

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

Reserved on : 30.12.2024
Pronounced on : 02.01.2025

Case:- HCP No. 138/2024

**Tarun Bahl, Aged 46 years,
Son of Sh. V. K. Bahl,
R/o H. No. 101/6, Channi Himmat, Jammu
Presently lodged in
Central Jail Kot Bhalwal, Jammu
Through wife Gita Sharma, Aged 43 years
Wife of Tarun Bahl,
R/o H. No. 101/6 Channi Himmat, Jammu.**

.....Petitioner

Through: Mr. G. S. Thakur, Advocate

Vs

1. Union Territory of J&K through Principal Secretary, Home Department, Civil Secretariat, Jammu / Srinagar.
2. District Magistrate, Jammu (Detaining Authority).
3. Sr. Superintendent of Police, Jammu.
4. Superintendent, Central Jail Kot Bhalwal, Jammu.

..... Respondents

Through: Mr. Rajesh Thappa, AAG

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

JUDGMENT

01. Heard learned counsel for the petitioner as well as for the respondents. Perused the pleadings of both sides and also the scanned detention record produced at the end of the respondents.

02. The case in hand is an exhibit of a preventive detention measure under the aegis of J&K Public Safety Act, 1978 being resorted to as a perverted detention by the District Police and

District Executive Magistracy as an extra legal expedience not only to curb fundamental right to personal liberty of the petitioner but also a stratagem to outmaneuver the constitutional and criminal courts indulgence in the matter of granting bail in favour of the petitioner thereby to show off that the fiat of Police and dictate Executive outruns the writ and commands of the constitutional and criminal court.

03. The petitioner, acting through his wife, has petitioned this Court invoking writ jurisdiction under article 226 of the Constitution of India for seeking a writ of habeas corpus for the purpose of retrieving and restoring the personal liberty of the petitioner which he has come to lose by virtue of detention order No. PSA-30 of 2024 dated 05.09.2024 passed by the respondent No. 2 – District Magistrate, Jammu purportedly acting under section 8 of the Jammu & Kashmir Public Safety Act, 1978.

04. The petitioner came to be arrested and detained on 06.09.2024 in execution of warrant of arrest with respect to detention Order No. PSA-30 of 2024 dated 05.09.2024 and kept and lodged in the confines of the Central Jail Kot Bhalwal, Jammu. The fact of arrest of the petitioner came to be confirmed by the Sr. Superintendent, Central Jail, Kot Bhalwal vide his letter No. 175/CJJKB-4684-89 dated 06.09.2024 to the Pr. Secretary, Home Department, UT of J&K.

05. There are two factual facets with respect to purported exercise attending the questioned preventive detention of the petitioner.

06. This Court would first deal with the factual facet with which the petitioner came to be confronted and acquainted but without any scope for the petitioner to know and plead about the other factual facet preceding his preventive detention about which he remained uninformed and unapprised.

07. First factual facet is that an accusation to an effect that the petitioner has allegedly publicized and published a purported confidential information relating to the deliberations of the State Level Committee with respect to the review and assessment of security cover relatable to high profile persons, several bureaucrats and politicians in the UT of Jammu & Kashmir, an FIR No. 0080/2024 dated 07.07.2024 for alleged commission of offences under section 3/5 of the Officials Secrets Act, 1923 read with section 353/49 of Bharatiya Nyaya Sanhita (BNS), 2023 came to be registered by the Police Station Channi Himmat, Jammu naming the petitioner as known accused and other unknown person/s which led to the immediate arrest of the petitioner on next day of 08.07.2024 by the Police Station Channi Himmat Jammu.

08. Operating on the repeat factual reference, a second FIR No. 0048/2024 dated 08.07.2024 came to be registered by the Police

Station Shergarhi, Srinagar for alleged commission of offences under section 5(4) of Official Secrets Act, 1923, section 72 of IT Act, 2000 & section 198 of Bharatiya Nyaya Sanhita (BNS), 2023 though against an unknown person for leaking out so called confidential minutes of meeting of State Level Committee.

09. The petitioner came up with a bail petition Bail App No. 157/2024 filed on 16.07.2024, with respect to his arrest taking place in FIR No. 0080/2024, before this Court wherein by virtue of an order dated 22.07.2024 he came to be admitted on interim bail. This bail petition is pending as on date before this Court for final disposal.

10. In addition to the petitioner's implication in said two FIRs, the petitioner also got named as accused in FIR No. 143/2024 dated 22.07.2024 under section 420 Indian Penal Code (IPC) with the Police Station Gandhi Nagar Jammu on having allegedly duped one Suresh Gupta for an amount of Rs.40 lacs and in which FIR the investigation at the relevant point of time was reported going on with the petitioner being under arrest custody in connection with said FIR, but before the petitioner was on bail with respect to two FIRs No. 80/2024 & 0048/2024.

11. It was in the aforesaid backdrop that the respondent No. 2 – District Magistrate, Jammu came to be approached by the respondent No. 3 – Sr. Superintendent of Police (SSP), Jammu with

a letter No. CRB/Dossier/2024/61/ DPOJ dated 05.09.2024 thereby submitting a purported revised dossier *qua* the petitioner stating therein that the petitioner has intentionally circulated secret and confidential information related to the security cover issues of various dignitaries, including secret official documents in a WhatsApp group for vested interests at the time when election process is going on and the Govt. Agencies are already facing various challenges in the form of combating anti-national elements who through their illegal designs are creating unrest at different parts of the UT of J&K and, therefore the act committed by the petitioner is clearly the one which relates to a threat to security/safety of senior dignitaries, politicians etc., of the UT of J&K and the act of circulation of one of such secret official documents is not only a threat to security of the State but also of apprehension of providing a path to the ANEs/ASEs to venture their nefarious designs into action.

12. For said profiling of the petitioner, the respondent No. 3 – Sr. Superintendent of Police (SSP), Jammu came to refer implication of the petitioner in FIR No. 80/2024 registered with the Police Station Channi Himmat Jammu under section 3/5 of the Official Secrets Act, 1923 read with section 353/49 of Bharatiya Nyaya Sanhita (BNS), 2023, FIR No. 48/2024 registered with the Police Station Shergarhi Srinagar under section 5(4) of Official Secrets Act, 1923, section 72 of Information Technology Act, 2000 & section 198

of Bharatiya Nyaya Sanhita (BNS), 2023 and FIR No. 143/2024 under section 420 Indian Penal Code (IPC) registered with the Police Station Gandhi Nagar, Jammu.

13. The purported revised dossier by the respondent No. 3- Sr. Superintendent of Police (SSP), Jammu was self-generated in the sense that neither SHO Police Station Channi Himmat Jammu nor SHO Police Station Shergarhi Srinagar or SHO Gandhi Nagar Police Station came recommending for processing of a case for preventive detention of the petitioner under the Jammu & Kashmir Public Safety Act, 1978 by highlighting the alleged activities of the petitioner to be prejudicial to the security of the UT of J&K.

14. It is in this context that the respondent No. 2 – District Magistrate, Jammu purportedly drew his subjective satisfaction by formulating so to say grounds of detention and thereby ordering preventive detention of the petitioner under section 8 of the Jammu & Kashmir Public Safety Act, 1978 by passing Order No. PSA-30 of 2024 dated 05.09.2024.

15. In order to sensationalize the case, the fact of the petitioner having 117 bank accounts in his name in J&K Bank, 2 in Punjab National Bank, 1 in SBI Bank, 1 in IDBI Bank, 4 in ICICI Bank, 11 in HDFC Bank, 7 in Central Bank and 1 in Canara Bank was highlighted both in dossier as well as in the grounds of detention as if having such number of bank accounts by the petitioner was an

illegal act in itself suggesting of dubious dealings of the petitioner including illegal acts of selling out secret information pertaining to the security of the State and money laundering.

16. The respondent No. 2 – District Magistrate, Jammu at his own end came forward with a verbatim reproduction of the dossier along with reproduction of the case law related to preventive detention as if making of the preventive detention Order No. PSA-30 of 2024 dated 05.09.2024 is adjudicatory decision in nature begging support of judgments of the Hon'ble Supreme Court of India.

17. The preventive detention Order No. PSA-30 of 2024 dated 05.09.2024 so passed by the respondent No. 2 – District Magistrate, Jammu came to be approved at the end of the Home Department, Govt. of UT of Jammu & Kashmir by issuance of an Order No. Home/PV-V/1793 of 2024 dated 13.09.2024 in terms of section 8(4) of the J&K Public Safety Act, 1978, whereupon the case was forwarded to the Advisory Board for its opinion, which is said to have been received in terms of a report on file No. Home/PB-V/463/2024 dated 26.09.2024 justifying the preventive detention of the petitioner thereby paving way for issuance of Govt. Order No. Home/PB-V/1943 of 2024 dated 07.10.2024 under section 17(1) of the J&K Public Safety Act, 1978 thereby confirming the preventive detention of the petitioner for a period of six months with effect from 06.09.2024 till 05.03.2025 and his confinement to continue in the

Central Jail Kot Bhalwal, Jammu in order to prevent the petitioner from acting in any manner prejudicial to the “Security of the State.”

18. The petitioner came forward with the institution of present writ petition on 23.10.2024 thereby assailing his preventive detention by every sense of reference, both factual as well as legal.

19. The respondent No. 2 - District Magistrate, Jammu in his counter affidavit to the writ petition has defended the exercise of preventive detention jurisdiction by him under the Jammu & Kashmir Public Safety Act, 1978 in slapping preventive detention on the petitioner reckoning his alleged activities to be prejudicial to the “Security of UT of J&K” in the light of the purported dossier fed information submitted before him.

20. The petitioner, being in state of detention, made repeated representations against his preventive detention in exercise of his constitutional and fundamental right envisaged under article 22 of the Constitution of India.

21. The aforestated is the actual factual facet about which the petitioner was having a readymade acquaintance as to background which has led to his preventive detention through the impugned preventive detention Order No. PSA-30 of 2024 dated 05.09.2024 passed by the respondent No. 2 – District Magistrate, Jammu.

22. However, the factual facet about which the petitioner was and remained uninformed and about which this Court has come to gather input only from the detention record is that on the basis of very said two FIRs i.e. FIR No. 80/2024 dated 07.07.2024 registered with the Police Station Channi Himmat Jammu & FIR No. 48/2024 dated 08.07.2024 registered with the Police Station Shergarhi Srinagar, the respondent No. 3 – Sr. Superintendent of Police (SSP), Jammu had, in fact, first submitted a dossier against the petitioner seeking his preventive detention by virtue of letter No. CRB/Dossier/2024/61/DPOJ purportedly dated 31.08.2023 addressed to the respondent No. 2 – District Magistrate, Jammu. This Court is drawing reference of date 31.08.2023 as is found mentioned by the respondent No. 2 – District Magistrate, Jammu in his response herein next getting referred which to the best guess of this Court is a typographical error but nevertheless being mentioned as it is.

23. In response to this dossier so submitted by the respondent No. 3 – Sr. Superintendent of Police (SSP), Jammu through his letter No. CRB/Dossier/2024/61/DPOJ purportedly dated 31.08.2023, the respondent No. 2 – District Magistrate, Jammu vide his response, through his letter No. 1247-48/DMJ/Judicial/2024-25 dated 02.09.2024, declined the call of the respondent No. 3 – Sr. Superintendent of Police (SSP), Jammu for slapping preventive detention on the petitioner holding that the case was lacking

substantive grounds against the petitioner under the Jammu & Kashmir Public Safety Act, 1978 being based purely on said two FIRs i.e., FIR No. 80/2024 dated 07.07.2024 registered with the Police Station Channi Himmat Jammu & FIR No. 48/2024 dated 08.07.2024 registered with the Police Station Shergarhi Srinagar.

24. It is upon said return of the first dossier from the end of the respondent No. 2 – District Magistrate, Jammu that the respondent No. 3 – Sr. Superintendent of Police (SSP), Jammu came up with purported revised dossier which he came to submit, vide his letter No. CRB/Dossier/2024/61/DPOJ dated 05.09.2024, to the respondent No. 2 – District Magistrate, Jammu, wherein in addition to the aforesaid two FIRs initially referred in the original dossier submitted vide letter No. CRB/Dossier/2024/61/DPOJ dated 31.08.2023, additional reference to FIR No. 143/2024 dated 22.07.2024 of the Police Station Gandhi Nagar Jammu as well as the bank accounts related purported information of the petitioner came to be put in so as to create a sham show of additional alleged adverse inputs against the petitioner to somehow fetch preventive detention of the petitioner to which second exercise of revised dossier the respondent No. 2 – District Magistrate, Jammu yielded his discretion and judgment by issuance of preventive detention order No. PSA-30 of 2024 dated 05.09.2024 as if given on asking.

25. This Court is not going to engage itself long on the failure fated preventive detention of the petitioner in the face of the fact that the respondents No. 3 & 2 i.e. Sr. Superintendent of Police (SSP), Jammu and the District Magistrate, Jammu have literally resorted to dubious exercise of authority and jurisdiction at their respective end to pounce upon the personal liberty of the petitioner by subjecting him to preventive detention and that is forthcoming from the fact that when the first dossier purportedly dated 31.08.2023 by referring to the FIR No. 80/2024 dated 07.07.2024 registered with the Police Station Channi Himmat Jammu & FIR No. 48/2024 dated 08.07.2024 registered with the Police Station Shergarhi Srinagar which was held not to be sufficient enough in the estimate of the respondent No. 2 – District Magistrate, Jammu to oblige the respondent No. 3 – Sr. Superintendent of Police (SSP), Jammu with an order of the preventive detention of the petitioner, then how come later reporting in purported revised dossier of FIR No. 143/2024 by the Police Station Gandhi Nagar Jammu for alleged commission of offence under section 420 Indian Penal Code (IPC) of cheating one Suresh Gupta for an amount of Rs. 40 lacs and also the petitioner having number of bank accounts in his own name being large could be such a telling differentiating adverse input that the petitioner's personal liberty was an eyesore reckoned to be prejudicial to the "Security of the State" so as to warrant his preventive detention. In fact the respondents No. 3 & 2 have self-

exposed themselves the power of preventive detention jurisdiction has been exercised by them with malice in law, if not malice in fact, by playing solely upon FIR No. 143/2024 and large number of bank accounts of the petitioner as first two FIRs were already ruled out to make a case for preventive detention of the petitioner.

26. So much so, in his counter affidavit, the respondent No. 2 – District Magistrate, Jammu has registered least sense of responsibility of apprising this Court that on an earlier occasion when served with a dossier by the respondent No. 3 – Sr. Superintendent of Police (SSP), Jammu vide letter No. CRB/Dossier/2024/61/DPOJ purportedly dated 31.08.2023, he (the respondent No. 2) had refused issuance of a preventive detention order of the petitioner. So even this Court would have remained uninformed but for the perusal of the detention record wherefrom this Court came to draw reference of the said aspect from letter No.1247-48/DMJ/Judicial/2024-25 dated 02.09.2024 of the respondent No. 2 – District Magistrate, Jammu and use of the expression “revised dossier” by the respondent No. 3 – Sr. Superintendent of Police (SSP), Jammu in his letter No. CRB/Dossier/2024/61/DPOJ dated 05.09.2024 addressed to the respondent No. 2 – District Magistrate, Jammu.

27. The detention record does not contain the first time dossier submitted by the respondent No. 3 – Sr. Superintendent of Police

(SSP), Jammu to the respondent No. 2 –District Magistrate, Jammu but the fact is confirmed that the said dossier was based purely upon two FIRs i.e., FIR No. 80/2024 dated 07.07.2024 registered with Police Station Channi Himmat Jammu & FIR No. 48/2024 dated 08.07.2024 registered with Police Station Shergarhi Srinagar and no other attending matter was available and cited.

28. The manner in which the petitioner has come to be literally hunted by the Police is a pointer to the fact that the preventive detention of the petitioner is malice oriented as is evident from sequence of facts stated herein next.

29. The petitioner was first arrested in connection with FIR No. 80/2024 by the Police Station Channi Himmat Jammu on 08.07.2024 but came to be released on an interim bail on 22.07.2024 by this Court. The petitioner immediately came to be arrested on the purported reference of FIR No. 48/2024 dated 08.07.2024 by the Police Station Shergarhi Srinagar wherein also he applied for bail on 30.07.2024 which came to be granted in his favour on 03.08.2024 by the City Magistrate, Srinagar. Upon his release from the arrest custody in relation to second FIR No. 48/2024 of the Police Station Shergarhi Srinagar, the petitioner came to be arrested now by reference to FIR no. 143/2024 dated 22.07.2024 by the Police Station Gandhi Nagar, Jammu, in which

regard the petitioner applied for bail on 02.09.2024 and came to be granted bail on 05.09.2024 by the City Judge, Jammu.

30. It is in this developing situation that the respondent No. 3 – Sr. Superintendent of Police (SSP), Jammu had generated his dossier submitted vide letter No. CRB/Dossier/2024/61/DPOJ purportedly dated 31.08.2023 as mentioned in letter No.1247-48/DMJ/ Judicial/2024-25 dated 02.09.2024 by the respondent No. 2 - District Magistrate, Jammu.

31. The petitioner's ultimate arrest and detention on 06.09.2024 is a pointer to the fact that the petitioner was somehow being eyed upon to be a witch-hunt by the authorities and that is exhibited from the aforesaid sequence.

32. The petitioner was deliberately pitted to serious prejudice is further exposed from the fact that the repeated representations of the petitioner against his preventive detention have been declined at the end of the respondent No. 1 but without any return information about the rejected fate of his representations being apprised to the petitioner.

33. The petitioners' representations were purportedly rejected by the Home Department, Govt. of UT of Jammu & Kashmir first by virtue of a communication No. Home/PB-V/463/2024/7569864 dated 08.10.2024 whereby the Deputy Secretary to Govt. Home Department, UT of Jammu & Kashmir apprised the respondent No.

2 – District Magistrate, Jammu conveying thereby that the representation of the petitioner against his detention is without any merit but this adverse outcome was never apprised to the petitioner for the sake of even comfort of his curiosity being a person under detention awaiting a word to know about the fate of his representation against his detention.

34. So much so, the operating mindset of the Police against the petitioner even in the matter of dealing with the representation of the petitioner is exhibited from the text of letter No.CID/SSP(A)/BR/3-T/JMU/16002 dated 14.12.2024 addressed by SSP(A) for ADGP CID to the Principal Secretary, Home Department, UT of J&K stating therein that the petitioner is a hard-core criminal.

35. The petitioner's representation again suffered second time rejection in terms of letter No. Home/PB-V/463/2024/7569864 dated 19.12.2024 from the end of the Deputy Secretary to Govt., Home Department, UT of J&K to the respondent No. 2 – District Magistrate, Jammu stating therein that said two representations of the petitioner dated nil and 30.09.2024 stand rejected but even this rejection was never announced to the petitioner thereby rendering the petitioner to wonder as if the constitutional exercise of consideration of a representation of a detainee against his preventive detention is a cosmetic formality only for the consumption of the

detention authorities without any corresponding obligation at their end to apprise the detenue about rejection of his representation against his detention.

36. This Court is consciously refraining from observing any facts, which otherwise are there on record for the notice of the Court extending an invitation to be commented upon but for the propriety of the proceeding to ensure that no prejudice gets caused in any manner whatsoever with respect to the investigation of the two FIRs, namely, FIR No. 0080/2024 & 0048/2024.

37. The seriousness of application of mind on the part of the authorities concerned in the matter of carrying out an exercise under the preventive detention jurisdiction has been repeatedly emphasized and impressed upon by the Hon'ble Supreme Court of India as is also found stated in para 21 in the case of **"Pramod Singla Vs Union of India and others,"** (2023)5 Scale 559, which is reproduced hereunder:-

"21. Before we deal with the issues framed, we find it important to note that preventive detention laws in India are a colonial legacy, and have a great potential to be abused and misused. Laws that have the ability to confer arbitrary powers to the state, must in all circumstances, be very critically examined, and must be used only in the rarest of rare cases. In cases of preventive detention, where the detenue is held in arrest not for a crime he has committed, but for a potential crime he may commit, the Courts must always give every benefit of doubt in favour of the detenue, and even the

slightest of errors in procedural compliances must result in favour of the detainee.”

38. In the case of **“Harish Pahwa Vs State of Uttar Pradesh & others,” (1981) AIR (SC) 1126** it has been held that it is the duty of the State to proceed to decide detainee’s representation with utmost expedition meaning thereby that the matter must be taken up for a consideration as soon as such a representation of a detainee is received and dealt with continuously until a final decision is taken and communicated to the detainee. Default in doing the bare minimum, as mandated by the Hon’ble Supreme Court of India in the case supra, renders a detention unconstitutional.

39. By fully bearing in mind the constitutional onus resting upon a constitutional court in the matter of dealing with the preventive detention case as echoed by the Hon’ble Supreme Court of India in the case of **“Frances Coralie Mullin Vs W. C. Khambra & ors.” (1980)2 SCC 275** defining the role of the Court in case of preventive detention to be one of eternal vigilance as no freedom is higher than personal freedom and duty higher than to maintain it unimpaired, for which the constitutional Court’s writ is the ultimate insurance against illegal detention, this Court is also responding to SOS call of the petitioner that he is suffering preventive detention custody which is vitiated with illegality warranting it to be set aside and thereby restoring him to his personal liberty being his

fundamental right guaranteed under article 21 of the Constitution of India.

40. The cumulative effect of the aforesaid facts and circumstances of the case relating to the questioned preventive detention of the petitioner is that the preventive detention of the petitioner is held to be malice afflicted and illegal warranting immediate quashment and, accordingly, this Court sets aside the impugned preventive detention order No. PSA-30 of 2024 dated 05.09.2024 of the respondent No. 2 – District Magistrate, Jammu read with approval/confirmation order/s passed by the Home Department, Govt. of UT of J&K, and as consequence directs immediate release of the petitioner from the confines and custody of the Central Jail Kot Bhalwal, Jammu. The Superintendent, Central Jail Kot Bhalwal, Jammu to ensure that the petitioner is restored to his personal liberty by release from the jail without being subjected to any restraint or further confinement.

41. ***Disposed of.***

(RAHUL BHARTI)
JUDGE

JAMMU
02.01.2025
Muneesh

Whether the order is speaking : **Yes**

Whether the order is reportable: **Yes**