

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

**Reserved on: 04.04.2024
Pronounced on: 30.05.2024**

Case:- WP(Crl) No. 829/2022

Suhail Ahmad Lone Aged about 24 Years,
S/o Mohammad Maqbool Lone R/o
Harwan Sopore,
Tehsil: Bomai Zainageer, District
Baramulla.
(Through His Brother-in-Law namely Javid
Ahmad Shah).

....Petitioner(s)

Through: Mr. M. A. Wani, Advocate.

Vs

1. Union Territory of J&K through
Principal Secretary to Govt. Home Department, Civil Sectt.
Jammu/Srinagar.
2. District Magistrate Baramulla, Kashmir.
3. Senior Superintendent of Police, Sopore.
4. Superintendent of Central Jail, Kot Bhalwal Jammu.

..... Respondent(s)

Through: Mr. Jehangir Ahmad Dar, GA.

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

JUDGMENT
(30.05.2024)

- 01.** Heard learned counsel for the petitioner as well as for the respondents. Perused the writ pleadings and the record therewith.
- 02.** Whether with respect to an unchanged set of facts and circumstances a subjective satisfaction of a District Magistrate under Jammu and Kashmir Public Safety Act,

1978 justify two preventive detention orders in succession against same person both on different basis i.e. maintenance of public order and security of State is the question which this writ petition comes to pose to this Court for an answer.

- 03.** The petitioner, through the medium of this writ petition, is challenging his preventive detention ordered by the respondent No. 2 – District Magistrate, Baramulla in terms of detention order No. 81/DMB/PSA/2022 dated 28.11.2022 thereby subjecting the petitioner to suffer preventive detention by purportedly holding his activities prejudicial to the security of the State warranting curtailment of his fundamental right to personal liberty otherwise guaranteed under article 21 of the Constitution of India.
- 04.** Before this Court comes to deal with the passing of the aforementioned impugned detention order against the petitioner, a reference needs to be made to a detention order earlier made against the petitioner by the same very District Magistrate, Baramulla acting at the instance of the same very District Police, Sopore.
- 05.** The Superintendent of Police (SP), Sopore had forward a dossier vide a letter No. Pross/PSA/21/37102 dated 05.11.2021 thereby seeking preventive detention of the petitioner by referring to the petitioner's alleged

involvement in FIR no. 109 of 2021, FIR no. 163 of 2021 and FIR no. 196 of 2021 all three registered by the Police Station, Sopore.

- 06.** This dossier had resulted in passing of a detention order No. 27/DMB/PSA/2022 dated 09.11.2021 by the respondent No. 2 – District Magistrate, Baramulla on the ground that the petitioner’s alleged reported activities were prejudicial to the “maintenance of public order of the State” and, therefore, the petitioner came to be detained and subjected to suffer detainment in the Central Jail Kot Bhalwal, Jammu for a period of one year meaning the maximum period prescribed for detention under section 8 of the Jammu and Kashmir Public Safety Act, 1978 relating to the ground of maintenance of public order.
- 07.** The first time preventive detention of the petitioner dated 09.11.2021 order aforesaid had taken place in the wake of his arrest on 02.11.2021 in connection with the FIR no. 196 of 2021 dated 23.07.2021 registered by the Police Station Sopore in which the petitioner figured as one of the named accused persons.
- 08.** For the sake of reference, this detention order dated 09.11.2021 along with grounds of detention framed in support thereof by the respondent No. 2 – District Magistrate, Baramulla are reproduced herein:-

“Office of the District Magistrate Baramulla**Subject: Detention under J&K Public Safety Act, 1978****Order No: 27/DMB/PSA/2021****Dated: 09-11-2021**

Whereas, Superintendent of Police Sopore vide his office letter No. Pross/PSA/21/102 dated 05.11.2021, has produced material record, such as dossier and other connected documents viz copy of FIR No: 109/2021, 163/2021, 196/2021, seizure memos etc. in respect of Suhail Ahmad Lone S/o Mohammad Maqbool Lone R/o Harwan Sopore, Tehsil Bomai Zaingeer, District Baramulla.

Whereas, I District Magistrate Baramulla have perused the contents and recommendations mentioned in the dossier carefully, produced before me in respect of said person.

Whereas, I am satisfied that with a view to prevent Suhail Ahmad Lone S/o Mohammad Maqbool Lone R/o Harwan Sopore, Tehsil Bomai Zaingeer, District Baramulla from acting in any manner in the activities which are prejudicial to the maintenance of public order and warrant immediate measures to be taken against the subject to stop him from indulging in such activities which are prejudicial to the maintenance of public order of the State.

Now, therefore, in exercise of powers conferred by clause (a) of section 8 of J&K Public Safety Act 1978, I District Magistrate Baramulla hereby direct that the aforesaid person be detained and lodged in Central Jail Kotebhbulwal Jammu for a period to be specified by the Government.

Sd/-**District Magistrate
Baramulla****No: DMB/PSA/2021/163-167****Grounds of Detention****Name:- Suhail Ahmad Lone****Son of:- Mohammad Maqbool Lone.****Address:- Harwan Zaingir, Sopore.****Tehsil:- Bomai Zaingir.****District:- Baramulla.****Age:- 23 Years.**

You were born in your native place and is 23 years of age. You are an incorrigible anti social element who has been coming to the adverse notice of Police for organizing and leading unlawful demonstrations & pelting stones upon police/security forces in Area Sopore in the wake of killing of LET terrorists namely Waseem Nazir R/O Hatlangoo on 04-05-2021, LET Commander namely Mudasar Ahmad Pandith R/O Dangerpora on 21-06-2021 and terrorist of LET outfit namely Fayaz Ahamd War R/O Warpora Sopore on 23-07-2021. You have studies up to 12th standard from Higher Secondary School Bomai Sopore and thereafter completed your BSc from Govt. Degree College Sopore and is presently dealing with fruit business. You have been identified as one of the main instigators of stone

pelting in Area Sopore following the killings of various terrorists of Sopore area. Your aim and objective is to disturb the maintenance of public order and to create an atmosphere conducive to propagation of secessionist ideology. Your activities are directed towards achieving this object which has a direct bearing upon the maintenance of public order. During the recent past you have turned an in corrigible anti social element and developed contacts with the likeminded elements and has formed a gang like outfit which at every available opportunity has been found resorting to stone pelting and disturbing the public order in Sopore area.

You have been found motivating youth of area Sopore for creating law and order incidents thereby disturbing peace and public order on the ground by forcing the general public to observe strikes on the killing to resort to stone pelting in Sopore area. It will be pertinent to mention here that stone pelting incidents apart from disturbing the public order endangers human life and property and a number of police/security forces detailed for law and order duties have been seriously injured during such incidents. The anti social elements are desperately trying to keep the Sopore area on boil and you are one of the important anti social elements to implement the said strategy, which has assumed alarming proportions in recent times.

You have been figuring adversely in police records for creating law and order problems to disturb peace. You have been specifically identified as an accused in the following cases of Police Station Sopore;

- 1- Case FIR No. 109/2021 U/S 307, 147, 148, 149, 336, IPC.
- 2- Case FIR No. 163/2021 U/S 307, 147, 148, 149, 336, IPC.
- 3- Case FIR No. 196/2021 U/S 307, 147, 148, 149, 336, IPC.

Copies of FIR's/site plan's/seizure memos/statements are enclosed marked as annexure A to A-5, B to B-5 and C to C-7 (Total 20 leaves)

However, you were arrested on 02-11-2021 in connection with the investigation in case FIR No. 196/2021 U/S 307, 147, 148, 149, 336, IPC which was registered in Police Station Sopore against you on 23-07-2021, when you alongwith your associates attacked the police/security forces at main Chowk Warpora Sopore with the intention to cause death. You are presently on Police remand in the instant case. Although, you are presently under custody, but there is a likelihood of your being admitted to bail and in case you are released at this stage there is well founded apprehension that you will again indulge in similar activities as have been mentioned above.

In order to stop you from indulging in activities which are prejudicial to the maintenance of public order, your detention under the provisions of J&K Public Safety Act – 1978 has become imperative, as the normal law has not proved sufficient to stop you from indulging in such activities.

In view of the above you are hereby detained under the provisions of J&K Public Safety Act 1978, you have a right of making representation before the Government in the Home Department or before the undersigned within prescribed time period against your detention, if you so choose.

Sd/-
District Magistrate
Baramulla

- 09.** The petitioner came to challenge his said detention by filing a writ petition WP (Crl) No. 86/2022 before this Court. This writ petition was filed on 31.03.2022 and had remained pending on the docket of this Court when the pendency of the writ petition outlasted one year period of detention inflicted upon the petitioner as a result whereof the writ petition was rendered infructuous and came to be *disposed of* accordingly in terms of an order dated 14.11.2022 whereby this Court called upon the detaining authority to release the petitioner in case if he was not required in any other case.
- 10.** The petitioner in his petition has alleged that without earning any release upon expiry of the detention period in terms of the detention order No. 27/DMB/PSA/2022 dated 09.11.2021 and direction to said effect by this Court in terms of its order dated 14.11.2022, the petitioner was retained in illegal custody and just after period of 13 days again came to be subjected to suffer next round of preventive detention in terms of the impugned detention order No. 81/DMB/PSA/2022 dated 28.11.2022 on the purported ground that the petitioner's activities are reckoned to be prejudicial to the security of the State warranting his preventive detention. While the petitioner was already lodged in Central Jail Kot Bhalwal, Jammu in a state of illegal confinement, the second detention order

came to be executed upon him by showing its date of execution to be 01.12.2022.

- 11.** This second detention was ordered by the respondent No. 2 – District Magistrate, Baramulla purportedly acting upon a dossier forwarded by the Senior Superintendent of Police (SSP), Sopore vide a letter No. Pross/PSA/2022/37020-22 dated 25.11.2022 which was nothing but a repeat of the earlier dossier served by the Senior Superintendent of Police (SSP), Sopore on the basis of which the first detention order No. 27/DMB/PSA/2022 dated 09.11.2021 was issued.
- 12.** By literally guided and led by the said dossier dated 25.11.2022, the respondent No. 2 – District Magistrate, Baramulla came to formulate purported grounds of detention against the petitioner so as to draw purported subjective satisfaction and passed the detention order No. 81/DMB/PSA/2022 dated 28.11.2022.
- 13.** For the sake of reference, the impugned detention order as well as grounds of detention in relation thereto passed and framed by the respondent No. 2 – District Magistrate, Baramulla are reproduced herein as under:-

“Office of the District Magistrate Baramulla

Subject: Detention under J&K Public Safety Act, 1978

Order No: 81/DMB/PSA/2022

Dated: 28-11-2022

Whereas Sr. Superintendent of Police Sopore vide his office letter No. Pross/PSA/2022/37020-22 dated 25-11-2022, has produced dossier in respect of Suhail Ahmad Lone S/O Mohammad Maqbool Lone R/o Harwan, Tehsil Bomai Zaingeer, District Baramulla.

Whereas, I District Magistrate Baramulla have perused the contents and recommendations mentioned in the dossier carefully produced before me in respect of said person.

Whereas, I am satisfied that with a view to prevent Suhail Ahmad Lone S/O Mohammad Maqbool Lone R/O Harwan, Tehsil Bomai Zaingeer, District Baramulla from acting in any manner in the activities which are prejudicial to security of the state and warrant immediate measures to be taken against the subject to stop him from indulging in such activities which are prejudicial to the security of the state.

Now, therefore in exercise of powers conferred by clause (a) of section 8 of the J&K Public Safety Act 1978, I District Magistrate Baramulla hereby direct that the aforesaid person be detained and lodged in Central Jail Kotebhulwal Jammu for a period to be specified by the Government.

Sd/-

District Magistrate
Baramulla

No: DMB/PSA/2022/432-36

Grounds of Detention

Name:- Suhail Ahmad Lone

Son of:- Mohammad Maqbool Lone.

Address:- Harwan Bomai

Tehsil:- Bomai Zaingeer

District:- Baramulla

Category:- OGW

Age:- 24 Years.

While perusing the dossier submitted by SSP Sopore against you, it has been reported that you were born in your native Harwan Bomai, Sopore and is 24 years old. As reported by the Police, you have been noticed as an incorrigible anti national/social element and remained involved in organizing and leading unlawful demonstrations & pelting stones upon police/security forces in Area Sopore after the killing of LeT terrorists namely Waseem Nazir R/O Hatlangoo on 04-05-2021, LeT Commander namely Mudasir Ahmad Pandith R/O Dangerpora on 21-06-2021 and terrorist of LeT outfit namely Fayaz Ahmad War R/O Warpora Sopore on 23-07-2021. You were found previously involved in below mentioned criminal cases of PD Sopore.

- 1- Case FIR No. 109/2021 U/S 307, 147, 148, 149, 336, IPC.
- 2- Case FIR No. 163/2021 U/S 307, 147, 148, 149, 336, IPC.
- 3- Case FIR No. 196/2021 U/S 307, 147, 148, 149, 336, IPC.

You were detained under PSA vide this office order No: 27/DMB/PSA/2021 dated 09-11-2021, being involved, as reported by

the police in the aforementioned unlawful/criminal activities. However, Hon'ble High court of J&K at Srinagar in its order dated 14-11-2022 ordered your release. Reportedly, after your release, as per the reliable and credible information/reports received by police from various agencies, your activities have been noticed as a threat to the National Security and Integrity of the Union of India as you have reportedly, voluntarily developed contacts with various terrorist/secessionist organizations and associates yourself with LeT outfit to carry out the activities related to secessionism and terrorism. LeT terrorist organization acts on directions and sermons of handlers across the border for terrorist related activities.

It has been further reported in the dossier prepared by police that on the basis of inputs received from various agencies and blogs on Social Media platform establishes that LeT is being controlled by ISI of Pakistan and on their advice and directions they are carrying out terrorist activities like killings of soft targets like street vendors, labourers from outside J&K UT, working in J&K, policemen who are off duty or are unarmed, so as to create an atmosphere of fear and intimidation being detrimental for integrity and sovereignty of the country. You were reportedly providing all kinds of help and logistics to the terrorists in the past and it is apprehended on the basis of inputs from various reliable sources/agencies, that you will again join and terrorist organization and choose the same path on behest of LeT outfit and handlers across the border, in case you remain at large at this stage. The recent use of VOIP, VPN, encrypted messaging applications and hotspots by such individuals have made their identification and apprehensions difficult. It has turned possible by the coordinated and strenuous efforts made by various agencies to identify you and unearth your linkages with terrorist outfits again in the face of the use of extreme and modern communication technology by the individual to evade being identified.

In view of your previous track of record and apprehension of your re-involvement in unlawful/terrorist activities, putforth by the Police and your remaining at large at this stage, it has become imperative to detain you so that the efforts of police and other law enforcement agencies do not go in vain, who are making every effort to put an end to the mindless killing of civilians in the UT of J&K, otherwise it may be difficult for the police and other law enforcement agencies to reign in on the terror outfits operating in J&K as you are an important arm of the terror ecosystem, currently operating in J&K.

Your activities referred to above are not only pre-judicial to the security of the state but are also aimed to recycle vicious terror atmosphere and create an atmosphere conducive for secessionists and terrorists to destabilize the government machinery.

In order to stop you from indulging in activities which are prejudicial to the maintenance of the security of state, your detention under Public Safety Act-1978 has become imperative as the normal law has not proved sufficient to deter you from indulging in such activities.

In view of the above, you are hereby detained under the provision of J&K Public Safety Act-1978. You have a right of making a representation before the Government in the Home Department against your detention, if you choose so."

Sd/-
District Magistrate
Baramulla

- 14.** The preventive detention of the petitioner came to be confirmed by the Govt. of UT of Jammu and Kashmir by virtue of Govt. order No. Home/PB-V/3256 of 2022 dated 26.12.2022 whereby the petitioner's detention was declared confirmed and was ordered to be detained outside the UT of Jammu and Kashmir in the District Jail Bareilly, Uttar Pradesh (UP).
- 15.** The institution of the present writ petition came to take place on 28.12.2022. It is after the institution of the writ petition that the petitioner's detention was further extended by virtue of Govt. order No. Home/PB-V/1080 of 2023 dated 16.05.2023.
- 16.** It is in the aforesaid state of facts and circumstances that the petitioner is challenging his preventive detention as being illegal and unwarranted carried out on the frivolous exercise of discretion at the end of the respondent No. 2 – District Magistrate, Baramulla.
- 17.** When this Court makes a comparative reading of the two detention orders above referred alongwith respective grounds of detention supporting the said two detention orders, this Court comes to see them replica of each other except an addition of one or two paragraphs in the grounds of detention which came to be formulated by the respondent No. 2 – District Magistrate, Baramulla in support of his second detention order and the addition of

said paragraphs is nothing but just bad branding and name calling of the petitioner without any factual content therein.

- 18.** There is absolutely nothing in the name of the facts as to what happened in the intervening 13 days of purported liberty of the petitioner upon his purported release upon the passing of the order dated 14.11.2022 by this Court in WP(Crl) No. 86/2022 and 28.11.2022 when the impugned preventive detention order came to be passed against the petitioner by the respondent No. 2 – District Magistrate, Baramulla.
- 19.** This Court is left to wonder that for the selfsame set of circumstances without any *iota* of change except intervention of 13 days in between from expiry of first detention order dated 09.11.2021 in terms of order dated 14.11.2022 of this Court in terms whereof the petitioner was order to be let off and the passing of the second detention order dated 28.11.2022 how come the very same set of facts and circumstances at the first instance were held to be prejudicial to the maintenance of Public Order and second time to be prejudicial to the security of the State.
- 20.** It is, thus, rendered clear that the so called subjective satisfaction of the respondent No. 2 – District Magistrate, Baramulla is nothing but matter of word play taking it for

granted that District Magistrate as well as the Govt. of UT of Jammu and Kashmir have omnipotent power and authority to subject any person to suffer preventive detention at any given point of time and for that matter any given District Magistrate or Govt. of UT of Jammu and Kashmir by appropriating expression of his and its liking in terms of the grounds of detention envisaged under section 8 of the Jammu and Kashmir Public Safety Act, 1978, can feel free to subject a person to suffer loss of personal liberty in the name of an order passed under Jammu and Kashmir Public Safety Act, 1978 as if exercise of preventive detention jurisdiction is answerable and/or accountable to no one. Such misconception at the end of the respondent No. 2 – District Magistrate, Baramulla needs a reality check that the constitutional courts are the guardian of the guarantees of fundamental rights to the citizens of the country and in the event of violation of a fundamental right in particular that of right to life and personal liberty, a constitutional court is meant not only to be extra sensitive but pro-active in immediately curbing the situation which is generating the violation of said fundamental right to life and personal liberty.

- 21.** In view of the aforesaid, the preventive detention of the petitioner is held and declared to be illegal *per se* and, therefore, the impugned preventive detention order No.

81/DMB/PSA/2022 dated 28.11.2022 read with consequent approval/confirmation order passed by the Govt. of UT of Jammu and Kashmir are hereby **quashed** and petitioner is directed to be released to his personal liberty not only by the Superintendent of the concerned Jail wherever the petitioner is detained but also by the respondent No. 2 – District Magistrate, Baramulla to ensure that the petitioner is released from the said Jail at the earliest.

22. Disposed of.

JAMMU
30.05.2024
Bunty

HIGH COURT



(RAHUL BHARTI)
JUDGE

Whether the order is speaking: **Yes**

सत्यमेव जयते

Whether the order is reportable: **Yes**

OF JAMMU & KASHMIR AND LADAKH