

(2024) 05 J&K CK 0049

In the Jammu And Kashmir High Court

Case No : ?Habeas Corpus Petition No. 45 Of 2023

Umar Nazir Rather

APPELLANT

Vs

Union Territory Of J&K And Others

RESPONDENT

Date of Decision : 14-05-2024

Acts Referred:

Indian Penal Code, 1860 — Section 120B, 420

Citation : (2024) 05 J&K CK 0049

Hon'ble Judges : Rahul Bharti, J

Bench : Single Bench

Advocate : M. Ashraf Wani

Final Decision : Disposed Of

Judgement

Rahul Bharti, J

1. Heard the learned counsel for the parties. Perused the writ record.
2. Through the medium of this writ petition filed through his father Sh. Nazir Ahmad Rather, the petitioner, who is a young person of 28 years of age, is seeking his release from the preventive custody in currency by an order of the respondent No. 2-District Magistrate Pulwama passed under the J&K Public Safety Act, 1978. The detention of the petitioner came to take place on 10/08/2023.
3. A case for the preventive detention of the petitioner was set up by the respondent No.3-Senior Superintendent of Police SSP Awantipora, who had vide a letter No. Conf/PSA/2023/549-52 dated 15/06/2023, submitted a dossier to the respondent No. 2-District Magistrate thereby seeking detention of the petitioner on account of his alleged involvement in an alleged crime registered under FIR No. 53/2023 for commission of offences under section 420 and 120-B Indian Penal Code by the Police Station Tral.
4. This dossier narrated the case that the petitioner acting in criminal connivance

with six persons namely Dr. Abdul Malik, Dr Asimm Afzal Mir, Shahnawaz Ahmed Khan, Yawar Ahmed Naikoo, Shabbir Ahmed Wani and Syed Azhar-ud-Din has lured gullible students and their parents to avail the leak of question papers for the forthcoming examination of B.Sc Nursing Course admission to be conducted by the Board of Professional Entrance Examination (BoPEE) in exchange for hefty money and thus committed cheating by criminal conspiracy. In this connection the petitioner along with the above named persons are said to have been nabbed by the police of the Police Station, Tral on 10/06/2023. The alleged acts of omission and commission on the part of the above named persons are said to have been a part of an active gang involved in cheating and forgery by manipulating innocent students on the pretext of leaking to them the question papers in return for money thereby exposing the carrier of many students to risk and creating a negative perception among us the student community. The petitioner was said to be very deceptive in appearance and very subtle and soft with words of mouth but truly dross doing larceny of hopes and dreams of students/ examination aspirants. The gang of the petitioner was said to have left the people of the area enraged thereby rendering their liberty prejudicial to maintenance of public order.

5. In addition to the petitioner, his two accomplices above named i.e. Yawar Ahmad Naikoo and Syed Azhar-ud-Din also came to be subjected to preventive detention by none else than the respondent No. 2 – District Magistrate, Pulwama.

6. Yawar Ahmad Naikoo came to question his preventive detention in a writ petition HCP No. 47/2023 and Syed Azhar-ud-Din questioned the preventive detention in writ petition HCP No. 44/2023. This Court came to quash the preventive detentions of the said two persons vide judgments both dated 10.11.2023, terming the preventive detentions of said two detainees in relation to maintenance of public order as misconceived but the preventive detention against the said two persons was ordered identically on the same text and context as in the case of present petitioner and so the outcome of the present writ petition by the petitioner challenging his preventive detention cannot be different to the one as rendered in the aforesaid two judgments with respect to Yawar Ahmad Naikoo and Syed Azhar-ud-Din. The two judgments passed by this Court in reference to the aforesaid two persons are on the record of this writ petition placed by way of an application filed by the petitioner.

7. In view of the aforesaid facts and circumstances of this case, this Court holds that the preventive detention of the petitioner was misconceived given the fact that the alleged acts of omission and commission on the part of the petitioner allegedly acting in complicity with the aforementioned persons resulting in his implication in FIR No. 53/2023 of the Police Station Tral in no manner can be construed to be prejudicial to the maintenance of public order. The impugned preventive detention order No. 40/DMP/PSA/23 dated 26.06.2023 passed by the respondent No. 2 – District Magistrate, Pulwama along with the approval and confirmation order passed by the Govt. of UT of Jammu & Kashmir are hereby

set aside.

8. The petitioner is directed to be restored to his personal liberty. The Superintendent of the concerned Jail as well as the respondent No. 2 – District Magistrate, Pulwama to ensure the release of the petitioner from the preventive detention custody forthwith.

9. Disposed of accordingly.