

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

HCP No. 213/2025

Pronounced on: 16.07.2026

Mushtaq Ahmad Dar

...Petitioner(s)

Through: Mr. Imtiyaz Ahmad Sofi, Advocate

Vs.

Union Territory of J&K and Anr.

...Respondent(s)

Through: Mr. Faheem Nisar Shah, GA

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. The petitioner is in preventive detention custody w.e.f. **02.05.2025** lodged in the District Jail, Rajouri.

4. The petitioner through his father-Mohd Subhan Dar, is throwing a challenge to the exercise at the end of respondents No. 1 and 2 on the basis whereof he has been ordered to suffer preventive detention custody under J&K Public Safety Act, 1978 meant to last for full period of two years w.e.f. **02.05.2025**.

5. A case for seeking preventive detention of the petitioner was mooted by the Senior Superintendent of Police, (SSP), Handwara who, vide his communication No.**Pros/Dossier/2025/2342-46** dated **27.04.2025** supplemented by a communication No.**Pros/ Dossier/ 2025/2407** dated **29.04.2025**, submitted a dossier to the respondent No.2-District Magistrate, Kupwara thereby seeking exercise of jurisdiction at his end under the J&K Public Safety Act, 1978 to order preventive detention of the petitioner so as to prevent him from acting in any manner prejudicial to the security of the State.

6. The dossier with reference to the petitioner refers to the criminal antecedents of the petitioner by reflection of his involvement in **FIR No. 153 of 2012** of the Police Station, Handwara by reference to which

criminal case is said to be sub-judice with the petitioner being enlarged on bail as an under-trial.

7. The petitioner even after his release on bail, is said to have continued with his alleged objectionable ways and, as such, was subjected to preventive detention custody in the year 2012 by reference to an Order No. **07-DMK/PSA of 2012** dated **21.07.2012** which is said to have been quashed by this Court on mere technical grounds but the petitioner still remained inclined towards anti-national activities with respect to which the respondents are said to have confidential reports and reports received from Sister Agencies. The petitioner is said to have even been subjected to the security proceedings under section 126 of Bharatiya Nagarik Suraksha Sanhita, 2023.

8. The dossier so submitted by the Senior Superintendent of Police, (SSP), Handwara persuaded the respondent No.2-District Magistrate, Kupwara to hold that a case was made out for the preventive detention of the petitioner and the basis for the said opinion of the respondent No.2-District Magistrate, Kupwara came to rest upon the grounds of detention

formulated which are repetition of the contents of the dossier submitted by the Senior Superintendent of Police, (SSP), Handwara.

9. The respondent No.2-District Magistrate, Kupwara came to issue detention order No.**05-DMK/PSA of 2025** dated **29.04.2025** directing the preventive detention, arrest and custody of the petitioner so as to prevent him from acting in any manner prejudicial to the security of the Union Territory of Jammu and Kashmir to be kept detained in the District Jail, Rajouri.

10. The detention order No. **05-DMK/PSA of 2025** dated **29.04.2025** does not bear an essential recital to the effect that the petitioner being ordered to be kept in preventive detention custody is for how much period to be settled by whom.

11. The respondent No.2-District Magistrate, Kupwara, by virtue of his communication No. **DMK/PSA/2025/169** dated **29.04.2025**, addressed to the Principal Secretary to the Government, Home Department, Union Territory of Jammu and Kashmir

apprised about the issuance of detention order against the petitioner and submitting the file for the consideration of the Home Department, Government of Union Territory of Jammu and Kashmir for the purpose of according approval to the detention order.

12. Likewise, the respondent No.2-District Magistrate, Kupwara, by virtue of communication No. **DMK/PSA/2025/170-176** dated **29.04.2025** thereby serving as a notice of detention to the petitioner and simultaneously apprising him thereby that he has a right of making a representation to the Government or to him against his preventive detention.

13. The execution of detention warrant upon petitioner came to take place through SI Nazir Ahmad, PID No. 965928 of Police Station/Post, Kralgund. The petitioner is said to have been handed over the documents in the form of detention order, notice of detention, grounds of detention and dossier total compilation of 28 leaves and is said to have been explained in the language understood by him to the extent of translated copy of detention order in Urdu.

14. The execution report generated by SI Nazir Ahmad bears a recital that the petitioner was informed about his right to make a representation to the competent authority against his detention order, if he so desires, without specifying which competent authority was indicated to the petitioner for the purpose of enabling him to exercise his constitutional right of making a representation to the Government as well as to the detention order making authority, whereas, the receipt of the grounds of detention taken from the petitioner bears a recital that he was informed of his right to make a representation to the Government.

15. By virtue of Government Order No. **Home/PB-V/780 of 2025** dated **05.05.2025**, approval to detention order No. **05-DMK/PSA of 2025** dated **29.04.2025** came to be accorded and the case was forwarded on **05.05.2025** to the Advisory Board for its opinion.

16. It was on **20.06.2025** that the petitioner had come forward with the institution of the present writ

petition after he has suffered forty nine days of detention custody in the District Jail, Rajouri.

17. The petitioner had addressed a representation dated **06.05.2025** against his preventive detention through his father-Abdul Subhan Dar to the Government.

18. The Advisory Board, by virtue of its Opinion Report dated **22.05.2025**, came to hold the petitioner's preventive detention based upon justifiable grounds is suffering no procedural deficiency or defect and also considered the representation made on behalf of the petitioner and found the same to be without any substance.

19. The Advisory Board's Opinion Report, thus, facilitated issuance of Government Order No. **Home/PB-V/1040 of 2025** dated **29.05.2025** confirming the detention of the petitioner for a period w.e.f **02.05.2025** till **01.11.2025** at first instance for a period of six months and the place of lodgment continued to be in the District Jail, Rajouri.

20. The petitioner's representation so submitted to the Government came to earn its disposal by virtue of a communication No. **Home/PB-V/191-2025** dated **29.05.2025** addressed to the respondent No.2-District Magistrate, Kupwara to apprise the petitioner about the fate of his representation being negative.

21. The petitioner came to be handed over the requisite communication of rejection of his representation against a receipt. The petitioner's detention came to be further extended from **02.11.2025** to **01.05.2026** by virtue of Government Order No. **Home/PB-V/1983 of 2025** dated **31.10.2025**.

22. The petitioner in his writ petition has come to assail his preventive detention on the grounds as set out in para 3 (i) to (xiv).

23. The petitioner has referred to the fact that entire basis of his preventive detention custody is resting solely upon reference to his involvement in criminal case under **FIR No. 153 of 2012** of the Police Station, Handwara which is still pending trial in which

he is on bail and therefore, a reference to such a long distant incident of 2012 in the dossier as well as in the grounds of detention was nothing but an attempt to cover up the fact of lack of material in the context of present state of activities of the petitioner so as to give a bad name to the petitioner and legitimize the preventive detention exercise initiated at the end of Senior Superintendent of Police, (SSP), Hadwara and the respondent No.2-District Magistrate, Kupwara.

24. The petitioner submits that the proceedings under section 126 of Bharatiya Nagarik Suraksha Sanhita, 2023 at no point of time were ever taken to logical end but still the bond furnished by him was not breached from his end while a case for preventive detention of the petitioner was processed and served by making said proceedings under section 126 of Bharatiya Nagarik Suraksha Sanhita, 2023 as the referral point.

25. The grounds of detention and the dossier being a mirror image of each other have been agitated by the petitioner to show that the sponsoring authority as well as the detention order making authority were both

acting with a bankruptcy of facts at their disposal for subjecting the petitioner to preventive detention custody.

26. The petitioner has referred to the said fact that the copy of communication No. **Pros/ Dossier/ 2025/ 2407** dated **29.04.2025** from the end of Senior Superintendent of Police, (SSP), Handwara as referred to in the order of detention was never ever provided to him.

27. It is further submitted that the purported reference to confidential reports and reliable reports from the Sister Agencies were never ever provided to the petitioner for enabling him to make an effective representation. The petitioner submits that he was deprived of his right of appearing before the Advisory Board despite having made a request in his representation.

28. The petitioner refers to the fact that in the year 2012 when he was subjected to preventive detention custody vide order No. **07-DMK/PSA of 2012** dated **21.07.2012**, same was quashed by this Court in **HCP**

No. 104/2012 dated 29.10.2012 but the same narrative was set up against the petitioner as had been pressed at this time.

29. The respondents, in their counter affidavit filed on **24.09.2025**, have defended the preventive detention of the petitioner by support of dossier, grounds of detention and further stating that all procedural compliances were carried out leaving no scope for the petitioner to have any grouse against his detention.

30. When this court examines the underlying basis of the petitioner's detention both from the end of the Senior Superintendent of Police, (SSP), Handwara in the context of preparing the dossier and from the end of the respondent No.2-District Magistrate, Kupwara in the context of formulating the grounds of detention for the purpose of drawing subjective satisfaction as to whether the petitioner's personal liberty needs to be curtailed by subjecting him to preventive detention custody, this court finds that misplaced reference to the petitioner's criminal antecedents under **FIR No. 153 of 2012** is to be taken out of consideration for the

simple reason because by reference to the said aspect, the petitioner was subjected to preventive detention custody in the year 2012 by virtue of respondent No.2-District Magistrate, Kupwara's order No. **07-DMK/PSA of 2012** dated **21.07.2012**. This court is observing the same on the strength of the grounds of detention itself which in paras 2 and 3 are meant to say the said fact.

31. Thus, once this court takes out the reference to the petitioner's antecedents relatable to **FIR No. 153 of 2012**, in the rest of the dossier as well as in the grounds of detention there is no whisper of factual content with intent on the basis whereof the Senior Superintendent of Police, (SSP), Handwara could have conceived of reckoning the petitioner's alleged state of activities to be prejudicial to the security of the State.

32. It is only by a heavily loaded opinionated assessment of the petitioner's conduct that the petitioner has been condemned to suffer preventive detention custody by labeling him as a bearer of subversive behavior having a strong association with a banned terrorist organization like Lashkar-e-Taiba with a bad character and with relevant entries against

his behavior recorded in the concerned Police Station from time to time.

33. This court wonders how against such a type of dossier and grounds of detention, a detenu can conceive of making any representation whatsoever except to say that he or she does not bear the said state of conduct or indulgences as attributed to him or her from the end of the District Police and borrowed by the District Magistrate.

34. This type of grounds of preventive detention of a person qualifies to be vague and baseless, and, therefore, any preventive detention resting upon such vague and baseless grounds cannot be allowed to be sustained except at the cost of sacrificing the fundamental right of personal liberty of a detenu to which a constitutional court cannot lend its nod.

35. In view of the aforesaid, this court holds the preventive detention custody of the petitioner to be based purely on vague and baseless grounds without any iota of factual content and, therefore, declares detention order No. **05-DMK/PSA of 2025** dated

29.04.2025 read with approval/confirmation/extension order(s) passed by the Home Department, Government of Union Territory of Jammu and Kashmir as illegal and are, accordingly, quashed.

36. The petitioner is directed to be released from his preventive detention custody from the concerned Jail wherever the petitioner is kept detained and the Superintendent of the concerned Jail shall release the petitioner forthwith.

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

38. Disposed of.



(RAHUL BHARTI)

JUDGE

SRINAGAR:

16.07.2026

"Manzoor"

Whether the judgment is speaking : Yes / No

Whether the judgment is reportable : Yes / No