

Government of Jammu and Kashmir
Home Department,
Civil secretariat, Jammu

**Subject: Orders under section 144 of the Cr.PC, 1973-instructions
reg;**

Government Order No. 25 – Home of 2020
Dated: 25.01.2020

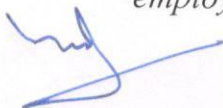
Whereas, the provisions relating to issuance of orders by the District Magistrate(s) or any other Magistrate so authorized, hereinafter referred to as Magistrates, are contained in Chapter X viz., “Maintenance of Public Order and Tranquility” of the Code of Criminal Procedure (Cr.P.C), 1973; and

2. Whereas, the power to take preventive measures to deal with the imminent threats to public peace in urgent cases of nuisance or apprehended danger is contained in section 144 Cr.P.C, which empowers the Magistrate(s) to issue a mandatory order requiring certain actions to be undertaken, or a prohibitory order restraining citizens from doing certain things; and

3. Whereas, the Hon’ble Supreme Court in Writ Petition (Civil) No. 1031 of 2019 titled Anuradha Bhasin vs. Union of India and Others, while laying emphasis on the statutory obligation cast upon the Magistrate(s) to adhere to the procedural requirements of section 144, Cr.PC, 1973, has been pleased to pass the following directions:

“ b) *The Respondent State/competent authorities are directed to publish all orders in force and any future orders under section 144, Cr.PC and for suspension of telecom service, including internet, to enable the affected persons to challenge it before the High Court or appropriate forum.*

p) *The power under Section 144, Cr.P.C., being remedial as well as preventive, is exercisable not only where there exists present danger, but also when there is an apprehension of danger. However, the danger contemplated should be in the nature of an “emergency” and for the purpose of preventing obstruction and annoyance or injury to any person lawfully employed.*



- q) *The power under Section 144, Cr.P.C cannot be used to suppress legitimate expression of opinion or grievance or exercise of any democratic rights.*
- r) *An order passed under Section 144, Cr.P.C. should state the material facts to enable judicial review of the same. The power should be exercised in a bona fide and reasonable manner, and the same should be passed by relying on the material facts, indicative of application of mind. This will enable judicial scrutiny of the aforesaid order.*
- s) *While exercising the power under Section 144, Cr.P.C., the Magistrate is duty bound to balance the rights and restrictions based on the principles of proportionality and thereafter, apply the least intrusive measure.*
- t) *Repetitive orders under Section 144, Cr.P.C. would be an abuse of power.*
- u) *The Respondent State/competent authorities are directed to review forthwith the need for continuance of any existing orders passed under Section 144, Cr.P.C in accordance with law laid down above.”*

4. Now, therefore, all the Magistrate(s) are directed to take note of the above directions and in particular ensure that:


- a) all the orders in force and any future orders under section 144, Cr.P.C are duly published;
- b) a review of all the existing orders, passed under section 144, Cr.P.C, is undertaken forthwith to assess the need for their continuance or otherwise, in accordance with the law laid down by the Hon'ble Supreme Court in Writ Petition (Civil) No. 1031 of 2019 titled Anuradha Bhasin vs. Union of India and Others; and
- c) the orders under section 144, Cr.P.C, as and when issued, are in conformity with the above directions and the principles laid down by the Hon'ble Supreme Court in the aforesaid matter.

5. It is further ordered that all the Magistrate(s) empowered in this behalf shall also ensure that the copy(ies) of the order(s), issued under



section 144 Cr.PC, is/are sent through all modes of communications, including on official e-mail of the Home Department viz., home-jk@nic.in and also to the concerned Divisional Commissioner, on the same day.

By order of the Government of Jammu and Kashmir.



(Shaleen Kabra) IAS

Principal Secretary to Government

Dated:25.01.2020

No:-Home/ISA/28/2020

Copy to the:

1. Chief Secretary, J&K.
2. Director General of Police, J&K.
3. Principal Secretary to the Hon'ble Lt. Governor.
4. ADGP, CID, J&K.
5. Divisional Commissioner, Kashmir/Jammu.
6. Director General, J&K Institute of Management, Public Administration and Rural Development.
7. Secretary to the Government, Department of Law, Justice and Parliamentary Affairs.
8. All District Magistrates for information and necessary action. They are requested to circulate the Government Order amongst all the Magistrates authorized to exercise powers under section 144 Cr.P.C. They may be sensitized accordingly.
9. Director Archives, Archaeology and Museums.
10. Management, Government Printing Press, Jammu for publication in the extra ordinary issue of the Government Gazette
11. I/c website.
12. Government Order file (w2sc).

Copy also to the Joint Secretary (J&K), MHA. GoI.