

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

Reserved on: 29.01.2026

Pronounced on: 05.02.2026

Uploaded on: 21.02.2026

Whether the operative part or full
judgment is pronounced: FULL

HCP No. 219/2024

Mohammad Usman Bhat

.....Petitioners

Through: Mr. N.H.Shah, Sr. Advocate with
Ms. Suwaiba, Advocate

Vs

Union Territory of J&K and others

.....Respondents

Through: Mr. Hakim Aman Ali, Dy.AG.

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

JUDGMENT

1. Heard learned counsel for the petitioner as well as for the respondents.
2. Perused the pleadings and the documents therewith.
3. The detention record produced also perused minutely.
4. The preventive detention custody being subjected to and suffered by the petitioner- Mohammad Usman Bhat has come to be

assailed by him through medium of present writ petition filed through his wife Akhtar Jan Begum.

5. The petitioner is resident of village Sahora Uri, District Baramulla and was aged 51 years at the time of institution of present writ petition on 06.06.2024.

6. The District Police, Baramulla, acting through Senior Superintendent of Police (SSP) Baramulla, by virtue of a letter No. **Lg1/PSA/2024/865-68** dated **06.04.2024** submitted a dossier with respect to the petitioner's alleged activities which in the estimate of the Senior Superintendent of Police (SSP), Baramulla afforded a case for seeking preventive detention of the petitioner so as to ward off his indulgence in the activities reckoned to be prejudicial to the maintenance of security in the UT of J&K.

7. In his three and half page dossier, the Senior Superintendent of Police (SSP) Baramulla, came to refer to alleged antecedents of the

petitioner as being an ex-filtrate to PoK via Sohra where the petitioner is said to have remained for four years to return to Kashmir in 2004 to start indulging in subversive activities posing a threat to the national security and integrity of the Union of India. The petitioner is said to have developed contacts with various terrorist and secessionist organizations to carry out activities of secessionism and terrorism as per the reliable and credible information/reports received from various agencies. The petitioner is alleged to be in close touch with the weapon smugglers namely Yaqoob Ahmad Kohli and Mehran Shah who also are said to have ex-filtrated to PoK in the year 1990 for obtaining illegal arms and ammunition training but not coming back to Kashmir. The petitioner is said to be getting directed from across the Border and implement the directions as per their dictation.

- 8.** The petitioner's state of personal liberty was reckoned, in the aforesaid background, to be

potentially disruptive of then forthcoming 2024 Lok Sabha elections in District Baramulla.

9. The dossier so submitted by the Senior Superintendent of Police (SSP) Baramulla, Police was unaccompanied by any other document or material, and was, thus, a self-meaning document for the consumption of the respondent No.2- District Magistrate Baramulla to consider and take a call of subjecting the petitioner to preventive detention custody.
10. The respondent No.2- District Magistrate Baramulla, by reading of said bare dossier made the repeat of text and context of said dossier to be named as grounds of detention for the purpose of nursing a subjective satisfaction to the respondent No.2-District Magistrate, Baramulla that the petitioner rendered himself to suffer loss of his personal liberty for the sake of preventing him from acting in a manner prejudicial to the maintenance of the security in the UT of J&K.

11. On the basis of said purported subjective satisfaction, the respondent No.2-District Magistrate, Baramulla came to issue an order **No.31/DMB/PSA/2024** dated **19.04.2024** thereby ordering the preventive detention of the petitioner and his confinement in the Central Jail Kot Bhalwal so as to prevent the petitioner from acting in any manner prejudicial to the maintenance of security in the UT of J&K for a period to be specified by the Government.

12. Coinciding with issuance of aforesaid detention order, the respondent No.2-District Magistrate, Baramulla, by virtue of the communication No. DMB/PSA/2024/151-155 dated 19.04.2024 addressed to the petitioner, thereby purportedly apprised him about issuance of detention order against him and his awaited detention with a right to him i.e., the petitioner to make a representation.

13. The detention warrant came to be executed when the petitioner was arrested and detained by ASI Sartaj Singh No.136/A-EXK -941443 of Police

Station, Kreeri on **23.04.2024** and handed over the person of the petitioner to the Superintendent, Central Jail, Kot Bhalwal, Jammu.

14. The petitioner is said to have been handed over eight leaves, compilation of detention order (01 leaf), notice of detention (01 leaf), grounds of detention (02 leaves) and dossier of detention (04 leaves).

15. The petitioner is said to have been explained the documents so delivered to him for the purpose of enabling him to understand fully with respect to his preventive detention being effected and for that purpose signature of the petitioner was also obtained on an Execution Report as well as receipt.

16. By virtue of Government Order No. **Home/PB-V/850 of 2024** dated **29.04.2024**, the Government of UT of J&K came to approve the detention order **No.31/DMB/PSA/2024** dated **19.04.2024** of the respondent No.2-District Magistrate, Baramulla and forwarding the case

for opinion of the Advisory Board constituted under the J&K Public Safety Act, 1978.

17. By virtue of its opinion report dated **14.05.2024** on file **No. Home/PB-V/289/2024**, the Advisory Board came to hold that preventive detention of the petitioner was justified on basis of the material so submitted by the Senior Superintendent of Police (SSP) Baramulla to the respondent No.2-District Magistrate, Baramulla.

18. The Advisory Board held the detention of the petitioner bearing a sufficient cause for preventing him from acting in any manner prejudicial to the security of the State in contrast to the basis cited by the respondent No.2-District Magistrate, Baramulla of detaining the petitioner in order to prevent him from acting in any manner prejudicial to the maintenance of the security in the UT of J&K.

19. Enabled by said Advisory Board's opinion, the Home Department, Government of UT of J&K by virtue of Government Order **No. Home/PB-V/1084 of 2024** dated **24.05.2024** came to lend

confirmation to the detention order of the petitioner by confirming his place of detention to be Central Jail, Kot Bhalwal, Jammu for initial period of six months lasting upto **22.10.2024**.

20. On the other hand, the petitioner, acting through his son Mohammad Iqbal Bhat, came to submit a written representation to the respondent No.2-District Magistrate, Baramulla on **24.05.2024** against the written receipt **No. 12338** thereby urging that the preventive detention slapped upon the petitioner was unwarranted and misconceived without any basis except on free will of the District Police, Baramulla.

21. The representation of the petitioner came to be forwarded by the respondent No.2-District Magistrate, Baramulla vide letter **No. DMB/ARA/1274-PSA/5172** dated **30.05.2024** to the Financial Commissioner (ACS), Home Department J&K.

22. It is in the aforesaid backdrop of the facts and circumstances that the institution of present writ petition on **06.06.2024** came to take place.

23. Post institution of writ petition, the first phase detention period of the petitioner coming to expire got extended by virtue of Government Order **No.Home/PB-V/1999 of 2024** dated **16.10.2024** in terms whereof the petitioner's preventive detention custody was extended to last till **22.04.2025** and subsequent extension of custody has also been said to have been carried out by virtue of the Government Order/s about which no reference is to be found made in the counter affidavit and in the file of detention record produced.

24. In the writ petition, the petitioner has assailed his preventive detention on the grounds as set out in Paragraph-6(a) to (m).

25. The frontal challenge to the detention order is that it is a ditto copy of the dossier submitted by the Senior Superintendent of Police (SSP), Baramulla without any shade of difference and

that is contrary to the position of law settled by this Court in the case **Noor-ud-din Shah Vs. State of J&K & Ors., 1989 SLJ-1.**

26. The singular reason which heavily weighs in favour of the petitioner for having his preventive detention set aside is default and omission on the part of the respondent Nos.1 and 2 by their failing to deal expediently and expeditiously with the petitioner's written representation dated **22.05.2024** submitted in the office of respondent No.2-District Magistrate Baramulla, against receipt **No.12338** on **24.05.2024.**

27. The representation of the petitioner was addressed to the respondent No.2- District Magistrate Baramulla who in turn, by virtue of his letter No. **DMB/ARA/1274-PSA/5172** dated **30.05.2024**, had forwarded the same to the Financial Commissioner (Additional Chief Secretary) Home Department Jammu & Kashmir Srinagar/Jammu for needful consideration.

28. Thus, before filing of the writ petition on **06.06.2024**, the petitioner's representation was

very much in the hands of the respondent No.2-District Magistrate Baramulla, and the respondent No.1-Home Department, Government of UT of J&K.

29. To his least notice and information but from his perspective and pondering, the petitioner's said representation seems to have been made a routine office oriented desk paper exercise.

30. From the end of the Home Department, Government of J&K, final fateful words on petitioner's representation came to be communicated when the Home Department, Government of J&K actions through Deputy Secretary to Government by virtue of a communication No. **Home/PB-V/289/2024(7459855)** dated **21.10.2024** purportedly apprised the respondent No.2-District Magistrate, Baramulla that the petitioner's representation dated **22.05.2024** after being considered has been found without any merit and thus, meant to apprise not only the respondent No.2- District Magistrate, Baramulla but also the

Superintendent Jail, Kot Bhalwal, with the request to inform the petitioner.

31. The time lag between the date of submission by the petitioner of his representation being in the month of **May, 2024** and its rejection taking place in the month of **October 2024** is almost five months, meaning thereby for continuing five months of detention custody the petitioner remained under state of suspense as to whether his constitutionally exercised right of representation is being accorded constitutionally awared application of mind on the part of the respondent Nos.1 & 2 or a nonchalant indulgence is being spared to his said representation.

32. This Court has no iota of doubt and hesitation to say that from the point and perspective of the petitioner as a detenue, his constitutionally guaranteed and exercised right of representation was being met by nonchalant and mechanical indulgence on the part of respondent Nos.1 & 2.

33. In the case of “**Sarabjeet Mokha Vs, District Magistrate, Jabalpur & Ors.,**” (2021) 20 SCC

98, the Hon'ble Supreme Court of India has adverted to the aspect of timeline with respect to consideration of representation submitted by detenu. In this case, the detenu was detained on **12.05.2021** with respect to which a written representation came to be submitted on **18.05.2021** and the rejection whereof took place on **24.06.2021**. The institution of the writ petition by the detenu came to take place on **03.07.2021** before the High Court of Madhya Pradesh. The detenu even submitted a 2nd representation against extension of his detention, which second representation was also rejected on **05.08.2021**. The rejection of the writ petition of the detenu by the High Court of Madhya Pradesh came to take place by holding the detention being justified which led the matter to reach the Hon'ble Supreme Court of India under article 136 of the Constitution of India.

34. The Hon'ble Supreme Court on India in the **Sarabjeet's** case (supra) expressly referred itself to the aspect of delay in considering the

representation by course searching the position of law obtaining on the subject. The delay on the part of the State Government of Madhya Pradesh in considering the representation of the detenu was considered to be fatal vitiating the preventive detention striking at the heart of the procedural right and guarantee guaranteed to a detenu.

35. The Hon'ble Supreme Court of India went to the extent of expressly and emphatically observing that the State Government cannot expect the Apex Court to uphold its power of subjective satisfaction to detain a person, while violating the procedural guarantees of the detenu that are fundamental to the laws of preventive detention enshrined in the Constitution. In fact, even the failure to communicate the decision on the representation of the detenu was reckoned to be a fundamental reason for quashing the detention of the detenu in the aforesaid case.

36. Both vices and infirmities attend the present detention case of the petitioner as his constitutional right of representation has been

subjected to circusy, serving as matter of paperwork amusement to the respondents No.1 and 2 but bewilderment to the petitioner.

37. In the light of aforesaid self defeating acts of omission and commission on the part of the respondents related to handling of preventive detention of the petitioner, the preventive detention is reckoned to be vitiated with an illegality by jeopardizing the petitioner's constitutional right of representation and its consideration.

38. Accordingly, preventive detention Order No. **31/DMB/PSA/2024** dated **19.04.2024** passed by the respondent No.2-District Magistrate, Baramulla and consequently confirmed/approved by the Home Department, Government of UT of J&K is hereby quashed. The petitioner is directed to be restored to his personal liberty.

39. The Superintendent of the concerned Jail where ever the petitioner is detained and lodged pursuant to the detention order hereby quashed, is directed to be released forthwith.

40. Writ petition **disposed of** as such.

(RAHUL BHARTI)
JUDGE

Srinagar
05.02.2026
Muzammil Q

Whether the judgment is speaking : Yes
Whether the judgment is reportable : Yes