

Serial No. 03

**HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT JAMMU**

Case:- HCP No. 08/2024

Tariq Hussain, Age 37+ years,
S/o Muzaffar Khan,
R/o Lassana,
Tehsil Surankote, District Poonch,
At present lodged in District Jail, Poonch,

.....Petitioner(s)

Through his younger brother Asif Khan, Age
25 years
S/o Muzaffar Khan,
R/o Village Lassana, Tehsil Surankote,
District Poonch

Through: Mr. Altaf Hussain Janjua, Advocate.

Vs

01. The Union Territory of J&K
Through its Additional Chief
Secretary/Financial
Commissioner (Home), Civil
Secretariat, Jammu-180001.
02. The District Magistrate, Poonch.
03. The Senior Superintendent of
Police, Poonch.
04. The Superintendent, District Jail,
Poonch.

..... Respondent(s)

Through: Mr. Pawan Dev Singh, Dy. AG.

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

JUDGMENT
(23.07.2024)

01. Heard learned counsel for the petitioner and the respondents. Perused the writ pleadings and record therewith.

- 02.** This writ petition came to be filed on 19.01.2024 by the petitioner acting through his brother, namely, Asif Khan seeking quashment of his preventive detention effected under Jammu and Kashmir Public Safety Act, 1978 and consequently seeking restoration of his personal liberty by issuance of a *writ of habeas corpus*.
- 03.** This writ petition came to be admitted on 31.01.2024 and on behalf of the respondents, appearance came to be caused on 13.03.2024 with an opportunity afforded to file counter affidavit which till date has not been filed and the petitioner is left hardly with remaining one month of his preventive detention custody before the full period of detention comes to expire on its own in the next month of August 2024. For this reason, this writ petition is being taken up for adjudication so as to serve the essence of principle of rule of law that a litigant who approaches the court of law seeking enforcement of his fundamental right is not left in a lurch just because of expiry of the time attending the pendency of his/her writ petition.
- 04.** The Senior Superintendent of Police (SSP), Poonch vide his letter No. CS/PSA/2023/7401 dated 05.08.2023 submitted a dossier against the petitioner to the

respondent No. 2 – District Magistrate, Poonch, thereby seeking preventive detention of the petitioner for his alleged activities which were reckoned to be prejudicial to the public order.

05. The respondent No. 2 – District Magistrate, Poonch at his end came to draw subjective satisfaction resulting in formulating the grounds of detention and thereupon passing order No. 06/DMP/PSA of 2023 dated 08.08.2023 ordering the petitioner's preventive detention on account of his activities being prejudicial to the public order within the scope of section 8 of the Jammu and Kashmir Public Safety Act, 1978 and his detention and detainment in District Jail, Poonch.

06. In the grounds of detention, the respondent No. 2 – District Magistrate, Poonch has drawn his purported subjective satisfaction by reference to the petitioner's antecedents related to FIR no. 15/2017, FIR no. 25/2017, FIR no. 117/2017, FIR no. 313/2021 and proceedings under sections 107/117/110 of the Code of Criminal Procedure, 1973 initiated twice on 20.06.2022 and 09.07.2023 being the last events in the chain of alleged events related to the petitioner for

making out a case for preventive detention of the petitioner.

07. The petitioner in his writ petition has assailed his detention on the ground that there was nothing to warrant curtailment of his personal liberty by invoking Jammu and Kashmir Public Safety Act, 1978 against him and that the petitioner was implicated in the FIRs which are false and frivolous and that the petitioner is undergoing trial as a law abiding citizen being on bail in all the said cases having never ever jumped the bail and, accordingly, the preventive detention order came to be slapped upon him more with a punitive mindset rather than anything else.

08. A perusal of the grounds of detention formulated by the respondent No. 2 – District Magistrate, Poonch reveals that he acted upon half-stated and half-served facts by the Senior Superintendent of Police (SSP), Poonch in the manner that if the petitioner had been booked by reference to the proceedings under sections 107/117/110 of the Code of Criminal Procedure, 1973 on two occasions, then just by mere recital to the said proceedings in his grounds of detention without stating anything further as to whether the petitioner was ever

called upon by the Executive Magistrate to execute a bond for keeping peace and for keeping good behavior and if so called upon to execute bond as mandated by the provisions of sections 107/117/110 of the Code of Criminal Procedure, 1973, then whether the petitioner ever breached any terms and conditions of the said bond. Thus, both Senior Superintendent of Police (SSP), Poonch and the District Magistrate, Poonch acted with sheer casualness and were remiss in the matter of depriving the petitioner of his fundamental right to personal liberty as if curtailment of a personal liberty is a matter of discretion on the *ipse-dixit* of the Executive.

- 09.** Otherwise also this Court finds that the FIRs which came to be referred by the District Magistrate, Poonch in the grounds of detention are not only stale but even unrelated with the aspect maintenance of public order as the FIRs referred to the alleged commission of offences which are on the side of **“Law and Order”** domain and surely not within the four corners of **“Maintenance of Public Order”** warranting preventive detention of the petitioner.

10. In view of the aforesaid aspects, the impugned detention Order no. 06/DMP/PSA of 2023 dated 08.08.2023 passed by the respondent No. 2 – District Magistrate, Poonch read with approval and confirmation order, if any, passed by the Govt. of UT of J&K are hereby **quashed** and the petitioner is directed to be restored to his personal liberty forthwith by the Superintendent of District Jail, Poonch and it is to be ensured by District Magistrate, Poonch also that the petitioner is restored to his personal liberty as early as possible immediately upon receipt of copy of this order.
11. Superintendent of District Jail, Poonch in particular to ensure immediate compliance with a direction hereby passed.
12. **Disposed of.**

(RAHUL BHARTI)
JUDGE

JAMMU
23.07.2024
Bunty

Whether the order is speaking: **Yes**

Whether the order is reportable: Yes/No