

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

**Reserved on: 10.11.2023
Pronounced on : 20.12.2023**

Case No. WP(Crl) no. 21/2023

Waqas Riyaz Khan, age 26 years S/o Riyaz Ahmad
Khan R/o Azad Basti Natipora Srinagar through his
father Riyaz Ahmad Khan, age 52 years S/o Abdul
Khaliq Khan R/o Azad Basti Natipora Srinagar.

.....Petitioner(s)

Through: Mr. M. Ayoub Bhat and Ms. Mahjabeen
Bhat, Advocates.

Vs

1. Union Territory of J&K through
Commissioner/Secretary to
Government Home Department,
J&K Civil Secretariat
Srinagar/Jammu.
2. District Magistrate, Srinagar.
3. Superintendent Central Jail Kot
Bhalwal, Jammu.

..... Respondent(s)

Through: Mr. Sajad Ashraf, GA

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

JUDGMENT

1. Heard learned counsel for the petitioner and perused the pleadings.

2. This writ petition under article 226 of the Constitution of India for seeking a writ of habeas corpus for quashment of preventive detention of the petitioner has been brought by the petitioner acting through his father.
3. The petitioner came to suffer loss of his fundamental right of personal liberty on the basis of preventive detention Order no. DMS/PSA/158/2022 dated 31.12.2022 passed by the respondent no. 2-District Magistrate, Srinagar thereby subjecting the petitioner to preventive detainment under section 8 of the Jammu and Kashmir Public Safety Act, 1978 (in short '**Act of 1978**') holding the petitioner's personal liberty to be prejudicial to the maintenance of the Security of the State warranting curtailment.
4. A case for seeking preventive detention of the petitioner was sponsored by the Senior Superintendent of Police (SSP), Srinagar by way of a dossier submitted vide letter no. LGL/Det-PSA/2022/29982-85 dated 16.12.2022 whereby the petitioner was read by the Senior Superintendent of Police (SSP), Srinagar bearing radical ideology right from his childhood inclined towards terrorism, instigating youth to indulge in anti-national activities and by way of having a well trained mind, the petitioner managing to remain out of sight from the eyes of law and enforcement agency thereby

managing to provide logistics to anti-national elements of the area and for the perpetuation of anti-national activities.

5. The petitioner was read to be having a potential to instigate the youth against the UT of Jammu and Kashmir and being engaged actively to propagate extremist ideology in Srinagar.
6. With this caricaturing of the petitioner, the Senior Superintendent of Police (SSP), Srinagar referred the petitioner's involvement and vital role during 2019 unrest leading to the arrest of the petitioner in FIR no. 158/2019 under section 147/148/149/427/336-IPC and FIR no. 162/2019 under section 147/148/149/336 IPC registered with the Police Station, Saddar in which two cases the petitioner was reported to have got released.
7. However, by every stretch of reference to showcase the petitioner as being a disgruntled element whose free movement was having a potential direct threat to security of UT of J&K within the Kashmir valley in particular district Srinagar and by reading the petitioner to be a staunch OGW involving in harboring, aiding and abetting terrorism in Kashmir valley having formed a gang of anti-national element with an object to disturb peace and tranquility, the petitioner was forwarded as a prospect for preventive

detention for which the dossier above referred was prepared and forwarded by the Senior Superintendent of Police (SSP), Srinagar before the District Magistrate, Srinagar.

8. This dossier paved and made the basis for the District Magistrate, Srinagar to repeat the fact missing dossier into grounds of detention and, therefore, both the dossier as well as the grounds of detention are found staying and operating at the same level of being fact deficiency which by no stretch of factual and legal reasoning could be said to be providing an occasion for subjecting the petitioner for loss of his fundamental right of personal liberty at the hands of the respondent no. 2-District Magistrate, Srinagar and Senior Superintendent of Police, Srinagar.
9. The grounds of detention text wise spelled out by the respondent no. 2-District Magistrate, Srinagar lack a context and, therefore, do not and cannot count the basis for generating a subjective satisfaction which is meant to operate to an objective situation in front. It is exercise of subjective satisfaction under preventive detention jurisdiction which is meant to be respected but that does not mean that the said subjective satisfaction can dispense with state of objectivity to be produced before the detention authority to apply its mind and draw a subjective

satisfaction for the purpose of subjecting a person to suffer preventive detention.

10. This Court is left seriously concerned by the tone and tenor of the purported grounds of detention forming the basis for the issuance of detention order which are nothing but opinionated caricature of the petitioner sketched by the Senior Superintendent of Police (SSP), Srinagar and acted upon by the respondent no. 2-District Magistrate, Srinagar.
11. The respondent no. 2-District Magistrate, Srinagar has nowhere referred as to on what factual basis and inputs shared by the Senior Superintendent of Police (SSP), Srinagar with the respondent no. 2-District Magistrate, Srinagar, the petitioner was so projected as referred in the grounds of detention. If taken as it is, then any law abiding citizen can be stereotyped at the hands of law and enforcement agency/authority for the sake of being put behind the bars not for any penal act of omission and commission on his/her part amounting to violation of law but just for the reason that law and enforcement agency/authority is so profiling a person to be a bad person.
12. For the reasons mentioned above, this writ petition is allowed. Preventive detention order no. DMS/PSA/158/2022

dated 31.12.2022 whereby the petitioner has been subjected to preventive detention is hereby quashed as a consequence whereof the petitioner is ordered to be restored to its personal liberty by the respondent no. 3-Superintendent, Central Jail, Kot Bhalwal Jammu.

13. **Disposed of** accordingly.

(Rahul Bharti)
Judge

SRINAGAR
20.12.2023
Naresh, Secy.

