

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

HCP No. 278/2025

Pronounced on: 01.07.2026

Azhar Nazir Mir

...Petitioner(s)

Through: Ms. Nida Nazir, Advocate

Vs.

Union Territory of J&K and Anr.

...Respondent(s)

Through: Mr. Bikramdeep Singh, Dy. AG

CORAM:

HON'BLE MR. JUSTICE RAHUL BHARTI, JUDGE

JUDGMENT

सत्यमेव जयते

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 detention of the petitioner.
3. The petitioner-Azhar Nazir Mir, acting through his father Nazir Ahmad Mir, came forward with the

present writ petition filed on **18.08.2025** being in a state of preventive detention custody presently confined in the District Jail Kathua, thereby urging this Court to exercise jurisdiction under article 226 of the Constitution of India by issuance of a writ of habeas corpus to get the petitioner out of his preventive detention custody.

4. The petitioner came to be placed in preventive detention custody by virtue of an Office Order No. DMB/PSA/15 of 2025 dated **30.04.2025** passed by the respondent No.2-District Magistrate, Budgam in exercise of authority under section 8 of the Jammu and Kashmir Public Safety Act, 1978 in order to prevent the petitioner from acting in a manner prejudicial to the security of the State.

5. The respondent No.2-District Magistrate, Budgam, for the purpose of passing the detention Order No. DMB/PSA/15 of 2025 dated **30.04.2025**, acted upon the dossier submitted by the Senior Superintendent of Police, (SSP), Budgam

accompanying communication No. PSA Cell/ Dossier/ 2025/ 607-10 dated **29.04.2025**.

6. On the basis of the dossier, the grounds of detention came to be formulated by the respondent No.2-District Magistrate Budgam, wherein the petitioner came to be characterized as a repeat violator of law having no respect for the law of land with his activities suggesting his relentless pursuit of aiding terrorists in the area. The petitioner's criminal antecedents by his reported involvement in FIR No. **91/2023** of Police Station, Beerwah for alleged commission of offences under Unlawful Activities (Prevention) Act, 1967 came to be highlighted along with fact of petitioner being bound down several times on **04.11.2023**, **04.03.2024**, **04.07.2024**, **01.01.2025**, **21.01.2025** and **23.04.2025** under relevant provisions of law but despite that the petitioner is said to have continued with his illicit actions thereby posing a persistent threat to the stability of the region. As per a purported report said to have been received by the Senior Superintendent of Police, (SSP), Budgam, the petitioner is said to have

established clandestine links with terrorist and therefore, working as an Over Ground Worker (OGW) of banned outfit LET.

7. Thus, the petitioner's said alleged state of activities was reckoned to be prejudicial to the maintenance of security of the State on the basis whereof the respondent No.2-District Magistrate, Budgam entertained a subjective satisfaction to come up with issuance of detention order No. DMB/PSA/15 of 2025 dated **30.04.2025**, thereby ordering the preventive detention of the petitioner with his custody and confinement to be in the District Jail, Kathua for the period to be specified by the Government.

8. In furtherance of the detention order so issued, the petitioner came to be taken into custody on **02.05.2025** when detention warrant executing officer SI Gh. Mohd of Police Station, Beerwah arrested the petitioner and before handing his person to the Assistant Superintendent, District Jail Kahtua, delivered 18 leaves compilation to the petitioner by purportedly reading over the order of detention,

grounds of detention and other accompanying documents in the language said to have been understood by the petitioner and in acknowledgement thereof fetching a receipt from the petitioner.

9. In his Execution Report, the executing officer SI Gh. Mohd is on record to say that he informed the petitioner about the fact that the petitioner can make a representation to the Government against the order of detention, if he so desires, and to this effect the confirmation is coming forth from the receipt taken from the petitioner wherein the petitioner is acknowledging the fact that he has been apprised about the fact that he can make a representation to the Government against the detention order, if he so desired.

10. Approval of the detention order No. DMB/PSA/15 of 2025 dated **30.04.2025**, so issued by respondent No.2-District Magistrate, Budgam came to be accorded by the Government, in terms of Government Order No. Home/PB-V/830 of 2025 dated **06.05.2025**, followed by forwarding of the case to the

Advisory Board for its opinion which came to tender its Opinion Report dated **21.05.2025** holding that the preventive detention of the petitioner was on justifiable grounds and that all the procedural formalities and safeguards meant for ordering and effecting the preventive detention of detenu have been carried out in due compliance.

11. Acting on behalf of the petitioner, his father Nazir Ahmad Mir, submitted a representation to the respondent No.2-District Magistrate, Budgam received on **21.05.2025**, thereby seeking revocation of petitioner's preventive detention which came to be forwarded by the respondent No.2-District Magistrate, Budgam vide his communication No.DMB/ PSA/ 2025/99-100 dated **23.05.2025** to the respondent No.1 for the purpose of consideration.

12. Following the Advisory Board's Opinion Report dated **21.05.2025** confirmation of the petitioner's preventive detention came to be granted by issuance of Government Order No. Home/PB-V/1087 of 2025 dated **02.06.2025** by prescribing upon the petitioner's

period of detention from **02.05.2025** till **01.11.2025** for six months at first instance and place of confinement continuing to be the District Jail, Kathua.

13. The petitioner has assailed his preventive detention on the grounds as set forth in para 4 (a) to (i). The challenge goes like this that the grounds of detention are baseless, frivolous without any substance. The petitioner's plea is that the preventive detention sponsoring authority as well as the detention order making authority were lacking any cogent and compelling reason prompting to enforce a preventive detention order against the petitioner. The grounds of detention being vague are said to have seriously prejudiced the right of the petitioner for making an effective representation against his preventive detention. The petitioner submits that his difficulty was compounded by the fact that he being a Kashmiri speaking and knowing person with hardly any sense of Urdu language was not explained the order of detention, grounds of detention and notice of detention in his local dialect and, thus, left wondering the actual reasoning of his preventive detention custody. The

petitioner has highlighted the aspect of grant of bail in his favour in connection with the criminal cases under trial and that being a precipitating factor for the sponsoring authority to somehow keep the petitioner in a state of incarceration and, thus, devised the mode of preventive detention custody against the petitioner.

14. The respondents have come forward with the counter affidavit filed on **02.12.2025** wherein it is being stated with emphasis that there is no scope for the petitioner to earn quashment of his preventive detention custody as the same is based on enabling facts and circumstances duly considered by the respondent No.2-District Magistrate, Budgam and all procedural safeguards and safety measures taken with respect to execution of the detention order and also ensuring due availability of constitutional right of the petitioner to make an effective representation.

15. In the light of the aforesaid, this Court is to consider the sustainability of the challenge from the end of the petitioner to his preventive detention or

sustainability of the preventive detention inflicted upon the petitioner.

16. The genesis of the petitioner's preventive detention is locked in the grounds of dossier. The reference to criminal case in terms of FIR No. **91 of 2023** cannot count as immediate ground for an occasion to precipitate and /or initiate preventive detention custody process against the petitioner as if that would have been so, then the same would have taken place and processed in the year 2023 itself by reference to the fact that the petitioner's involvement in alleged commission of offences under Unlawful Activities (Prevention) Act, 1967 is alarming for the State to take serious notice and, thus, upon his out on bail in the said case a case for his preventive detention is rendered an indispensable situation.

17. When this Court takes out the reference of the petitioner's involvement in said criminal case of 2023, what remains thereafter is the purported reference to the proceedings under section 107 of the Code of

Criminal Procedure, 1973 and under section 126 of Bharatiya Nagarik Suraksha Sanhita, 2023.

18. Now, if the petitioner was subjected to said proceedings under section 107 of the Code of Criminal Procedure, 1973 and later under section 126 of Bharatiya Nagarik Suraksha Sanhita, 2023 in a series from 2023 to 2025, then there is no whisper of reference in the dossier as well as in the grounds of detention as to whether the petitioner was ever bound down by final order/s passed in the context of said proceedings, and next whether the petitioner ever breached bond conditions mandated upon the petitioner in terms of the final order/s.

19. If the proceedings under section 107 of the Code of Criminal Procedure, 1973 and 126 of Bharatiya Nagarik Suraksha Sanhita, 2023 were initiated only for the purpose of record generating without being taken to logical end, then this Court has no hesitation to observe that the Code of Criminal Procedure, 1973 in terms of its section 107 and Bharatiya Nagarik Suraksha Sanhita, 2023 in terms of

its section 126 were being exploited rather than being earnestly applied to bring the petitioner to suffer correction with respect to his objectionable and adverse conduct and behavior while being in state of personal liberty.

20. If the petitioner did not breach any terms and conditions of the bond by reference to the aforesaid proceedings, how come by purported reference to same very proceedings, a case for preventive detention custody under J&K Public Safety Act, 1978, could be conceived and allowed to rest upon is a self posing question, which ought to have bothered the respondent No.2-District Magistrate, Budgam at the very first blush of dossier so submitted by the Senior Superintendent of Police, (SSP), Budgam, but it appears that the respondent No.2-District Magistrate, Budgam was already prepossessed with discretion and decision to accept the dossier without any demurrer.

21. Thus, this Court cannot escape accepting the challenge of the petitioner to the preventive detention custody fastened upon him on the plea that the same

is resting upon vague, frivolous and baseless grounds without any iota of factual footing to generate any ground of detention in response to the dossier so submitted.

22. In the light of the aforesaid, this Court is inclined to grant the writ. Preventive detention order No. DMB/PSA/15 of 2025 dated **30.04.2025** passed by the respondent No.2-District Magistrate, Budgam read with approval/confirmation/extension order(s) passed by the respondent No.1 are hereby quashed.

23. The petitioner is directed to be restored to his personal liberty forthwith by release from the concerned Jail wherever the petitioner is being kept confined by reference to the detention order hereby being quashed and to that effect Superintendent concerned Jail to act in abidance.

24. Disposed of.

(RAHUL BHARTI)
JUDGE

SRINAGAR:

01.07.2026

"Manzoor"

Whether the judgment is speaking	:	Yes / No
Whether the judgment is reportable	:	Yes / No