

HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT SRINAGAR

HCP No. 297/2024

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***

Shahid Riyaz Bhat

...Petitioner(s)

Through: Mr. Yonis Ahmad, Advocate.

Vs.

Union Territory of J&K & Anr.

...Respondent(s)

Through: Mr. Furqan Sofi, GA

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

JUDGMENT

1. The petitioner, in terms of the detention order No. **DMP/PSA/24 dated 08.04.2024** (for short 'impugned order'), has been detained in the interest of security of the UT of J&K by Respondent No.2- District Magistrate, Pulwama (for short 'detaining authority') in exercise of powers conferred on him under **Section 8 of the J&K Public Safety Act, 1978**. The said detention order has been challenged through the medium of present petition, allegedly being in breach of the provisions of **Article 22(5)** of the Constitution of India.
2. The plea raised by the petitioner in the petition is that the detaining authority has passed the order of detention while taking into account the incident of the year 2021, as such, the order of detention has been passed on the basis of the incident, in FIR No.72/2021 which

has no proximate or live connection between the activities of the above said incident and the order of detention because there is undue and long delay between the activates attributed to the petitioner. It is pleaded that the detaining authority has levelled sweeping and general allegations of the involvement of the petitioner in the alleged activities without the ground of detention being supported by any such material and the satisfaction has been arrived at totally unsupported by any material, there being no material available before the detaining authority on record connecting the petitioner with anti-national and anti-social activities. It is further stated that the petitioner has been detained on the apprehension of recycling in militancy on the basis of assumption and presumption without any material on record, as such, the impugned order of detention is bad in the eyes of law. Furthermore, the detaining authority has failed to apply its mind objectively, as the order of detention has been passed on the direction of the officer who has prepared the police dossier and no attempt has been made by the detaining authority to scan and evaluate such allegations which have been placed before the detaining authority and the order of detention has been passed mechanically, without applying the mind, as such, very satisfaction of the detaining authority is vitiated because there was no material on record to detain the petitioner.

3. It is further pleaded that the grounds of detention on the basis of which detaining authority has issued the detention order are vague, uncertain and indefinite as no person can make any representation on the basis of the said grounds of detention to the appropriate authority because the detaining authority has not explained in the order of

detention what activities apprehended the detaining authority while passing the detention order as the detaining authority has levelled sweeping and general allegations against the petitioner.

4. Respondents in their reply affidavit have stated that the grounds of detention are precise, proximate, pertinent and relevant. There is no vagueness or staleness in the grounds coupled with definite indications as to the impact thereof, which has been precisely stated in the grounds of detention. Further it is contended that the grounds of detention give complete account of the activities of the detainee which are highly prejudicial for maintenance of security of the UT of J&K, as such, there was no option left but to order detention of the detainee under Public Safety Act.
5. Learned counsel for the petitioner during the course of arguments contends that the allegations made in the grounds of detention are vague, non-existent and no prudent man can make a representation against such allegations and passing of detention on such grounds is unjustified and unreasonable. All the allegations levelled against the detainee are far from reality and that the detainee is not involved in any unlawful activity, so as to justify his preventive detention.
6. Learned counsel for the respondents, ex-adversus, submits that there is no vagueness in the grounds of detention. The procedural safeguards prescribed under the provisions of Public Safety Act and the rights guaranteed to the detainee under the Constitution have strictly been followed in the present case. The detainee has been furnished whole of the material, as was required, and was also made aware of his right to make representation to the detaining authority against his detention. He further argued that the pleas of the grounds

of detention being vague, non-existent, non-relevant, not proximate or invalid, shall not invalidate the detention order as statutorily provided in Section 10-A of the J&K PSA, in terms whereof petitioner has been detained. He finally submits that the impugned detention order, having been passed perfectly in consonance with law, grounds of detention explained / communicated to the detainee, all safeguards complied with the subjective satisfaction of detaining authority, cannot be gone into, to substantiate its own opinion by the Court. It was prayed to uphold the impugned detention order.

7. Heard learned counsel for the parties, perused the record and considered the same.
8. On perusal of the record, it is nowhere mentioned as to what were the subsequent activities of the petitioner-detinue from the year 2021 till his detention vide impugned order was ordered i.e. April, 2024. The incident of the year 2021 cannot be made to base preventive detention in the year 2024 for want of proximate link between the alleged activities of the petitioner-detinue and the apprehension of the detaining authority to deter him from such activities.
9. Preventive detention being a drastic State action based only upon suspicion arising from a person's past activity, can be allowed, as the settled legal position mandates, only, if there is a live and proximate link between a person's past activities and the need for passing of a preventive detention order. A preventive detention order is unsustainable on stale or illusory grounds, which have no real nexus with the past prejudicial activity. Delay in passing and execution of a preventive detention order not only defeats the very purpose of such

order, but more importantly, creates a doubt as to the necessity of adopting such a harsh measure against an individual, whereby the individual's liberty is curtailed on suspicion alone.

10. In *P.U Iqbal Vs. Union of India & Ors.* reported as (1992) 1 SCC

434, the Hon'ble Supreme Court has held as under:-

"14. Now, there can be no doubt-and the law on this point must be regarded as well settled by these two decisions-that if there is unreasonable delay between the date of the order of detention and the date of arrest of the detenue, such delay, unless satisfactorily explained, would throw considerable doubt on the genuineness of the subjective satisfaction of the District Magistrate and it would be a legitimate inference to draw that the District Magistrate was not really and genuinely satisfied as regards the necessity for detaining the petitioner.

15. Chinnappa Reddy, J. speaking for the Bench in Bhawarlal Ganeshmalji v. State of Tamil Nadu has explained as follow:

It is further true that there must be a 'live and proximate link' between the grounds of detention alleged by the detaining authority and the avowed purpose of detention namely the prevention of smuggling activities. We may in appropriate cases assume that the link is 'snapped' if there is a long and unexplained delay between the date of the order of detention and the arrest of the detenu. In such a case, we may strike down an order of detention unless the grounds indicate a fresh application of the mind of the detaining authority to the new situation and the changed circumstances. But where the delay is not only adequately explained but is found to be the result of the recalcitrant or refractory conduct of the detenu in evading arrest, there is warrant to consider the 'link' not snapped but strengthened.

18. It is manifestly clear from a conspectus of the above decisions of this Court, that the law promulgated on this aspect is that if there is unreasonable delay between the date of the order of detention and the date of arrest of the detenue,

such delay unless satisfactorily explained throws a considerable doubt on the genuineness of the requisite subjective satisfaction of the detaining authority in passing the detention order and consequently render the detention order bad and invalid because the 'live and proximate link' between the grounds of the detention and the purpose of detention is snapped in arresting the detainee. A question whether the delay is unreasonable and stands unexplained depends on the facts and circumstances of each case."

11. A similar view has been taken by the Hon'ble Supreme Court in

Rushikesh Tanaji Bhoite Vs. State of Maharashtra & Ors.

reported as (2012) 2 SCC 72, wherein the Apex Court has observed that :-

"9. In a case where detainee is released on bail and is enjoying his freedom under the order of the court at the time of passing the order of detention, then such order of bail, in our opinion, must be placed before the detaining authority to enable him to reach at the proper satisfaction.

10. In the present case, since the order of bail dated August 15, 2010 was neither placed before the detaining authority at the time of passing the order of detention nor the detaining authority was aware of the order of bail, in our view, the detention order is rendered invalid. We cannot attempt to assess in what manner and to what extent consideration of the order granting bail to the detainee would have effected the satisfaction of the detaining authority but suffice it to say that non-placing and non-consideration of the material as vital as the bail order has vitiated the subjective decision of the detaining authority."

12. In another case titled *Vijay Narain Singh Vs. State of Bihar & Ors.*

reported as (1984) 3 SCC 14, Hon'ble Apex Court has held that:-

"When a person is enlarged on bail by a competent criminal court, great caution should be exercised in scrutinising the validity of an order of preventive detention which is based on the very same charge which is to be tried by the criminal court."

13. From the aforesaid enunciation of law on the subject, it is clear that unless there are fresh grounds of detention, a person cannot be put under preventive detention on the basis of the grounds of detention which have formed basis of an earlier FIR wherein he has been bailed out. The ratio laid down by the Supreme Court in the aforesaid two cases squarely applies to the facts of the present case. Thus, the impugned order of detention cannot be sustained in the eyes of law.

14. For the foregoing reasons and keeping in view the above said legal position, the present petition is allowed and the impugned order of detention of the petitioner-detenu bearing No. **DMP/PSA/24 dated 08.04.2024** passed by District Magistrate, Pulwama is, hereby, quashed. The petitioner-detenu namely Shahid Riyaz Bhat S/O Riyaz Ahmad Bhat R/O Prichoo, Pulwama is ordered to be released from detention, if otherwise, not required in any other case(s).

15. Petition **disposed of** accordingly.

16. Scanned copy of the detention record of the case be returned back to the learned counsel for the respondents.

(M. A. CHOWDHARY)
JUDGE

Srinagar
16.12.2025
Muzammil. Q

Whether the order is reportable: Yes / No