

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

HCP No. 324/2024

Zahoor Ahmad Thoker

**S/O Bashir Ahmad thoker, R/O Padpawan Shopian Tehsil and District, Shopian,
Th. his mother, Khurshi Begum.**

..... Petitioner(s)

Through: -
Mr. B. A. Tak, Advocate.

V/s

1. Union Territory of J&K, th.

Principal/Secretary, Home Department, J&K Govt.

Civil Secretariat, Srinagar/Jammu.

2. District Magistrate, Shopian.

3. Senior Superintendent of Police, Shopian.

..... Respondent(s)

Through: -
*Mr. Bikramdeep Singh, Dy. AG with
Ms. Nowbahar Khan, Assisting counsel.*

CORAM:

HON'BLE MR. JUSTICE JAVED IQBAL WANI, JUDGE

JUDGMENT

09.10.2025

1. The petitioner in the instant petition filed under Article 226 of the Constitution has challenged detention Order No. 190/DMS/PSA/2024 dated 12.09.2024 (for short "Impugned order") passed by the respondent 2 herein (for short "the Detaining Authority") where-under the petitioner has been detained under the Provisions of Section 13 of the Jammu and Kashmir Public Safety Act, 1978 (hereinafter referred to as "the Act").

2. The impugned order is being challenged by the petitioner on multiple grounds urged in the petition.

3. Reply affidavit has been filed by the respondents to the petition wherein the petition is being opposed on the premise that based on reasonable prediction of future behavior as well as past conduct of the petitioner referred by the sponsoring agency and upon collective assessment thereof, the Detaining Authority reached to subjective satisfaction for placing the petitioner under preventive detention as the petitioner was found to be an over ground worker of LeT terrorist organization and used to keep

a close eye on the movement of police and security forces and would alert the terrorists as well as other over ground workers about their movement and also provide all logistic support to the terrorists in the area like transportation, hideout, clothing etc. etc. and, as such, based upon the said activities of the petitioner found to be prejudicial to the U.T of J&K and India, the petitioner was detained under the Act by virtue of impugned order which was executed on 17th October, 2024, and in furtherance thereof the petitioner was read over the order of detention, grounds of detention as also came to be informed about his right of making a representation against his detention and that the representation received by the Home Department was considered and disposed of as being without merit, decision whereof was conveyed to the petitioner through Superintendent of Police District Jail, Baramulla.

It is lastly stated that in the process of detaining the petitioner all the statutory provisions were followed and Constitutional guarantees fulfilled.

Heard the learned counsel for the parties and perused the record.

4. Notwithstanding the multiple grounds of challenge urged in the petition by the petitioner, the counsel for the petitioner would however, confine the said challenge firstly to the ground that the Detaining Authority did not apply its independent mind while framing the grounds of detention but chose to copy the same as that of the dossier furnished by the sponsoring agency and, in fact, the grounds of detention are the replica of the dossier and secondly, the representation submitted by the petitioner was not considered in accordance with law.

5. On the contrary, the counsel for the respondents while opposing the submissions of the counsel for the petitioner would contend that the grounds

of detention were drawn and framed by the Detaining Authority independently with complete application of mind and that the representation of the petitioner was initially, upon receipt by the Detaining Authority forwarded to the Advisory Board, in that, by then the detention record had been placed before the Advisory Board for its opinion and that the Advisory Board considered and rejected the representation of the petitioner and that the Government as well considered the representation of the petitioner independent of the consideration of the representation by the Advisory Board and rejected the same inasmuch as, conveyed the said rejection to the petitioner through Superintendent of Police District Jail, Baramulla and also obtained receipt from the petitioner in this regard.

6. Insofar as, the aforesaid first ground urged by the counsel for the petitioner is concerned, perusal of the record available on the file as well as the detention record produced by the counsel for the respondents, *ex-facie* tends to show that indisputably the grounds of detention are in essence a carbon copy of the dossier barring few words and expressions here and there and in fact, the grounds of detention are found to be replica of the dossier, suggesting that the Detaining Authority has failed to discharge its statutory duty in framing the grounds of detention with its own independent application of mind.

7. Insofar as the aforesaid next ground urged by the counsel for the petitioner is concerned, the detention record produced by the counsel for the respondents ironically reveals that although representation submitted by the petitioner through his mother is stated to have been received by the Detaining Authority yet the said representation seemingly has been rejected by the Government upon the instructions of SSP (A) CID J&K who vide letter dated 23rd November, 2024, for and on behalf of the ADGP CID J&K

has called upon the Principal Secretary to the Government, Home Department to reject the representation of the petitioner. Further perusal of detention record further reveals that based thereupon, the Deputy Secretary to the Government has vide letter dated 2nd December, 2024 addressed to the Detaining Authority conveyed the rejection of the representation of the petitioner as having been found without any merit with the direction to inform the petitioner about the said rejection.

The aforesaid position obtaining in the matter thus would signifying that the respondents have failed to consider and decide the representation of the petitioner inline and tune with the provisions of Article 22(5) of the Constitution. Assuming that the representation stands adverted to by the Government or else by the Advisory Board in accordance with law, yet otherwise also the said representation seemingly has been considered and decided belatedly.

8. Viewed thus, for what has been considered and analyzed hereinabove, the instant petition succeeds, as a consequence whereof the impugned Order No. 190/DMS/PSA/2024 dated 12.09.2024, is, quashed with the direction to the respondents including the concerned Jail authority to release the petitioner from preventive detention, unless is required in any other case.

9. The detention record produced by counsel for the respondents is returned back in the open Court.

(Javed Iqbal Wani)
Judge

SRINAGAR
09.10.2025
"Abdul Rashid"

Whether approved for reporting? Yes/No