

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

**HCP 186/2024**

Reserved on : 25.09.2025  
Pronounced on : 08.10.2025

**Nadeem Ahmad Dar, Aged 24 Years  
S/O , Ab Khaliq Dar,  
R/O Zazripora Kulgam, District Kulgam  
Through His Brother, Rameez Ahmad Dar,  
Aged about 27 Years,  
S/O Ab Khaliq Dar,  
R/O Zazripora Kulgam, District Kulgam**

**Petitioner(s)**

Through: Mr. Asif Nabi, Advocate vice Mr. G.N. Shaheen, Advocate

**Vs.**

- 1. Union Territory of Jammu and Kashmir,  
through Principal Secretary, Home  
Department, J&K Govt., Civil Sectt.  
Srinagar/Jammu**
- 2. District Magistrate, Kulgam**
- 3. Senior Superintendent of Police Kulgam**
- 4. Superintendent Central Jail Srinagar**

**Respondent(s)**

Through: Mr. Zahid Qais Noor, GA

**CORAM:**

**HON'BLE MS. JUSTICE MOKSHA KHAJURIA KAZMI, JUDGE.**

**JUDGMENT**

1. This petition has been filed by the petitioner, Rameez Ahmad Dar, brother of Nadeem Ahmad Dar, S/O Ab Khaliq Dar, R/O Zazripora Kulgam, District Kulgam, (hereinafter to be referred as “detenue”), to assail order No. 12/DMK/PSA/2024 dated 16.04.2024, (hereinafter to be referred as “impugned order”), passed by Respondent No. 2, District Magistrate, Kulgam, whereby, the detenue has been detained under preventive detention in terms of the provisions of the J&K Public Safety Act, 1978.

2. It is stated in the petition that the detenue has been arrested by Police Station, Kulgam on 10.03.2024 in terms of Section 107, 151 Cr.P.C and while in custody he was shifted to Central Jail Srinagar and detained in terms of the

impugned order. The petitioner is challenging the said impugned order *inter alia* on the grounds that the grounds of detention are vague, mere assertions of the detaining authority and no prudent man can make an effective representation against these allegations; the involvement of the detenu in case FIR NOS. 96/2019, 133/2018 and 138/2020 mentioned in the grounds of detention have no nexus with the detenu for having been fabricated by the police to justify the illegal detention; it is prejudicial to the rights and interests of the detenu for having been deprived the fundamental right of liberty guaranteed under Article 21 of the Constitution; the impugned order is passed without application of mind; the detention order does not mention the name of the detaining authority, therefore the person who has derived the subjective satisfaction while passing the impugned order is not known which is against the mandate of law; the detenu was bailed out in the FIRs mentioned against his name and the detention order based on such FIRs bearing No. 3/DMK/PSA 2021 dated 05.05.2021, which was rendered infructuous and the detenu was directed to be released from preventive custody by this Court while adjudicating WP(Crl) No. 101/2021 in terms of order dated 24.07.2023; the grounds of detention in the instant petition are identical to the one taken in support of the earlier detention and no fresh activity has been alleged against the detenu; the detaining authority has not mentioned in the grounds of detention that the detenu had been detained in preventive detention earlier also in terms of detention order dated 05.05.2021 and the detenu served the full period of detention as was imposed in terms of the said detention order; the material relied upon in the grounds of detention including the copy of FIRs as well as the statement of witness recorded under Section 161 of the Cr.P.C, seizure memos, copies of the previous detention order and the grounds of detention thereof, have not been furnished to the detenu, rendering him incapacitated to make an effective

representation against his detention; the detainee has read up to 8<sup>th</sup> Standard only, and is not conversant with English language, in which the grounds of detention and other allied material has been communicated to the detainee, again depriving him from making an effective representation against his detention; the detainee was bound down under Sections 107, 151 of Cr.P.C for maintaining a good behaviour but was not released; no compelling reasons have been given by the detaining authority for having issued the impugned order; the safeguards provided by the Act have been violated by the respondents as the detention order is neither confirmed in statutory period of 12 days from the date of its passing, nor is the reference made to the Advisory Board within the stipulated period; the detainee was not informed to appear in person or through his representative before the Advisory Board.

3. Based on the above stated grounds, the petitioner, besides seeking quashment of the impugned order, is also praying for compensation to the tune of Rs. 10 lacs from the respondents for having illegally detained the detainee under preventive detention.

4. Upon notice, the respondents appeared and filed the reply affidavit, stating therein *inter alia* that the detainee has been named in several FIRS from 2018-20; he has been an Over-ground Worker (OGW) for some militants of the area; the detaining authority, on the recommendations of the police concerned, derived satisfaction as regards the preventive detention of the detainee and accordingly issued the impugned detention order; the safeguards provided in the Act have been complied with in letter and spirit; the detainee was last named in case FIR No. 138/2020 of Police Station Kulgam for being involved in the commission of offences punishable in terms of Sections 13, 19, 20, ULAP Act and was arrested on 14 august 2020, but was later bailed out by the competent court of law, the detainee was subsequently detained in the year 2021 in

pursuance of order No. 3/DMK/PSA/2021, dated 05.05.2021 and he remained in preventive custody until the maximum period under the Act expired; the grounds of detention sufficiently connect the detainee with the activities, which, on the face of it are highly prejudicial to the maintenance of the security of state; the grounds of detention are precise, proximate, pertinent and relevant and there is no vagueness or staleness attached with it.

5. I have heard learned counsel for the parties, considered the submissions made and perused the material made available.

6. It appears that the respondents have not provided the detainee the material relied upon by them in issuing the impugned order, as would the detention record indicate, e.g., the dossier and last detention order was not supplied to the detainee, nor was he given the order by virtue of which he was bound down on 01.03.2024, thus, depriving him of his right to make an effective representation against his detention to the Government or the Detaining Authority.

7. The respondents have admittedly not attributed any fresh activity to the detainee to showcase as to in what manner the detainee has continued to pursue his alleged nefarious activities, constraining the respondents to invoke the provisions of preventive detention against him. In this view of the matter, it is quite expedient to state that the link between the detainee and the alleged activities is snapped by the efflux of time, rendering the impugned order vulnerable to withstand the test of law.

8. The Apex Court in case titled “*Jaseela Shaji vs. The Union of India*” reported as (2024) 9 SC 53, while referring to certain earlier decisions of the court, has held that the failure of the respondents to supply the relevant material to the detainee is fatal for the detention order. It would be profitable to reproduce paragraphs 29, 35, 36 and 37 of the judgment.

*“29. There can be no doubt that it is not necessary to furnish copies of each and every document to which a casual or passing*

reference may be made in the narration of facts and which are not relied upon by the Detaining Authority in making the order of detention. However, failure to furnish copies of such document/documents as is/are relied on by the Detaining Authority which would deprive the detenu to make an effective representation would certainly amount to violation of the fundamental right guaranteed under Article 22(5) of the 18 Constitution of India.

35. In the case of *Ranu Bhandari* (supra), this Court observed thus:

*“25. Keeping in mind the fact that of all human rights the right to personal liberty and individual freedom is probably the most cherished, we can now proceed to examine the contention advanced on behalf of the parties in the facts and circumstances of this case. But before we proceed to do so, it would be apposite to reproduce hereinbelow a verse from a song which was introduced in the cinematographic version of Joy Adamson's memorable classic Born Free which in a few simple words encapsulates the essence of personal liberty and individual freedom and runs as follows:*

*“Born free, as free as the wind blows, As free as the grass grows, Born free to follow your heart.*

*Born free and beauty surrounds you, The world still astounds you, Each time you look at a star.*

*Stay free, with no walls to hide you, You're as free as the roving tide, So there's no need to hide.*

*Born free and life is worth living, It's only worth living, if you're born free.” The aforesaid words aptly describe the 21 concept of personal liberty and individual freedom which may, however, be curtailed by preventive detention laws, which could be used to consign an individual to the confines of jail without any trial, on the basis of the satisfaction arrived at by the detaining authority on the basis of material placed before him. The courts which are empowered to issue prerogative writs have, therefore, to be extremely cautious in examining the manner in which a detention order is passed in respect of an individual so that his right to personal liberty and individual freedom is not arbitrarily taken away from him even temporarily without following the procedure prescribed by law.*

36. A perusal of the aforesaid judgment would reveal that for emphasizing the importance of personal liberty and individual freedom, this Court has reproduced Joy Adamson's memorable classic *Born Free*. This Court observed that though the concept of personal liberty and individual freedom can be curtailed by preventive detention laws, the Courts have to ensure that the

*right to personal liberty and individual freedom is not arbitrarily taken away even temporarily without following the procedure prescribed by law. It has been held that when a detention order is passed all the material relied upon by the detaining authority in making such an order must be supplied to the detenu to enable him to make an effective representation. This Court held that this is required in order to comply with the mandate of Article 22 (5) of the Constitution, irrespective of whether the detenu had knowledge of such material or not.*

*37. It is thus a settled position that though it may not be necessary to furnish copies of each and every document to which a casual or passing reference has been made, it is imperative that every such document which has been relied on by the Detaining Authority and which affects the right of the detenu to make an effective representation under Article 22(5) of the Constitution has to be supplied to the detenu.”*

9. Having regard to what has been said hereinbefore, and taking into consideration the ratio laid down by the Apex court in the judgments *supra*, the petition succeeds, is allowed and as a result whereof, the impugned order dated 16.04.2024, bearing No. 12/DMK/PSA/2024, issued by Respondent No. 2, District Magistrate, Kulgam, is quashed. The detenue namely, Nadeem Ahmad Dar, S/O Ab Khaliq Dar, R/O Zazripora Kulgam, District Kulgam, is directed to be released from preventive custody forthwith.

10. The detention records be returned to learned counsel for the respondents against receipt.

11. Disposed of.

**(MOKSHA KHAJURIA KAZMI)**  
**JUDGE**

**SRINAGAR:**  
**08.10.2025**  
“Misba ”

|                                       |     |
|---------------------------------------|-----|
| ❖ Whether the Judgment is Reportable? | No  |
| ❖ Whether the Judgment is Speaking?   | Yes |