

HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT SRINAGAR

Reserved on: 29.01.2026

Pronounced on: 05.02.2026

Uploaded on: 10.02.2026

Whether the operative part or full judgment is pronounced: Full

HCP No. 312/2024

Basharat Ahmad Bazaz, Aged 32 years
S/o Ghulam Hassan Bazaz
R/o Malik Angan, Fateh Kadal, Srinagar
Through his mother
Mst. Rafiqah Assad, Aged 61 years

..... Appellant (s)

Through: Mr. Wajid Mohammad Haseeb,
Advocate

V/s

- 1. UT of Jammu and Kashmir,**
Through Principal Secretary, Home Department,
J&K Government, Civil Secretariat, Srinagar/Jammu
- 2. District Magistrate, Srinagar**
- 3. Sr. Superintendent of Police, Srinagar**

..... Respondent(s)

Through: None.

Coram:

Hon'ble Mr. Justice Rahul Bharti, Judge.

JUDGMENT

1. The petitioner, Basharat Ahmad Bazaz, acting through his mother Mst. Rafiqah Assad, has come to petition this Court with present writ petition filed on **18.09.2024**, thereby assailing his preventive detention ordered vide impugned

Order No. DMS/PSA/22/2024 dated 05.09.2024 passed by the respondent No. 2- District Magistrate, Srinagar, thereby subjecting the petitioner to suffer preventive detention under Jammu and Kashmir Public Safety Act, 1978 for the sake of preventing the petitioner from acting in any manner prejudicial to maintenance of the security of the State.

2. A case for preventive detention of the petitioner was mooted by the Senior Superintendent of Police, (SSP) Srinagar, by virtue of dossier submitted vide **Letter No. LGL/Det-PSA/2024/19451-54 dated 30.08.2024** notifying the alleged state of activities of the petitioner on the basis whereof the petitioner's fundamental right to personal liberty was reckoned by the District Police to be prejudicial to the maintenance of the security of the State.
3. Acting upon said dossier, respondent No. 2-District Magistrate, Srinagar formulated the grounds of detention, thereby, purportedly drawing the subjective satisfaction that a case has been made out for effecting the preventive detention of the petitioner and, thus, ordering his preventive detention to take place by confining him to the Central Jail Srinagar.

4. In the writ petition, the petitioner has posed challenge to his detention on the grounds set out in para 3 (i to xv).
5. The petitioner submits that grounds of detention bear no nexus with the petitioner as the basis of the grounds of detention is fabrication by the police to somehow justify the consequent detention. In fact, the petitioner is meaning to say that detention was aimed against someone else rather than the petitioner and, thus, impugned order of detention is a case of mistaken identity. The grounds of detention are alleged to be vague and non-existent on the basis whereof no satisfaction, much less the subjective satisfaction, could have been drawn by the detention order making authority.
6. The grounds of detention are said to be lacking specificity. The petitioner submits that once he was subjected to preventive proceedings under section **126 of the Bharatiya Nagarik Suraksha Sanhita, (BNSS), 2023**, there was no occasion for the respondent No. 2 to come up with the drastic action of setting the petitioner to suffer preventive detention under Jammu and Kashmir Public Safety Act, 1978 when petitioner had not breached any terms and conditions

relatable to preventive proceedings against him so instituted under **Bharatiya Nagarik Suraksha Sanhita (BNSS), 2023**. It is being asserted that driving motive in effecting the preventive detention of the petitioner was relatable to the forthcoming Assembly election at the relevant point of time which came to take place and still petitioner is suffering incarceration in terms of his preventive detention custody.

7. The petitioner comes up with heavy weight submission that literally on the identical grounds he was first subjected to preventive detention in the year **2018** by virtue of an order No. **DMS/PSA/37/2018** dated **16.11.2018** which was quashed by this court in **HCP No. 438/2018** by virtue of judgment dated **30.05.2019** when it was held by this Court in its said judgment dated **30.05.2019** that there was no specific allegation relatable to petitioner to justify the ground of detention and consequent preventive detention.
8. Said judgment dated **30.05.2019** was never assailed by the District Magistrate, Srinagar and the petitioner at last had earned his lost personal liberty.

9. The grounds of detention this time supporting impugned detention order are being asserted as replica of the dossier, thereby reflecting upon a mechanical and run-of-the-mill application of mind on the part of the respondent No. 2-District Magistrate, Srinagar in acting on “dotted lines” as served by the District Police Srinagar without any independent aware application of mind on his part.
10. The petitioner also submits that his constitutional right to representation has gone to suffer a dustbin disposal without apprising the petitioner the fate of his said representation so submitted by him.
11. In response to the writ petition, the respondent No. 2-District Magistrate, Srinagar, in his counter affidavit submitted on 30-12-2024, submits that the detention of the petitioner is fully justifiable by reference to impugned order as the petitioner is said to have come in contact with the active terrorist and OGW's of TRF/LeT at an early age, thereby motivating him to work with the outfit as an Over Ground Worker.
12. The criminal antecedents of the petitioner by reference to **FIR No. 67/2018** of the Police Station MR Gunj, **FIR No.**

68/2018 of the Police Station MR Gunj, and **FIR No. 22/2018** of the Police Station Nowhatta warranting preventive proceedings against petitioner have been highlighted in the counter affidavit.

13. Detention warrant is said to have been executed with the arrest of the petitioner taking place on **06-09-2024**, whereupon he was handed over to the Central Jail Srinagar, where he is said to be lodged as per detention order.
14. All the procedural requirements relating to the execution of the detention warrant are said to have been carried into compliance and that is why vide **Government Order No. Home/PB-V/1967 dated 10.10.2024** whereby detention period of the petitioner was settled for a period of six months at the first place to continue to extend thereafter till full course of detention period.
15. In the entire counter affidavit, the respondent No. 2-District Magistrate, Srinagar has not referred to the fact as to when and vide which Government Order, the detention order so passed by him i.e, District Magistrate, Srinagar was first approved by the Government, then to be followed by

confirmation of the detention order. There is no reference in the entire counter affidavit as to whether detention of the petitioner was referred to the Advisory Board for examination and its opinion as to whether detention of the petitioner was justified or not.

16. It is in the backdrop of the aforesaid facts and circumstances of the case that this Court is to examine the legality and validity of the petitioner's preventive detenu.
17. In the original preventive detention **Order No. DMS/PSA/22/2024 dated 05.09.2024** passed by the respondent No. 2- District Magistrate Srinagar, the detenu's parentage is referred to be son of late Ghulam Rasool Bazaz, resident of Malik Angan, Fateh Kadal, Srinagar followed next day issued **Corrigendum No. DMS/Jud/PSA/1051-1055/2024dated 06.09.2024** to effect that **instead of Late Ghulam Rasool Bazaz name of father be read as Ghulam Hassan Bazaz.**
18. Given the fact that petitioner came to be detained on **06.09.2024** on the very next date of passing of detention order when the arrest of the person named in the aforesaid

detention order was supposed to be that of Basharat Ahmad Bazaz @ Prince who was son of late Ghulam Rasool Bazaz, then how the identity of the person to be detained was sorted and established by Executing Officer in leading himself instead directly to the petitioner, to be confirmed as being son of late Ghulam Rasool Bazaz is a fact which exposes the malice in law of the preventive detention set out against the petitioner from the end of the respondent No. 2-District Magistrate, Srinagar.

19. It is nowhere stated in the counter affidavit and for that matter in the Corrigendum above referred whether incorrect mention of parentage was in the dossier of SSP Srinagar or at the end of the respondent No. 2-District Magistrate, Srinagar and that is very serious omission which exposes application of mind on the part of the sponsoring and as well as detention order making authority in playing fast and loose with the truth in matters of constitutionally sacrosanct matter.
20. This Court has no hesitation to observe that petitioner is right in his submission that his preventive detention order was a case of mistaken identity in the sense that when there was

previous detention of the petitioner effected by virtue of **Order No. DMS/PSA/37/2018 dated 16.11.2018** passed by none other than the District Magistrate Srinagar himself by reference to him, the petitioner's parentage was referred to be son of late Ghulam Hassan Bazaz whereas in the impugned preventive detention order issued by same very District Magistrate Srinagar, the reference of parentage of intended detainee is that of late Ghulam Rasool Bazaz and thus it could not have been a case of a typographical or inadvertent error/oversight on the part of the respondent No. 2-District Magistrate Srinagar and if it is so then surely the same reflects the passing of the impugned detention order as sheer non-application of the mind, in order to cover up which by virtue of **Corrigendum No. DMS/Jud/PSA/1051-1055/2024 dated 06.09.2024**, the parentage was changed to be read as “son of Ghulam Hassan Bazaz.” It is nowhere mentioned from the end of the respondent No. 2-District Magistrate, Srinagar as to whether Corrigendum issuing exercise was suo motu or was solicited SSP, Srinagar on account of error being in dossier.

21. Counsel for the petitioner is right to submit that while the Corrigendum was issued by the reference to impugned **Order No. DMS/PSA/22/2024 dated 5.09.2024**, the **Communication No. DMS/PSA/Jud/1026-31 dated 05.09.2024** issued by District Magistrate Srinagar remained as it is and that was to **Basharat Ahmad Bazaz @ Prince son of late Ghulam Rasool Bazaz** which was never put to any correction and so remained the grounds of detention being addressed to detenu who is son of late Ghulam Rasool Bazaz.
22. The aforesaid goof-up on the part of respondent No. 2-District Magistrate Srinagar is in itself a sufficient ground to quash the impugned preventive detention order and consequent preventive detention of the petitioner, and therefore on the basis thereof, the same is being set aside.
23. Additionally, also, the impugned preventive detention of the petitioner warrants to be set aside as the Representation submitted by the petitioner, duly received in the office of respondent No. 2-District Magistrate, Srinagar on **10.09.2024**, has remained begging for consideration to which the respondent No. 2-District Magistrate, Srinagar in his

counter-affidavit filed on **03.12.2024** is least bothered to whisper any reply.

24. Right of representation is not an empty formality from the point of view of a detenu whereas it may be reckoned to be formality of botheration from the point of view of detention order making authority. The detention order making authority appears to be ridden with a preconceived mindset that a detenu cannot make out or be heard to make out any ground for revocation of his/her preventive detention by way of his/her representation, and therefore, there is hardly any need to have a look at the representation of a detenu except to put it in the dustbin disposal and not to even bother to make any averment in counter affidavit to be submitted before a Constitutional Court where legality and validity of the impugned detention is being examined, as is the present case.
25. In view of the aforesaid, preventive detention of the order is held to be factually illegal, which renders impugned **Order No. DMS/PSA/22/2024 dated 05.09.2024** read with confirmation **Government Order No. Home/PB-V/1967 of 2024 dated 10.10.2024**, illegal.

26. The petitioner is thus ordered to be restored to his personal liberty, for which Superintendent of Central Jail, Srinagar to act in abidance.

(Rahul Bharti)
Judge

SRINAGAR
05.02.2026
Aasif

Whether the judgment is reported Yes/No

Whether the judgment is speaking Yes/No