Regular List
Serial No. 04

HIGH COURT OF JAMMU & KASHMIR AND LADAKH AT JAMMU

Date of pronouncement: **23.10.2026**

Uploaded on: **27.10.2026**

HCP No. 63/2026

Shakoor Ahmed, aged 39 years
S/o Gulam Ahmed Dar
R/o Village Rajdhani, Tehsil Thanamandi,
District Rajouri (J&K).
Present lodged in District Jail, Poonch
Through his brother Manzoor Ahmed
S/o Gulam Ahmed Dar.

.....Petitioner

Through: Mr. Muzaffar Iqbal Khan, Sr. Adv. with
Mr. Mazher Ali Khan, Advocate.

Vs

1. The Union Territory of Jammu & Kashmir,
through Principal Secretary (Home),
Civil Secretariat, Jammu.

2. The District Magistrate, Rajouri.

3. The Superintendent, District Jail, Poonch.

.....Respondents

Through: Mr. Dewakar Sharma, Dy. AG.

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

JUDGMENT (ORAL)

01. Heard Mr. Muzaffar Iqbal Khan, learned Sr. Advocate assisted by Mr. Mazher Ali Khan, learned Advocate and also Mr. Dewakar Sharma, learned Dy. AG.

02. Perused the writ pleadings and documents therewith and also the counter affidavit filed from the end of the respondents along with documents therewith.

03. The petitioner-Shakoor Ahmed, acting through his brother Manzoor Ahmed, has come forward with the present writ petition filed on **27.07.2026** invoking writ jurisdiction of this Court under **article 226** of the Constitution of India thereby seeking issuance of a *writ of habeas corpus* for the release of person of the petitioner from preventive detention custody slapped upon him by the respondent No. 2-District Magistrate, Rajouri acting under the Jammu & Kashmir Public Safety Act, 1978.

04. The Senior Superintendent of Police (SSP), Rajouri, by virtue of a communication **No. PA/PSA/2026/9369-72/C** dated **11.06.2026**, had come to submit a dossier to the respondent No. 2-District Magistrate, Rajouri thereby projecting the alleged state of activities of the petitioner reckoned by the District Police to be prejudicial to the maintenance of Public Order warranting the preventive detention custody of the petitioner so as to ensure maintenance of Public Order in the District in particular and the adjoining areas in general.

05. It took the respondent No. 2-District Magistrate, Rajouri almost one month to spare time for consideration of the dossier so submitted by the Senior Superintendent of Police (SSP), Rajouri.

06. By purported formulation of grounds of detention, the respondent No. 2-District Magistrate, Rajouri came to a subjective satisfaction that reported state of alleged activities of the petitioner, including his criminal antecedents relatable to **FIR No. 101/2020** under **section 188** IPC read with **section 11** of the Prevention of Cruelty to Animals Act of Police Station, Thanamandi, **FIR No. 165/2022** under **section 188** IPC of the Police Station, Rajouri and **FIR No. 75/2025** under **section 223** of the Bharatiya Nyaya Sanhita (BNS), 2023 read with **section 11** of the Prevention of Cruelty to Animals Act, Police Station, Thanamandi, sufficed the petitioner to be reckoned as a person acting in a manner prejudicial to the maintenance of Public Order and liable to suffer loss of his fundamental right to personal liberty.

07. Consequently, by virtue of detention order **No. DMR/PSA/05 of 2026** dated **11.07.2026**, the petitioner came to be ordered to be detained and kept in District Jail, Poonch.

08. On the basis of the said detention order, the petitioner came to be taken into preventive detention custody on **13.07.2026** when SI-Zakir Hussain of District Police Line (DPL), Rajouri had come to arrest the petitioner and handed over his person to the Superintendent Jail, Rajouri wherefrom the petitioner came to petition this Court with the present writ petition.

09. Learned counsel for the petitioner refers to a fundamental flaw in the matter of procedural compliances relatable to ordering and effecting the preventive detention custody of the petitioner which fundamental flaw is that the respondent No. 2-District Magistrate, Rajouri in his notice **No. DMR/JC/2026-27/669-71** dated **11.07.2026** addressed to the petitioner omitted to apprise the petitioner about his constitutional right of making a representation against his detention being so ordered by the respondent No. 2-District Magistrate, Rajouri to the detention order making authority which being the respondent No. 2-District Magistrate, Rajouri.

10. In fact, notice **No. DMR/JC/2026-27/669-71** dated **11.07.2026** of the respondent No. 2-District Magistrate, Rajouri is meaning to apprise the petitioner of his right to make a representation only to the Government and none else. Therefore, there is an express omission being found in the very notice itself.

11. The omission is further compounded by the fact from the receipt procured from the petitioner as a detenue by SI-Zakir Hussain in connection with execution of the detention warrant and delivering to the petitioner 82 leaves compilation comprising of detention warrant, grounds of detention, notice of detention order, dossier and other relevant record and also explaining to the petitioner the contents of 82 leaves compilation which of course

HIGH COURT OF JAMMU & KASHMIR AND LADAKH
सत्यमेव जयते

including the notice of detention **No. DMR/JC/2026-27/669-71** dated **11.07.2026** issued by the respondent No. 2-District Magistrate, Rajouri to the petitioner. The petitioner was, thus, simply informed and apprised of his right to make a representation against his detention to the Government and not to the detention order making authority as well.

12. The petitioner's detention came to be confirmed by virtue of a Govt. Order **No. Home/PB-V/955 of 2026** dated **06.08.2026** pursuant to the Advisory Board's opinion dated **29.07.2026** wherein the petitioner's preventive detention custody was held to be justified.

13. This Court is taken by serious concern that how could Advisory Board under the Jammu and Kashmir Public Safety Act, 1978 omit such a patent omission obtaining on record with respect to the preventive detention custody of the petitioner. The Advisory Board in its opinion report has stated that there is no representation from the petitioner's end against his preventive detention which is correct to the extent of Government but not applicable in the context of the petitioner's right to make representation to the respondent No. 2-District Magistrate, Rajouri with respect to which right the petitioner was never ever notified.

14. This Court is not entitled to question the petitioner as to what prejudice has he suffered by deprivation of his right to be

HIGH COURT OF JAMMU & KASHMIR AND LADAKH
सत्यमेव जयते

informed of making a representation against his detention to the detention order making authority. When it is a matter of loss of fundamental right to personal liberty, doctrine of prejudice is not meant to be confronted to a person suffering the loss of fundamental right to personal liberty by being in confinement and custody without having suffered any conviction for commission of offence/s by a criminal court of law.

15. The petitioner's detention is under preventive measures envisaged under the Jammu and Kashmir Public Safety Act, 1978 and, therefore, preventive detention jurisdiction is purely procedure driven admitting of no scope for any lapse of meticulous compliance on the part not only of the sponsoring authority seeking preventive detention of a prospective detenue but also on the part of the detention order making authority as well as detention order approving and confirmation authority which is the State.

16. In fact, even the role of the Advisory Board is supposed to be that of a vigilant authority to be a watchdog to scan the case/s submitted for its opinion from the end of the Government. Advisory Board is meant to ensure that all the procedural compliances attending with the detention of a person under the Jammu and Kashmir Public Safety Act, 1978 has suffered no miss at every related aspect of the procedural compliance. Advisory Board is not meant to be a mere Post-Office like authority of getting a case of a

HIGH COURT OF JAMMU & KASHMIR AND LADAKH
सत्यमेव जयते

preventive detention of a person on its liable and doling out a favorable opinion report for enabling confirmation of the preventive detention of a detenue. The purpose of Advisory Board is that of filtration which this Court is sad to observe is being reckoned as a free passage for the detention orders to arrive on the table of detention order confirmation authority.

17. In the light of the aforesaid, preventive detention order **No. DMR/PSA/05 of 2026** dated **11.07.2026** read with approval/confirmation/extension orders passed on the part of the respondent No. 2–District Magistrate, Rajouri as well as the Govt. of UT of Jammu & Kashmir are hereby ***quashed***.

18. The Superintendent District Jail, Poonch is directed to set the petitioner free by release from the Jail forthwith.

19. ***Disposed of.***

(RAHUL BHARTI)
JUDGE

JAMMU
23.10.2026
Bunty

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

HIGH COURT OF JAMMU & KASHMIR AND LADAKH
सत्यमेव जयते

Bunty Kumar
2026.10.27 13:12
I attest to the accuracy and
integrity of this document