safety Act, 1978.

5. The dossier so submitted referred the petitioner as 'Imam' of the Jamia Masjid, Nowpora, Chadoora. The purported field reports are said to have suggested the

petitioner working as potential OGW to an active terrorist-Asif Ahmed Sheikh providing him shelter and other logistic support.

6. It is worth reproducing herein one particular line referring to the petitioner and same reads as, *“The subject is also providing ass sort of assistance to the active terrorist for his movement from one place to another place.” This Court needs not to say or observe any further on the quality of reading of text by its author.*

7. The dossier refers to the reports that the petitioner while performing ritual prayers was giving objectionable sermons about ‘Jihad’ for luring the young generation to get them involved and to join terrorist ranks. The petitioner, being a resident of hilly area, is said to be fully aware of the topography of the area enabling him to provide logistic support to other local/foreign terrorists for their movement from one place to another. The petitioner is referred to be so radicalized that he is waiting for an opportunity of weaponry snatching so that he may join the terrorist folds.

8. The petitioner is said to have been subjected to preventive custody under sections 126 and 170 BNSS on **11.04.2025** and **17.04.2025**.

9. It is by reference to the alleged profile of the petitioner that a case for his preventive detention was put into process from the end of the Senior Superintendent of Police (SSP), Pulwama.

10. The respondent No.2-District Magistrate, Pulwama, purportedly applying his mind to the dossier and the material therewith, formulated purported grounds of detention therein referring that the petitioner, who is the resident of the village Abhama Tehsil Rajpora, District Pulwama, is 'Hafiz-e-Quran' of 2014 on the basis whereof he got appointed as 'Molvi' at 'Markazi Jamia Masjid', Abhama for the period **2015** to **2024** whereafter shifted to Nowpora, Chadoora and pursuing his occupation as 'Imam'.

11. The grounds of detention refer petitioner being working as OGW of active terrorist-Asif Ahmed Sheikh providing him logistic support to carry out subversive activities in congenial atmosphere.

12. The petitioner's delivery of Friday ritual religious sermons has been reckoned to be inciting the youth of the area to join 'Jihad' by joining the terrorist ranks.

13. The long and short of grounds of detention is the repeat of the text of the dossier to put in simple perspective.

14. On the basis of said grounds of detention, the petitioner's reported alleged state of activities were read and reckoned by the respondent No.2-District Magistrate, Pulwama being to prejudicial to the security of the State warranting his preventive detention custody under the J&K Public Safety Act, 1978 on the basis whereof the preventive detention order No.**15/DMP/PSA/25** dated **30.04.2025** came to be passed thereby ordering the preventive detention of the petitioner.

15. The petitioner was, thus, ordered to be kept confined in the District Jail, Udhampur for a period to be specified by the Government.

16. Pursuant to the preventive detention order, the petitioner came to be taken into custody on

01.05.2025 when S.I Mohd. Yousaf **No. 911597/EXK/DPL** Pulwama carried out execution of the detention warrant and of the formalities related therewith in terms of handing over the order of detention, grounds of detention and other documents and also reading and explaining to the petitioner the grounds of detention to make him understand fully before being delivered to the Superintendent, District Jail Udhampur.

17. The petitioner was given a compilation of ten leaves in order which reads as under:-

- i. Copy of warrant (01 leaf).
- ii. Notice of detention (01 leaf).
- iii. Grounds of detention (02 leaves).
- iv. Dossier (02 leaves).
- v. Copies of Istegasa (03 leaves).
- vi. Beat report (01 leaves).

18. By virtue of Government Order **No. Home/PB-V/877/2025** dated **08.05.2025**, the detention order **No. 15/DMP/PSA/25** dated **30.04.2025** came to be approved for enabling the case for examination of the

Advisory Board constituted under Jammu and Kashmir Public Safety Act, 1978.

19. By virtue of its opinion report dated **21.05.2025** on file **No. Home/PB-V/210/2025**, the Advisory Board reckoned the detention of the petitioner to be based on justifiable grounds and the process of passing of detention order and its related compliances dully followed. As per the Advisory Board's said opinion report, there was no representation placed before it coming from the end of the petitioner against his preventive detention.

20. By virtue of Government Order **No. Home/PB-V/1037/2025** dated **27.05.2025**, preventive detention of the petitioner came to be confirmed with detention period fixed for a period of six months w.e.f **01.05.2025** to **31.10.2025** at first instance.

21. For the purpose of extending period of detention for another six months w.e.f **01.11.2025** till **30.04.2026**, the Home Department, Government of UT of Jammu and Kashmir came to pass Government Order **No. Home/PB-V/1937/2025** dated **27.10.2025** stating therein that as on the date of

passing of Government Order, there was no representation received from the petitioner or his family member against the impugned detention order.

22. It is in the aforesaid facts and circumstances that the petitioner came forward with institution of the present writ petition on **27.05.2025** assailing his detention on the grounds as set out in Para 5 (a) to (v).

23. The petitioner assails his detention as being an outcome of colorable exercise of power at the end of the respondent's No. 1 to 3 violating his fundamental right/s guaranteed under Constitution of India particularly in terms of its Article 22.

24. The petitioner challenges that approval to the original detention order has not been granted within the stipulated period as mentioned in Section 8(4) of Jammu and Kashmir Public Safety Act, 1978.

25. The petitioner assails that there has been no proper application of mind on part of the detaining authority with respect to the dossier placed by the Senior Superintendent of Police, (SSP) Pulwama. The detaining authority is said to have formulated no

grounds of detention on its own independent application of mind. The petitioner submits that he has not been provided the dossier at the time of his detention taking place which seriously affected his right of making an effective representation. The petitioner submits that the language used in the grounds of detention is not known to him more particularly when hyper technical words have been used such like **OGW** in describing the petitioner.

26. The petitioner submits that the alleged incidents are all conjectured without any iota of factual content. The grounds of detention framed in passing the impugned detention order are being assailed as vague.

27. Alongwith his writ petition, the petitioner has annexed impugned detention order **No. 15/DMP/PSA/25** dated **30.04.2025**, grounds of detention, dossier submitted by the Senior Superintendent of Police, (SSP) Pulwama.

28. Counter Affidavit from the end of the respondents came to be filed on **19.09.2025**.

29. In the Counter Affidavit, the respondent No.2-District Magistrate, Pulwama has defended the preventive detention of the petitioner tooth and nail.

30. Upon hearings both sides and after perusing the pleadings and the documents therewith as well as also the detention record, this Court comes to a self-evident scenario that the petitioner does not have any criminal antecedents whatsoever and that is the reason that no such adverse antecedent has been cited in the dossier as well as in the grounds of detention viz-a-viz the petitioner. It is only by purported reference to the alleged preventive proceedings under sections 126 and 170 of Bharatiya Nagarik Suraksha Sanhita (BNSS), 2023 which are said to have been taken on **11.04.2025** and **17.04.2025** that a justification for reckoning the petitioner a potential doer of prejudicial activities came to be pressed into picture for the purpose of framing a dossier against the petitioner so as to warrant his preventive detention custody.

31. A purported reference to the proceedings under section 126 read with Section 170 of Bharatiya

Nagarik Suraksha Sanhita (BNSS), 2023 is by no stretch of legal reference and reliability a complete reference to constitute as a fact that the law took its full course in subjecting the petitioner and binding him with an order passed under section 130 read with 136 of the Bharatiya Nagarik Suraksha Sanhita (BNSS), 2023 for keeping peace.

32. It is one thing to initiate a proceeding/s under sections 125,126,127,128 and/or 129 of the Bharatiya Nagarik Suraksha Sanhita (BNSS), 2023 and it is another thing to conclude it with an order under section 130/136 of Bharatiya Nagarik Suraksha Sanhita (BNSS), 2023 coming into being whereby an Executive Magistrate takes a judicial call as to whether the information provided to him has truth bearing or not and if truth bearing then whether sufficient to subject a person being enquired against to be orderd to furnish security for keeping peace for a given period of time with or without surety bonds.

33. In the present case, if the petitioner would have been subjected to a final order under Section 136 of Bharatiya Nagarik Suraksha Sanhita (BNSS), 2023

with execution of a bond with or without sureties, then surely the petitioner would have suffered forfeiture of the bond/s on account of breach of the bond/s by not ensuring security for keeping peace or public tranquility.

34. Thus, the purported reference to sections to 126/170 of Bharatiya Nagarik Suraksha Sanhita (BNSS), 2023 was always and is a half fact which found the basis for the respondent No.2-District Magistrate, Pulwama to switch over to more drastic provision of preventive detention custody under Jammu and Kashmir Public Safety Act, 1978 against the petitioner when not even a bond was required from him at first instance in the proceedings of lesser effect under section 126 of Bharatiya Nagarik Suraksha Sanhita (BNSS), 2023.

35. This Court cannot brush aside the arguments of Mr. M. Ayoub Bhat, learned counsel for the petitioner, that the basis of detention of the petitioner is vagueness and nothing else as in the case if reference to the purported section 126/170 of Bharatiya Nagarik Suraksha Sanhita (BNSS), 2023 is taken out

from the dossier as well as from the grounds of detention, then there was nothing at the disposal at the end of Superintendent of Police (SSP), Pulwama as well as respondent No.2- District Magistrate Pulwama in considering and ordering the preventive detention of the petitioner.

36. A dossier as well as grounds of detention are not meant to be smokescreen for ordering and validating a preventive detention of a citizen of this country who by majestic force of Article 21 of the Constitution of India is entitled to his personal liberty.

37. In the present case, this Court finds that both the dossier as well as the grounds of detention are nothing but smokescreen on the basis whereof the petitioner has come to suffer loss of his personal liberty thereby impinging his fundamental right to personal liberty under article 21 of the Constitution of India which warrants this Court to exercise its jurisdiction under article 226 of the Constitution of India to restore the petitioner to his personal liberty.

38. Accordingly, this Court holds the preventive detention order **No.15/DMP/PSA/25** dated

30.04.2025 passed by the respondent No.2- District Magistrate Pulwama read with approval/confirmation/extension Government order/s operating against the petitioner's personal liberty as illegal and are hereby quashed.

39. The petitioner is directed to be restored to his personal liberty by his release from the concerned Jail for which the Superintendent concerned to carry out obedience and compliance.

(RAHUL BHARTI)
JUDGE

Srinagar
02.04.2026
Opinder

Whether the judgment is speaking : Yes / No

Whether the judgment is reportable : Yes / No