

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

HCP No. 271/2025

Pronounced on: 09.07.2026

Asif Ahmad Dar

...Petitioner(s)

Through: Mr. M. Ayoub Bhat, Advocate with
Ms. Mahjabeena Bhat, Advocate

Vs.

Union Territory of J&K and Ors.

...Respondent(s)

Through: None

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 facts of the case attending the preventive detention custody of the petitioner getting ordered by

the respondent No.2-District Magistrate, Pulwama are that the Senior Superintendent of Police, (SSP), Pulwama came to monitor and document alleged activities of the petitioner which counted to be prejudicial to the security of the State so in order to prevent him from further indulging in such state of activities while being in state of personal liberty, a dossier came to be submitted to the respondent No.2-District Magistrate, Pulwama accompanying letter No. CS/PSA/25/25-28 dated **28.04.2025**.

4. The dossier introduced the petitioner as a person who has done his Moulvi Course in the year 2017 and then getting in religious services in Jamia Masjid, Marvel in the year 2019. As per the Intelligence Agencies' reports and also as per Beat In-charge, Marvel Kakapora, the petitioner is said to have got in contact with Anti-National elements during the course study of his moulviship and got involved in commission of anti-national and subversive activities in the area to sabotage the integrity, security and sovereignty of Nation. The petitioner is said to have

been giving objectionable sermons about Jihad during Friday prayers, thereby luring young generation to get involved terrorist ranks. The petitioner was reckoned to be a potential OGW of killed terrorists Riyaz Ahmad Dar alias Khalid alias Sheeraz and Rayees Ahmad Dar, by providing all logistical support in terms of food, clothes, shelter and other logistical infrastructure. The petitioner is said to be a highly radicalized and sympathizer to terrorists being operative in District Pulwama (Marvel area). The petitioner is reportedly in touch with the POK handlers through different means.

5. By reference to the purported noted state of indulgences of the petitioner, he is said to have been bound down on **05.03.2025**, **10.04.2025** and **25.04.2025** under section 126 of Bharatiya Nagrik Suraksha Sanhita, (BNSS), 2023, which provides for security for keeping peace in other cases. On this dossier's content quality, the petitioner's preventive detention under J&K Public Safety Act, 1978 was solicited from the end of the respondent No.2-District

Magistrate, Pulwama vested with the jurisdiction to order preventive detention of a person.

6. One and half page dossier came to be literally borrowed word by word by the respondent No.2-District Magistrate, Pulwama to be introduced as a grounds of detention for generating and lending a purported subjective satisfaction to the respondent No.2-District Magistrate, Pulwama that the petitioner by purported reference to his alleged state of activities deserves to be deprived of his fundamental right to personal liberty by his preventive custody. Accordingly, by virtue of an Order No. 03/DMP/PSA/25 dated **30.04.2025**, the petitioner was ordered to be detained so as to prevent him from acting in any manner prejudicial to the security of the State and to be kept detained in the District Jail, Udhampur for a period to be specified by the Government.

7. By virtue of a communication No.DMP/PSA/25/07-09 dated **30.04.2025**, the respondent No.2-District Magistrate, Pulwama came to address to the petitioner's notice about the fact of passing of

detention order No. 03/DMP/PSA/25 dated **30.04.2025**, and also apprising him about his right to make a representation either to the Government or to the detention order making authority that being the District Magistrate, Pulwama.

8. The aforesaid detention order No.03/DMP/PSA/25 dated **30.04.2025** came to be executed by SI Mohd Yousuf of District Police Line, Pulwama, who took the petitioner into custody on **01.05.2025** but before handing over his person to the Assistant Superintendent, District Jail Udhampur provided to the petitioner, against a proper receipt, the entire material/relevant documents and also explaining to him in the language, i.e. Urdu/Kashmiri to the satisfaction that the petitioner had understood all said material fully.

9. The executing officer-SI Mohd Yousuf is on record to say in his Execution Report dated **01.05.2025** that he informed the petitioner about his right to make a representation to the Government against the detention order meaning thereby what was

edited out from being apprised to the petitioner is a fact that he was also entitled to make a representation against his preventive detention even to the detention order making authority that being the District Magistrate, Pulwama.

10. The receipt of grounds of detention fetched from the petitioner against his signature by SI Mohd Yousuf is also confirming the said fact that what the petitioner came to be apprised and which he acknowledged as a fact is that he could make a representation against his preventive detention to the Government.

11. By virtue of Government Order No. Home/PB-V/884 of 2025 dated **08.05.2025**, approval came to be granted to the detention order No.03/DMP/PSA/2025 dated **30.04.2025** awaiting the opinion of the Advisory Board to whom the petitioner's detention case was forwarded for examination.

12. The Advisory Board, by virtue of its report dated **21.05.2025**, came to examine the detention of

the petitioner and found it to be based on sufficient grounds and, accordingly, recommended so.

13. The Advisory Board in its Opinion Report comes forth with a recital in para 2 that the petitioner was informed of his right of making representation against his detention to the detaining authority as also to the Government. Wherefrom this fact came to be read by the Advisory Board from the record produced is, least to say, is left to be better known to the Advisory Board because the Execution Report and the Receipt on record is contrary to said observation and it is here where the very constitutional right of the petitioner got punctured vitiating the very basis of procedural safety and safeguards for a detenu being subjected to a preventive detention custody.

14. On the basis of the Advisory Board's purported Opinion, the confirmation of the petitioner's preventive detention came to be effected by virtue of a Government Order No. Home/PB-V/1052 of 2025 dated **30.05.2025** and also prescribing first installment of period of detention from **01.05.2025** till

31.10.2025 and continued to be detained in District Jail, Udhampur.

15. The petitioner's preventive detention has been further extended from 01.11.2025 till 30.04.2026 by virtue of subsequent Government Order No. Home/PB-V/1964 of 2025 dated **29.10.2025**.

16. The Advisory Board, in its opinion report, has categorically referred to fact that there was a no representation made by petitioner as no such representation was found lying on the file so placed by the Government before the Advisory Board for seeking its opinion with respect to justifiability of the petitioner's preventive detention.

17. As against the aforesaid fact, the District Magistrate, Pulwama in terms of his communication No. DMP/PA/25/184-87 dated **13.05.2025** addressed to none else than the petitioner is on record to say that on **13.05.2025** representation was presented on his behalf by his wife-Ruhi Jan, very much in the hands of the District Magistrate, Pulwama and still the Advisory Board in its opinion report dated **21.05.2025** was

finding no such representation accompanying the file so forwarded by the Government for examining it for its opinion.

18. The respondent No.2-District Magistrate, Pulwama, by virtue of his aforesaid communication dated **13.05.2025**, purportedly apprised the petitioner about the fact that his representation upon being considered by him has been found devoid of any merit.

19. The Superintendent, District Jail, Udhampur, by communication No. DJU/MS/25/4702 dated **14.05.2025** addressed to the Additional Secretary Home Department, Government of Jammu and Kashmir was apprising him about the fact of disposal of the petitioner's representation so made to the District Magistrate, Pulwama meaning thereby even the Government was well posted with the notice of fact that the petitioner had made a representation against the preventive detention to the District Magistrate, Pulwama, notwithstanding the fact that he was not apprised about his said right by the detention warrant executing officer Mohd Yousuf, and still when the file

came to be forwarded to the Advisory Board there was no such representation accompanying the file for consideration of the Advisory Board and its fate found by Advisory Board to be missing on record.

20. The petitioner has assailed his preventive detention and the Government through the counter affidavit filed by District Magistrate, Pulwama of the time is defending the preventive detention of the petitioner.

21. The respondent No.2-District Magistrate, Pulwama in his counter affidavit is nowhere advertng to the fact that how come the petitioner's representation made to him and its disposal by him was not further forwarded to the Government for notice and consideration of the Advisory Board.

22. The petitioner cannot be expected to have an access to the file/record which is in the making related to preventive detention of the petitioner and, therefore, a challenge to this type of omission on the part of the District Magistrate concerned as well as the Home Department, Government of UT of Jammu and

Kashmir cannot fall to the notice of the detenu to be cited as a ground of challenge to the preventive detention but upon examination of the record sent for by constitutional court such serious flaws come rushing out which cannot escape from being taken into serious consideration for examining the legality of preventive detention so imposed and inflicted upon a detenu.

23. In the light of the aforesaid serious flaws, 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. **03/DMP/PSA/25** dated **30.04.2025** passed by the respondent No.2-District Magistrate, Pulwama 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:

09.07.2026

“Manzoor”

Whether the judgment is speaking : Yes / No

Whether the judgment is reportable : Yes / No

