

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

HCP No. 42/2024

Reserved On: 10th of April, 2025.
Pronounced On: 2nd of June, 2025.

Ubaid Bashir Wani

... Petitioner(s)

Through: -

Mr Syed Sibtain, Advocate with
Ms Tehreem Masoodi, Advocate.

V/s

Union Territory of J&K and Ors.

... Respondent(s)

Through: -

Mr Furqan Yaqoob Sofi, Government Advocate.

CORAM:

Hon'ble Mr Justice Rahul Bharti, Judge.

(JUDGMENT)

01. Heard learned counsel for the parties.
02. Perused the pleadings of the writ petition and the record therewith. Also perused the record relating to the detention of the petitioner as produced by the learned counsel for the respondents.
03. The petitioner-Ubaid Bashir Wani, acting through his father-Bashir Ahmad Wani, came to institute this writ petition on 16th of February, 2024

invoking article 226 of the Constitution of India for seeking his release from preventive detention custody effected under the Jammu & Kashmir Public Safety Act, 1978 by an order of the respondent No.2-District Magistrate, Pulwama.

04. The Senior Superintendent of Police (SSP), Awantipora, vide his letter No. Conf/PSA/2023/740-43 dated 4th of December, 2023, submitted a dossier to the respondent No.2-District Magistrate, Pulwama wherein the petitioner came to be projected that he is in contact with very mischievous and separatist elements from his young age itself in the process of which he developed strong secessionist, separatist, radical and terrorist ideology engaging in propagating the said ideology amongst the youth of his age. The petitioner is alleged to be an Over Ground Worker (OGW) of *Lashkar-e-Toiba* (LeT) and *The Resistance Front* (TRF) to whom the petitioner is alleged to be providing logistic support particularly providing of food, shelter and passing of information with regard to the movement of security forces and police in the area of the terrorists.

05. By reference to an incident of 6th of November, 2019 leading to registration of FIR No. 58/2019 by the Police Station, Khrew for commission of alleged offences punishable under section 13 of the Unlawful Activities (Prevention) Act, 1967 read with section 506 of the Indian Penal Code (IPC), the petitioner's involvement is highlighted that he had accompanied Sajad Ahmad Khanday to visit Zaman-ul-Islam Wani receiving letter heads of banned terrorist organization *Lashkar-e-Toiba* (LeT) from him written with anti-Government content which came to be pasted in Khrew area. The petitioner is said to have been booked and challaned in the case on 29th of December, 2021. The petitioner is said to have been enlarged on bail, but still he is alleged not to have abandoned his anti-national activities and nefarious designs. As per police inputs and various agencies, the petitioner is suspected to be running his anti-national agenda by supporting and promoting terrorist ideology.

06. Against the petitioner, proceedings under section 107 read with section 151 of the Code of Criminal Procedure (Cr. P. C.) are said to have been

invoked on four different occasions, i.e., 28th of April, 2023, 25th of July, 2023, 2nd of November, 2023 and 7th of November, 2023 whereafter the case for his preventive detention custody was mooted as a matter of last resort to check him from indulging in his alleged objectionable activities.

07. Acting upon the said dossier of Senior Superintendent of Police (SSP), Awantipora, the respondent No.2-District Magistrate, Pulwama formulated grounds of detention by borrowing the text of the dossier and thereby drawing subjective satisfaction that a case for ordering the preventive detention of the petitioner was made out thereby leading to issuance of order No. 54/DMP/PSA/23 dated 15th of December, 2023 in terms whereof the preventive detention of the petitioner was ordered to take place to be detained and confined in the Central Jail Kot Bhalwal, Jammu in order to prevent the petitioner **“from acting in a manner prejudicial to the Union Territory of Jammu & Kashmir.”**

08. Vide his communication No. DMP/PSA/23/200-02 dated 15th of December, 2023, addressed to the petitioner, the respondent No.2-

District Magistrate, Pulwama intended to notify the petitioner about his ordered preventive detention and his right to make a representation either to the respondent No.2-District Magistrate, Pulwama or to the Government.

09. The respondent No.2-District Magistrate, Pulwama came forward with issuance of a corrigendum No. DMP/PSA/23/206-10 dated 19th of December, 2023 in terms whereof it came to be declared that the expression **“prejudicial to the security of the Union Territory of Jammu & Kashmir”** to be read in order No. 54/DMP/PSA/23 dated 15th of December, 2023 in place of **“prejudicial to the security of the State”**.

10. Acting upon said order No. 54/DMP/PSA/23 dated 15th of December, 2023, ASI Fayaz Ahmad of District Police Lines, Awantipora executed the detention warrant against the petitioner by taking him physically into custody on 19th of December, 2023 and handing him over to the Superintendent, Central Jail Kot Bhalwal, Jammu. The petitioner is said to have been handed over 32-leaves' compilation which

for sure did not carry the Corrigendum dated 19th December, 2023.

11. Upon detention of the petitioner having taken place on 19th of December, 2023 so carried out by ASI Fayaz Ahmad of District Police Lines, Awantipora, the Senior Superintendent of Police (SSP), Awantipora, vide his communication No. Conf/PSA/2023/4308-13 dated 21st of December, 2023, had apprised the Additional Chief Secretary, Home Department, Government of Union Territory of Jammu & Kashmir about the detention of the petitioner having been carried out on 19th of December, 2023 as per law, rules and regulations governing the field.

12. The detention order No. 54/DMP/PSA/23 dated 15th of December, 2023 read with Corrigendum dated 19th of December, 2023 came to be approved by the Home Department, Government of Union Territory of Jammu & Kashmir vide Government Order No. Home/PB-V/2854/2023 dated 20th of December, 2023 by forwarding the case for Advisory Board's opinion which came to be tendered on file No. Home/PB-V/642/2023 dated 27th of December, 2023.

13. The Advisory Board came to hold that there was sufficient cause made out for imposing preventive detention upon the petitioner and that there was no representation from the end of the petitioner against his preventive detention custody.

14. Acting upon the said Advisory Board's opinion, the Government of Union Territory of Jammu & Kashmir, through its Home Department, vide Government Order No. Home/PB-V/56 dated 4th of January, 2024, came to confirm the detention of the petitioner ordering his preventive detention for a period of six months at the first instance and his detention and confinement to be in the Central Jail Kot Bhalwal, Jammu.

15. Upon expiry of first six months period of detention, the petitioner's detention period came to be further extended vide Government Order No. Home/PB-V/1254 of 2024 dated 10th of June, 2024 with next six months of period of detention being spelt out from 19th of June, 2024 to 18th of December, 2024.

16. Thereafter, the petitioner who was confined in Central Jail Kot Bhalwal, Jammu came to be shifted from the said Jail to the Central Jail, Agra by virtue of Government Order No. Home/PB-V/1713 of 2024 dated 2nd of September, 2024.

17. In his writ petition, the petitioner has assailed his preventive detention on the grounds as set out in paragraph No. 7 (a) to (l), besides referring to the judgments of the Hon'ble Supreme Court of India as also of this Court to assert that the petitioner's preventive detention is against the spirit of the law as settled in the said cases.

18. In this regard, the petitioner has made reference to the following judgments:

- i. **Thahira Haris Etc. Etc. v. Government of Karnataka, (AIR 2009 SC 2184);**
- ii. **Dhannajoy Dass v. District Magistrate, (AIR 1982 SC 1315);**
- iii. **Sofia Gulam Mohd. Bham v. State of Maharashtra & Ors., (AIR 1999 SC 3051);**
- iv. **Syed Aasiya Indrabi v. State of J&K and Ors., [2009 (1) SLJ 2019];**
- v. **Abdul Latief Wahab Sheikh v. B. K. Jha, [1987 (2) SCC 22];**
- vi. **Mohammad Rafiq Mir v. UT of J&K and Anr., [WP (Crl) No. 107/2020];**
- vii. **Sajad Ahmad Bhat v. UT of J&K, [WP (Crl) 127/2022]; and**

viii. Riyaz Ahmad Mir v. UT of J&K and Ors., [WP (Crl) No. 228/2021].

19. The petitioner, in his writ petition, has alleged that the allegations levelled against him in the dossier as well as in the grounds of detention are false and that he has been implicated by the Police on the basis of *malafide* and ill-will. The petitioner has further alleged that he was not given the entire record accompanying the detention order, so much so that original copies of detention order and grounds of detention were not supplied to him. The petitioner has alleged that he is Kashmiri speaking and understanding person and was clueless about the basis and manner of his detention. It is also alleged by the petitioner in the writ petition that the preventive detention was slapped upon him in order to overreach the bail order granted by the trial court in his favour in a pending criminal case related to FIR No. 58/2019.

20. Counter affidavit to the present writ petition from the end of the respondents came to be filed on 23rd of July, 2024.

21. In their counter affidavit, the respondents have defended the preventive detention slapped upon the petitioner by stating that all procedural compliances were carried out. The respondents, in their counter affidavit, refer to judgments in support of their case:

- i. **Haradhan Saha v. State of West Bengal, [(1975) 3 SCC 198];**
- ii. **Secretary to Government, Public (Law and Order) and Anr. v. Nabila & Anr., [(2015) 12 SCC 127]; and**
- iii. **Debu Mahato v. State, [1974 AIR (SC) 816].**

22. Upon going through the pleadings of the parties, the documents therewith and the detention record produced, this Court is hastened to an irresistible finding of flaw and fault attending the preventive detention of the petitioner thereby exposing the casual and clerical quality of application of mind on the part of the respondent No.2-District Magistrate, Pulwama of the time.

23. The Senior Superintendent of Police (SSP), Awantipora, in his dossier, solicited slapping of Jammu & Kashmir Public Safety Act, 1978 against

the petitioner in the interests of security and sovereignty of the Country.

24. The respondent No.2-District Magistrate, Pulwama, in his detention order, came to observe that in order to prevent the petitioner **“from acting in a manner prejudicial to the Union Territory of Jammu & Kashmir,”** it is necessary to detain the petitioner under the provisions of the Jammu & Kashmir Public Safety Act, 1978.

25. The respondent No.2-District Magistrate, Pulwama, thus, omitted and missed out to mention as to whether the petitioner was to be restrained/prevented from acting in a manner prejudicial to the maintenance of public order or to the security of the UT of J&K.

26. This omission is *ex-facie* self-speaking in the very text of order No. 54/DMP/PSA/23 dated 15th of December, 2023. It is on the basis of this detention order that the petitioner came to be detained by the detention warrant executing officer ASI-Fayaz Ahmad on 19th of December, 2023 and it is this very order which was read to the petitioner and is to be believed

that the same was explained to the petitioner in the language understood by him. If the detention order No. 54/DMP/PSA/23 dated 15th of December, 2023 was so read to the petitioner, then the question which comes rushing to confront the respondent No.2-District Magistrate, Pulwama is that what was petitioner made to understand that he was being detained from acting in a manner prejudicial to what; maintenance of public order or security of the UT of J&K.

27. There is found nothing on the detention record file produced from the end of the respondents to show that upon being detained and handed over with the detention order along with the grounds of detention and dossier any subsequent order/document was ever handed over to the petitioner to make him understand that what for he was being detained so as to prevent him from acting in a manner prejudicial otherwise to an un-stated end situation.

28. The farce attending at the end of the respondent No.2-District Magistrate, Pulwama is exposed from the fact that in issuing the Corrigendum No. DMP/PSA/23/206-10 dated 19th of December,

2023, copy of which was never handed over or provided to the petitioner, the respondent No.2-District Magistrate, Pulwama was purportedly dealing with two cases simultaneously; one related to the detention of the petitioner and the other related to the detention of one Sajad Ahmad Bhat. If left to respondent No.2-District Magistrate, Pulwama's understanding, then in the detention order of the petitioner as well as of said Sajad Ahmad Bhat expression **“prejudicial to the security of the State”** was already written which was to be replaced by expression **“prejudicial to the security of the Union Territory of Jammu & Kashmir.”**

29. Nothing is farther from the truth than the Corrigendum of the respondent No.2-District Magistrate, Pulwama in assuming that the detention order No. 54/DMP/PSA/23 dated 15th of December, 2023 related to the petitioner was bearing the expression “prejudicial to the security of the State” which is not correct at all at first instance.

30. Even if the said Corrigendum is taken to have made a course correction to the preventive detention order against the petitioner, the very fact

that a copy thereof was not handed over to the petitioner is exposed from the fact that the receipt taken from the petitioner by ASI-Fayaz Ahmad on 19th of December, 2023 is not referring to any such Corrigendum having been handed over to the petitioner. So much so, not even the Superintendent of Central Jail Kot Bhalwal, Jammu has furnished any document to show that later on petitioner came to be handed over with the copy of the corrigendum against a receipt meaning thereby that the petitioner was never ever apprised as to for what he was being detained to refrain from acting in a manner prejudicial to an undefined and unmentioned pretext.

31. It is a very sorry state of affairs also with respect to the working of the Advisory Board in examining a file of preventive detention of a detenu that it did not apply its own independent mind to such a patent anomaly attending the preventive detention of the petitioner to the extent that the petitioner was rendered clueless as to on which pretext he had come to be detained.

32. It is an indispensable part of the Advisory Board to examine the detention record of a detenu

under the Jammu & Kashmir Public Safety Act, 1978 in a very searching and thorough manner and not as a matter of going through the motion, as has been done in the present case by the Advisory Board. The Advisory Board is meant to scan a preventive detention case with respect to a detenu with an independent mind and thorough interest and is not expected to act as if just there to second the exercise done by the District Magistrate or the Government in subjecting a detenu to preventive detention under the Jammu & Kashmir Public Safety Act, 1978.

33. The respondents cannot be heard to say that the petitioner came to be apprised later with the fact that his preventive detention was aimed to prevent him from acting in a manner prejudicial to the security of the Union Territory of Jammu & Kashmir. This Court says so for the reason that there is nothing on record of the detention file produced from the end of the respondents to show that the Government Order approving the preventive detention of the petitioner as well as the Government Order confirming the preventive detention order of the petitioner passed by respondent No.2-District Magistrate, Pulwama

were ever furnished to the petitioner while he was in state of detainment in the Central Jail Kot Bhalwal, Jammu. So much so, the petitioner was not even provided with copy of Government Order No. Home/PB-V/1713 of 2024 dated 2nd of September, 2024 whereby the petitioner came to be shifted from Central Jail Kot Bhalwal, Jammu to Central Jail, Agra.

34. The cumulative effect of all the aforesaid facts and circumstances of the case render the very preventive detention of the petitioner illegal right from its very inception and, therefore, cannot sustain to run its full effect against the petitioner. The preventive detention of the petitioner in the present case is, thus, seriously vitiated and is held to be illegal.

35. Resultantly, the preventive detention order No. 54/DMP/PSA/23 dated 15th of December, 2023 passed by respondent No.2-District Magistrate, Pulwama read with consequent approval/confirmation/extension order(s) passed by the Home Department, Government of Union Territory of Jammu & Kashmir with respect to the petitioner are hereby set aside.

36. The petitioner is directed to be restored, without loss of any further time, to his personal liberty by his immediate release from the concerned Jail and to that effect the Superintendent of the concerned Jail detaining the petitioner to act in compliance of the directions hereby being issued with respect to the release of the petitioner from preventive detention custody.

37. **Disposed** of.

38. Record be returned.

(Rahul Bharti)
Judge

SRINAGAR

June 2nd, 2025

"TAHIR"

i. *Whether the Judgment is approved for reporting?*

Yes