

HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT SRINAGAR

HCP No.180/2025

Reserved on: 11.12.2025

Pronounced on: 16.12.2025

Uploaded on: 17.12.2025

*Whether the operative part or full
judgment is pronounced-**Full Judgment***

Bahar Nabi Mir

...Petitioner(s)

Through: Mr. Sameer Qayoom, Advocate.

Vs.

Union Territory of J&K & Ors.

...Respondent(s)

Through: Mr. Hakim Aman Ali, Dy.AG.

CORAM: HON'BLE MR. JUSTICE M. A. CHOWDHARY, JUDGE

JUDGMENT

1. The petitioner Bahar Nabi Mir S/O Ghulam Nabi Mir R/O Ferozpora, Rafiabad, Watergam, Baramulla (for short 'detenue') through his father, has called in question the detention order No. 08/DMB/PSA/2025 dated 29.04.2025 (for short 'impugned order') passed by the District Magistrate, Baramulla -Respondent No. 2 (for short 'detaining authority'), whereby the detenue came to be detained under the provisions of the Jammu & Kashmir Public Safety Act, 1978 (for short "the Act").
2. Precisely the case of the petitioner is that he was arrested by the police concerned on suspicion for few days and then was detained under the preventive custody in terms of the impugned order and

was shifted to District Jail, Udhampur. It is averred in the petition that the allegations made in the dossier are baseless and false without any proof. The allegation leveled in the dossier and the grounds of detention against the petitioner that he despite facing trial in the FIR No.185/2019 before the competent court, has been providing food and shelter and transportation to the terrorists, is false and baseless and is without any proof only to justify the preventive detention of the petitioner. Petitioner's further contention is that he has no contact with any terrorist through any network and has never attempted to recruit local youth into terrorist networks and has never assisted any terrorist in carrying out any civilian killings in the Valley, same are baseless based on assumptions and in order to justify the preventive detention of the petitioner. Furthermore, the detention order and the grounds of detention suffer from lack of application of mind by the detaining authority in concluding that the petitioner's activities are prejudicial to the security of the State/UT of J&K, therefore, the detention order requires to be quashed.

3. Respondents have filed their counter affidavit to the writ petition and resisted the same on the ground that the activities of the detainee were highly prejudicial to the security of the State/UT of J&K, therefore, to prevent him from acting in such activities, he has been detained strictly in accordance with the provisions of Public Safety Act. Respondents further averred that they have followed all the constitutional and statutory safeguards while passing the impugned order of detention. It is contended that the detainee has remained active in anti-national activities; that the contents of the warrant and

grounds of detention were read over to the detainee in the language he understood, and was also informed of his right to make a representation to the Government against his detention. He has in token affixed his signatures on the documents. The grounds of detention are precise, relevant and disclose the need of the hour for detaining the petitioner-detenu.

4. Heard learned counsel for both the sides, perused the record and considered the same.
5. Perusal of grounds of detention reveals that on 25.11.2019 the petitioner was apprehended along-with two other associates of the Lashkar-e-Taiba (LeT) outfit while travelling in a white Maruti Alto-800 vehicle. The petitioner was tasked to intimidate the individuals submitting recruitment applications for the Railways Security as Special Police Officers (SPOs) at Railway Station, Baramulla. That, acting on credible intelligence, the police intercepted his vehicle at Jahama crossing, Baramulla and arrested the petitioner and his associates. Upon physical search, two Chinese UBGL hand grenades were recovered from his possession and that of his associates. That, in consequence of this terror incident, case FIR No. 185/2019 under Section 7/25 Arms Act and Sections 23, 39 of Unlawful Activities (Prevention) Act, 1967 was registered at Police Station, Baramulla and investigation was initiated; that, during the course of investigation, the petitioner was found actively associated with the Lashkar-e-Taiba terror outfit as an OGW (Over Ground Worker) and confirmed that the above act was carried out at the behest of

terrorists of the said organization; that, the petitioner has further confessed to have facilitated the safe passage and logistical support for terrorists; that, as per the intelligence received from multiple field agencies, the petitioner was operating discreetly through encrypted communication applications and virtual proxy networks, maintaining contacts with active terrorists of Lashkar-e-Taiba; that, the petitioner is covertly moving from village to village, attempting to radicalize and recruiting the local youth into terrorist networks; that, the reliable and credible reports confirm that the petitioner has voluntarily assisted the proscribed terrorist organization Lashkar-e-Taiba and have deep rooted ties with its active cadres; and that, it was imperative to detain the petitioner under the provisions of J&K PSA, 1978, as the ordinary legal measures have proven ineffective in restraining his involvement in subversive and terror-linked activities.

6. Perusal of the record and pleadings do disclose that the detaining authority has complied with the mandate of law and by no stretch of imagination it can be said that the detaining authority has committed any breach which would warrant interference by this Court.
7. Grounds of detention unmask that the petitioner-detenu had inclination towards unlawful activities which ultimately resulted in petitioner-detenu becoming a hardcore over-ground worker for Lashkar-e-Taiba terrorist outfit, and in the past he very ingeniously avoided getting incriminated openly but he was found involved in the aforementioned case registered against him.

8. The purpose of J&K Public Safety Act, 1978, is to prevent the acts and activities prejudicial to the security of the State or maintenance of public order. These acts are preceded by good amount of planning and organization by the set of people fascinated in turmoil. They are not like ordinary law and order crimes. If, however, in any given case a single act is found to be not sufficient to sustain the order of detention that may well be quashed but it cannot be stated as a principle that one single act cannot constitute the basis for detention. On the contrary, it does. In other words, it is not necessary that there should be multiplicity of grounds for making or sustaining an order of detention.
9. It may not be out of place to mention here that grounds of detention are definite, proximate and free from any ambiguity. Detenue has been informed with sufficient clarity what actually weighed with Detaining Authority while passing detention order. Detaining Authority has narrated the facts that made it to exercise its powers under Section 8 of the Act of 1978, and record subjective satisfaction that detenue was required to be placed under preventive detention in order to prevent him from acting in any manner prejudicial to the security of the State. In such circumstances, suffice it is to say that there had been material before detaining authority to come to a conclusion and hence, it cannot be said that subjective satisfaction of detaining authority was wrongly arrived at or grounds of detention are self-contradictory or vague. The role of detenue has been specifically described.

10. Even otherwise it is settled law that this Court exercising writ jurisdiction under Article 226 of the Constitution has limited scope to scrutinize whether detention order has been passed on the material placed before it. It cannot go further and examine sufficiency of material. This Court does not sit in appeal over the decision of detaining authority and cannot substitute its own opinion over that of detaining authority when grounds of detention are precise, pertinent, proximate and relevant.

11. This Court can only examine grounds disclosed by the Government in order to see whether they are relevant to the object which the legislation has in view, that is, to prevent detinue from engaging in activities prejudicial to security of the State or maintenance of public order. The following judgments have been rendered by the Hon'ble Apex Court, where this point has been discussed:-

- i) ***Union of India v. Arvind Shergill* reported as (2000) 7 SCC 601;**
- ii) ***Pebam Ningol Mikoi Devi v. State of Manipura* reported as (2010) 9 SCC; and**
- iii) ***Subramanian v. State of T.N.* reported as (2012) 4 SCC 699.**

12. If an order of detention is made only to bypass a criminal prosecution which may be annoying because of inconvenience of proving guilt in a court of law, it would certainly be an abuse of power of preventive detention and detention order would be bad. But if object of making the order of detention is to prevent commission of activities in future, it would be a perfectly legitimate exercise of power to make the order of detention. The Court would have to

consider all the facts and circumstances of the case in order to determine on which side of the line detention order falls. The order of detention was plainly with a view to prevent a detainee from continuing the activities which are prejudicial to the security of the State or maintenance of public order.

13. In the above background, it would be apt to refer to the observations made by the Constitution Bench of the Supreme Court in the case of '*The State of Bombay v. Atma Ram Shridhar Vaidya*' reported as *AIR 1951 SC 157*. Para-5 of the judgment lays law on the point, which is advantageous to be reproduced hereunder:-

“5. It has to be borne in mind that the legislation in question is not an emergency legislation. The powers of preventive detention under this Act of 1950 are in addition to those contained in the Criminal Procedure Code, where preventive detention is followed by an inquiry or trial. By its very nature, preventive detention is aimed at preventing the commission of an offence or preventing the detained person from achieving a certain end. The authority making the order therefore cannot always be in possession of full detailed information when it passes the order and the information in its possession may fall far short of legal proof of any specific offence, although it may be indicative of a strong probability of the impending commission of a prejudicial act. Section a of the Preventive Detention Act therefore requires that the Central Government or the State Government must be satisfied with respect to any person that with a view to preventing him from acting in any manner prejudicial to (1) the defense of India, the relations of India with foreign powers, or the security of India, or (2) the security of the State or the maintenance of public order, or

(3) the maintenance of supplies and services essential to the community it is necessary So to do, make an order directing that such person be detained. According to the wording of section 3, therefore, before the Government can pass an order of preventive detention it must be satisfied with respect to the individual person that his activities are directed against one or other of the three objects mentioned in the section, and that the detaining authority was satisfied that it was necessary to prevent him from acting in such a manner. The wording of the section thus clearly shows that it is the satisfaction of the Central Government or the State Government on the point which alone is 22 WP(Crl) no.549/2019 necessary to be established. It is significant that while the objects intended to be defeated are mentioned, the different methods, acts or omissions by which that can be done are not mentioned, as it is not humanly possible to give such an exhaustive list. The satisfaction of the Government however must be based on some grounds. There can be no satisfaction if there are no grounds for the same. There may be a divergence of opinion as to whether certain grounds are sufficient to bring about the satisfaction required by the section. One person may think one way, another the other way. If, therefore, the grounds on which it is stated that the Central Government or the State Government was satisfied are such as a rational human being can consider connected in some manner with the objects which were to be prevented from being attained, the question of satisfaction except on the ground of mala fides cannot be challenged in a court. Whether in a particular case the grounds are sufficient or not, according to the opinion of any person or body other than the Central Government or the State Government, is ruled out by the wording of the section. It is not for the court to sit in the place of the Central Government or the State Government and try to deter- mine if it would have come to

the same conclusion as the Central or the State Government. As has been generally observed, this is a matter for the subjective decision of the Government and that cannot be substituted by an objective test in a court of law. Such detention orders are passed on information and materials which may not be strictly admissible as evidence under the Evidence Act in a court, but which the law, taking into consideration the needs and exigencies of administration, has allowed to be considered sufficient for the subjective decision of the Government.”

14. The preventive detention is aimed at preventing prejudicial activities or preventing the detained person from achieving a certain end. The authority making the order, therefore, cannot always be in possession of full detailed information when it passes the order of detention and the information in its possession, may fall far short of legal proof of any specific offence. Public Safety Act, therefore, requires that the Government must be satisfied with respect to any person that with a view to preventing him from acting in any manner prejudicial to the security of the State or the maintenance of public order or the maintenance of supplies and services essential to the community, it is necessary to make an order directing that such person be detained. The Act, therefore, implies that the Government can pass an order of preventive detention it must be satisfied with respect to the individual person that his activities are directed against objects mentioned in the Act and that detaining authority was satisfied that it was necessary to prevent him from acting in such a manner.

15. Thus, it clearly shows that it is the satisfaction of Government on the point which alone is necessary to be established. It is significant that while the objects intended to be defeated are mentioned, the different methods, acts or omissions by which that can be done are not mentioned as it is not humanly possible to give such an exhaustive list. The satisfaction of the Government, however, must be based on some grounds. There can be no satisfaction if there are no grounds for the same. There may be a divergence of opinion as to whether certain grounds are sufficient to bring about the satisfaction required by the Act. Whether in a particular case, the grounds are sufficient or not, according to the opinion of any person or body other than the Government, is ruled out by the language of the Act. It is not for the Court to sit in place of the Government and try to determine if it would have come to the same conclusion as Government. As has been generally observed, this is a matter for the subjective decision of the Government and that cannot be substituted by an objective test in a court of law. Such detention orders, the Supreme Court has said, are passed on information and material which may not be strictly admissible as evidence under the Evidence Act in a court, but which the law, taking into consideration the needs and exigencies of administration, has allowed to be considered sufficient for the subjective decision of the Government.
16. Undoubtedly, personal liberty is one of the most cherished freedoms, perhaps more important than the other freedoms guaranteed under the Constitution. In a democracy governed by the rule of law, the drastic power to detain a person without trial for security of the State

or maintenance of public order, must be strictly construed. However, where individual liberty comes into conflict with interest of the security of the State or maintenance of public order, then the liberty of the individual must give way to the larger interest of the nation. These observations have been made by the Supreme Court in the case of '*Sunil Fulchand Shah v. Union of India & Ors.* reported as *(2000) 3 SCC 409*'.

17. To sum up, a law of preventive detention is not invalid because it prescribes no objective standard for ordering preventive detention, and leaves the matter to subjective satisfaction of the Executive. The reason for this view is that preventive detention is not punitive but preventive and is resorted to with a view to prevent a person from committing activities regarded as prejudicial to certain objects that the law of preventive detention seeks to prescribe. Preventive detention is, thus, based on suspicion or anticipation and not on proof. The responsibility for security of State or maintenance of public order rests on the Executive and it must therefore, have necessary powers to order preventive detention. Having said that, subjective satisfaction of a detaining authority to detain a person or not, is not open to objective assessment by a Court. A Court is not a proper forum to scrutinize the merits of administrative decision to detain a person. The Court cannot substitute its own satisfaction for that of the authority concerned and decide whether its satisfaction was reasonable or proper, or whether in the circumstances of the matter, the person concerned should have been detained or not. It is often said and held that the Courts do not even go into the question

whether the facts mentioned in grounds of detention are correct or false. The reason for the rule is that to decide this, evidence may have to be taken by the courts and that is not the policy of law of preventive detention. While saying so, this Court does not sit in appeal over decision of detaining authority and cannot substitute its own opinion over that of detaining authority when grounds of detention are precise, pertinent, proximate and relevant.

18. Applying the ratio of the judgments supra and having glance on the discussions made hereinabove, the respondents have complied with the mandate and safeguards provided by the Act. Hence, this writ petition merits dismissal and is, accordingly, **dismissed**.
19. Scanned copy of detention record, as has been produced by the learned counsel for the respondents, be returned back to him.

Srinagar
16.12.2025
Muzammil. Q

(M. A. CHOWDHARY)
JUDGE

Whether the order is reportable: Yes / No