

**HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT JAMMU**

HCP No. 11/2026

Reserved on: 02.07.2026

Pronounced on: 09.07.2026

Uploaded on :- **09.07.2026**

*Whether the operative part or
full judgment is pronounced : **Full***

Sandeep Kumar @ Chotu, Age 25 years
S/O Tarsem Lal,
R/O Village Chak Aslam,
Tehsil R S Pura,
District Jammu
through his mother Tripta Devi.

.....Petitioner(s)

Through :- Mr. Jagpaul Singh, Advocate

v/s

1. **Union Territory of J&K** through
Commissioner-cum-Secretary, Home Department,
Civil Secretariat, Jammu.
2. District Magistrate, Jammu.
3. Senior Superintendent of Police, Jammu.
4. Superintendent,
Central Jail, Jammu.

.....Respondent(s)

Through :- Mr. Pawan Dev Singh, Dy. AG

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

JUDGMENT

1. District Magistrate, Jammu (hereinafter called 'Detaining Authority') in exercise of powers under Section 8 of the Jammu & Kashmir Public Safety Act, 1978, passed the detention Order No.**PSA-02 of 2026 dated 24.01.2026** (for short 'impugned order'), in terms whereof the detainee-**Sandeep Kumar @ Chotu** S/O Tarsem Lal R/O Chak Aslam, Tehsil R S Pura, District Jammu (for short 'detenue') has been detained under preventive detention, with a view to

prevent him for acting in any manner prejudicial to the maintenance of ‘public order’.

2. The impugned detention order has been challenged through the medium of the instant petition, being in breach of the provisions of Article 22(5) of the Constitution of India read with Section 13(1) of the J&K Public Safety Act, 1978.

3. Petitioner contends that the Detaining Authority passed the impugned detention order casually, mechanically and without there being due application of mind; that the grounds of detention are a verbatim copy of the dossier prepared by respondent No.3; that the grounds of detention, the order of detention and dossier were not provided to the petitioner within the stipulated period as prescribed under Section 13 of J&K Public Safety Act, 1978 and whole of the material is not supplied to the petitioner, thereby, prevented the petitioner in filing an effective and meaningful representation before the Government; that the fate of representation submitted by the petitioner to respondent No.1 was not communicated to the petitioner; that the detaining authority has miserably failed to record subjective satisfaction before passing the impugned detention order; that representation dated 02.02.2026 filed on behalf of petitioner to respondent; that the respondents have challenged the bail orders in two cases, but without waiting for the outcome of the applications seeking cancellation of bail, they have passed the impugned detention order;. Lastly, it is stated that the impugned detention order be set aside and the writ petition be allowed.

4. Learned counsel for the petitioner, in support of his submissions, has placed reliance on judgments of the Supreme Court in *‘Khairul Haque V. State*

of West Bengal’ reported at **AIROnline 1969 SC 177**; *‘Jayanarayan Sukul v. State of West Benga’* reported at **1970 (1) SCC 219**; *‘Haradhan Saha v. Madan Lal Agarwala’* reported at **(1975) 3 SCC 198**; and Criminal Appeal No.2189/2026 titled *‘Sunil Kumar Gupta @ Sunil Chain V. Union of India & Ors’* decided on 27.04.2026 and judgments passed by this court in the case of *‘Koushal Sharma V. UT of J&K & Ors’* reported at **JKJ ONLINE 91093** and *‘Nek Ram & Satnam V. UT of J&K & Ors’* reported at **JKJ ONLINE 90441**.

5. The respondents have contested the writ petition by filing counter affidavit of the detaining authority. In the counter affidavit, it has been submitted that the impugned order of detention has been passed by the detaining authority after carefully analyzing the dossier dated 20.01.2026 submitted by SSP Jammu; that the detainee is a habitual criminal, who is involved in the commission of various offences like attempt to murder, stabbing, kidnapping, offences under the Arms Act and other serious crimes regarding which 13 FIRs were registered against him, which make it imperative to detain him under preventive detention; that the detention order is based on subjective satisfaction of the detaining authority and the grounds of detention clearly reflect the application of mind; that despite repeated invocation of ordinary criminal law, the detainee has continued to indulge in unlawful activities, thereby demonstrating the ineffectiveness of such measures; that the detaining authority was satisfied that the activities of the detainee were prejudicial to the maintenance of public order and that there was every likelihood of the detainee continuing with such activities if he be let free; that the respondents have supplied all the material to the detainee and have also read out and explained the contents thereof in the language he understands; that he was also informed about

his right to make a representation to the Government as well as detaining authority; that the representation filed by the detainee was duly considered and rejected and result whereof was duly conveyed to the detainee through jail authorities against proper receipt; that the respondents, in order to lend support to their contentions, have produced the detention record.

6. A rejoinder affidavit has also been filed by the petitioner on 02.05.2026 stating therein that a representation came to be filed against the detention order before respondent No.1 on 02.02.2026, which was duly received by respondent no.1 on 03.02.2026 and fate of the said representation was not made known to the petitioner, however, the petitioner came to be informed by the jail authorities that the representation submitted by him against his detention order before respondent No.1 stands rejected by the Advisory Board vide its opinion dated 16.02.2026.

7. Heard learned counsel for both the sides at length and perused the detention record.

8. The detention record, as produced, reveals that the detainee was involved in following cases registered at different Police Stations:-

- 1) *FIR No. 08/2026; U/Secs 354-D/341/323 RPC;*
- 2) *FIR No.189/2020, U/Secs 307/341/147/148 IPC, 4/25 Arms Act;*
- 3) *FIR No.93/2021 U/Secs 382/323/34 IPC 4/25 Arms Act;*
- 4) *FIR No.124/2021 U/Secs 8/21/22/29 NDPS Act;*
- 5) *FIR No.74/2022 U/Secs 341/323/382/34 IPC*
- 6) *FIR No.15/2023 U/Secs 452/323/506 IPC, 4/25 Arms Act;*
- 7) *FIR No.72/2023 U/Secs 458/323/147 IPC 4/25 Arms Act;*
- 8) *FIR No.102/2023 U/Sec 4/25 Arms Act;*

9) *FIR No. 53/2025 U/Sec 351(3) BNS, 3/35 Arms Act;*

10) *FIR No.66/2025 U/Secs 109/126(2)/115(2)/191(2)/191(3)/111 BNS, 3/4/25 Arms Act;*

11) *FIR No.207/2025 U/Secs 126(2)/115(2)/191(2)/111 BNS, 4/25 Arms Act;*

12) *FIR No. 208/2025 U/Secs 333/352/351(2)/191(2)/191(3)/111 BNS, 4/25 Arms Act; and*

13) *FIR No. 213/2025 U/Sec 262 BNS.*

Involvement of the detainee in the aforementioned cases appears to have heavily weighed with the detaining authority, while passing impugned detention order.

9. Although detainee has raised many grounds for assailing the impugned order of detention, yet, during the course of arguments, his counsel restricted his arguments to the contentions that:

- i) That there is non application of mind by the detaining authority as the grounds of detention are a verbatim copy of the dossier prepared by sponsoring agency; and
- ii) That grounds of detention, order of detention and dossier were not provided to the petitioner within stipulated period as prescribed under Section 13 of J&K Public Safety Act, 1978;
- iii) That the impugned order is passed without recording subjective satisfaction by the detaining authority; and
- iv) That representation filed by the petitioner before respondent no.1 was never considered and if considered, result whereof was not communicated to the petitioner.

10. On the contrary, Mr. P D Singh, learned Dy. AG appearing counsel for the respondents while opposing the submissions of Mr. Jagpaul Singh appearing counsel for the petitioner, would insist that the order under challenge has been passed validly and legally against the petitioner and in the process, all legal, statutory and constitutional provisions and guarantees stand fulfilled and complied with. He would further submit that the representation of the petitioner was considered rightly and a decision whereof also came to be conveyed to the petitioner. He would further submit that since the representation of the petitioner stands forwarded to the Advisory Board also being an authority competent to consider the representation beside respondent No.1, the said consideration, can said to be substantial compliance of the provision of Article 22(5) of the Constitution and no prejudice, whatsoever, can be said to have been caused to the petitioner on account of non consideration of his representation by respondent No.2.

11. The contention raised by the petitioner that detenue has not been supplied the material/other relevant documents on the basis thereof detention order has been passed rendering the petitioner unable to make an effective representation and that the same have not been read over and explained to him in a language he understood appears to be specious as the perusal of the detention record would show that upon execution of the impugned detention order, total **301 leaves** of relevant documents came to be supplied to the detenue on the very next day i.e. on 25.01.2026, against proper receipt and the same have been read over in English and explained to the detenue in the languages Hindi/Dogri understood by him. Thus, the contention of the petitioner in this regard is not sustainable.

12. The ground relating to non-application of mind on the part of the detaining authority as the grounds of detention are verbatim copy of dossier submitted by the sponsoring agency, that has been urged by learned counsel for the petitioner, is also without any substance. If we have a look at the dossier of the sponsoring agency and the grounds of detention, the same by no means can be stated to be in similar language. In the grounds of detention, the District Magistrate has, after noticing the background facts, clearly recorded his satisfaction that the activities of the petitioner are highly prejudicial to the maintenance of public order. Even otherwise, mere fact that there is similarity in the contents of the dossier and the grounds of detention does not necessarily mean that there is non-application of mind on the part of the detaining authority. If from a perusal of the grounds of detention, it is otherwise shown that the detaining authority has applied its mind to the material for recording its satisfaction and has recorded its subjective satisfaction as to the imperative need of passing the order of detention, similarity in the language of dossier and the grounds of detention would pale into insignificance because mere reproduction does not necessarily prove non-application of mind by the detaining authority. In this regard, I am fortified by the judgment dated 01.04.2024 of the Division Bench of this Court in the case of [Jahangir Ahmad Wani vs. UT of J&K \(LPA No.124/2023\)](#).

13. So far as the contention raised by the petitioner that his representation was not considered nor its result communication to him is concerned, perusal of the detention record would show that the State government vide communication dated 20.02.2026 informed the District Magistrate, Jammu about the disposal of the representation in question and sent a copy to Superintendent, Central Jail Jammu with the direction to inform the petitioner regarding the disposal of the

representation filed by the petitioner to respondent No.1 against proper receipt. The Sr. Superintendent Central Jail Jammu has sent receipt of disposal of representation on 26.02.2026 to the Principal Secretary, Home Department, J&K, along with acknowledgement receipt which bears signatures of the petitioner countersigned by Sr. Superintendent Central Jail, Jammu which unequivocally proves that the result of the representation was conveyed to the petitioner. Hence the said contention of the petitioner that he was not informed about the disposal of the representation pales into insignificance.

14. The detaining authority, before invoking the preventive detention, discussed various grounds for detention, incorporating that the detainee has been involved in offences of a violent nature, including armed assaults, attempts on human life, use of deadly weapons, kidnapping, house trespass, intimidation, narcotic trafficking, and attacks on public servants and is facing charges for the aforementioned cases and as many as 13 FIRs bearing FIR Nos.08/2016, 189/2020, 93/2021, 124/2021, 74/2022, 15/2023, 72/2023, 102/2023, 53/2025, 66/2025, 207/2025, 208/2025 & 213/2025 have been registered against the detainee; that the detainee's repeated behavior has caused significant harm to the local community and society as a whole; that the detainee is a habitual offender whose repeated involvement in criminal activities demonstrates that the existing substantive laws have been insufficient in deterring or curbing his unlawful conduct; that the detainee poses a substantial threat to the peace and stability of society; that the detainee's repeated involvement in unlawful activities continues to disturb public order and contributes to growing unrest and disorder within the community. It is further asserted in the record that if he is released from custody, he may again indulge in such criminal/unlawful activities. The aforesaid reasons persuaded the Detaining Authority to detain the detainee in preventive

detention in order to curb his activities which are prejudicial to the maintenance of public order.

15. Personal liberty is one of the most cherished freedoms, perhaps more important than the other freedoms guaranteed under the Constitution. It was for this reason that the Founding Fathers enacted the safeguards in Article 22 in the Constitution so as to limit the power of the State to detain a person without trial, which may otherwise pass the test of Article 21, by humanizing the harsh authority over individual liberty. In a democracy governed by the rule of law, the drastic power to detain a person without trial for ‘security of the State’ and/or ‘maintenance of public order’ must be strictly construed. However, where individual liberty comes into conflict with the interest of the security of the State or public order, then the liberty of the individual must give way to the larger interest of the nation. The Hon’ble Apex Court in **Smt. Icchu Devi Choraria v. Union of India & Ors. (AIR 1980 SC 1983)** held as under:

“The court has always regarded personal liberty as the most precious possession of mankind and refused to tolerate illegal detention, regardless of the social cost involved in the release of a possible renegade.

This is an area where the court has been most strict and scrupulous in ensuring observance with the requirements of the law, and even where a requirement of the law is breached in the slightest measure, the court has not hesitated to strike down the order of detention or to direct the release of the detainee even though the detention may have been valid till the breach occurred.”

16. Right of personal liberty is a most precious right guaranteed under the Constitution of India. A person is not to be deprived of his personal liberty, except in accordance with procedures established under law and

the procedure as laid down in the case “**Maneka Gandhi vs. Union of India, (1978 AIR SC 597)**”, is to be just and fair. The personal liberty may be curtailed where a person faces a criminal charge or is convicted of an offence and sentenced to imprisonment. Where a person is facing trial on a criminal charge and is temporarily deprived of his personal liberty owing to criminal charge framed against him, he has an opportunity to defend himself and to be acquitted of the charge in case prosecution fails to bring home his guilt. Where such person is convicted of offence, he still has satisfaction of having been given adequate opportunity to contest the charge and also adduce evidence in his defense.

17. Framers of the Constitution, however, have, by incorporating **Article 22(5)** in the Constitution, left room for detention of a person without a formal charge and trial and without such person being held guilty of an offence and sentenced to imprisonment by a competent court. Its aim and object are to save society from activities that are likely to deprive a large number of people of their right to life and personal liberty. In such a case it would be dangerous, for the people at large, to wait and watch as by the time ordinary law is set into motion, the person, having dangerous designs, would execute his plans, exposing general public to risk and causing colossal damage to life and property. It is, for that reason, necessary to take preventive measures and prevent a person bent upon to perpetrate mischief from translating his ideas into action. **Article 22(5)** of the Constitution of India, therefore, leaves scope for enactment of preventive detention law.

18. Referring 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 AIR 1951 SC 157' would be advantageous. Paragraph 5 of the said judgment lays law on the point, which is profitable 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 defence 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 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 determine 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.”

19. In accordance with the legal position, afore-stated, settled by the **Six-Judge Constitution Bench** way back in the year 1951, the scope of looking into the manner in which the subjective satisfaction is arrived at by the detaining authority, is limited. This Court, while examining the material, which is made basis of subjective satisfaction of the detaining authority, would not act as a court of appeal and find fault with the satisfaction on the ground that on the basis of the material before detaining authority another view was possible.

20. The courts do not even go into the questions as to whether the facts mentioned in the 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 it is not the policy of the law of preventive detention. This matter lies within the competence of the advisory board.

21. Those who are responsible for national security or for maintenance of public order must be the sole judges of what the national security, public order or security of the State requires. Preventive detention is devised to afford protection to society. The object is not to punish a man for having done something but to intercept before he does it and to prevent him from doing. Justification for such detention is suspicion or reasonable probability and not criminal conviction, which can only be warranted by legal evidence. Thus, any preventive measures, even if they involve some restraint or hardship upon individuals, as held by the Supreme Court in the case ‘**Ashok Kumar v. Delhi**

Administration & Ors., AIR 1982 SC 1143’, do not contribute in any way of the nature of punishment.

22. Observing that the object of preventive detention is not to punish a man for having done something but to intercept and to prevent him from doing so, the Supreme Court held in the case “**Naresh Kumar Goyal v. Union of India & Ors., 2005 (8) SCC 276**”, and reiterated in the judgment in a case titled “**Union of India & Anr. v. Dimple Happy Dhakad (AIR 2019 SC 3428)**” that an order of detention is not a curative or reformatory or punitive, but a preventive action, acknowledged object of which being to prevent anti-social and subversive elements from endangering the welfare of the country or security of the nation or from disturbing public tranquility or from indulging in anti-national activities or smuggling activities or from engaging in illicit traffic in narcotic drugs and psychotropic substances, etc. Preventive detention is devised to afford protection to society. Rulings on the subject have consistently taken the view that preventive detention is devised to afford protection to society. The object is not to punish a man for having done something but to intercept before he does it and to prevent him from doing so.

23. In view of the foregoing discussion and the settled legal position, impugned detention order is upheld and the petition is found devoid of any merit and is, accordingly, dismissed along-with pending application(s).

24. The record of detention be returned to the respondents through their counsel.

(M.A.Chowdhary)
Judge

JAMMU
09.07.2026.
Raj Kumar

Whether the order is speaking: Yes.

Whether the order is reportable: Yes.