

HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT JAMMU

Pronounced on: 28.04.2026

HCP No. 134/2025 CM No.5930/25

Shamash Din, age 78 years ...Petitioner(s)
s/o Lt. Sh. Mukhtiar Ahmad
r/o Lohai, Tehsil Lohai Malhar, District Kathua
A/P Lodged at District Jail, Udhampur.

Through: Mr. Ajay Gandotra, Sr Adv with
 Mr. Gulbaz Sheikh, adv.

vs.

**1.UT of J&K, through Principal Secretary to Govt.
 (Home) Department Civil Sectt. Srinagar,**

**2.District Magistrate Kathua,
 College Road, Shiv Nagar, Kathua.**

...Respondents.

**3. Senior Superintendent of Police, Kathua,
 College Road, Urli-wand, Kathua.**

4. Superintendent District Jail, Udhampur.

Through: Mr. Suneel Malhotra, GA.

CORAM:

Hon'ble Mr. Justice Mohd. Yousuf Wani, Judge.

JUDGMENT

- 1) Impugned in the instant petition, filed on behalf of the petitioner/*detenu*, under the provisions of Article 226 of the Constitution of India, is the order of detention bearing No. PSA/161 dated 24.05.2025, issued by the respondent No. 2 i.e.

District Magistrate, Kathua (hereinafter referred to as the Detaining Authority for short), in exercise of its powers vested under Section 8 (1) (a) (i) of the Jammu and Kashmir Public Safety Act, 1978 (hereinafter referred to as the PSA for sort) whereby the petitioner/*detenu* was ordered to be detained and lodged in the District Jail Udhampur, with a view to prevent him from acting in any manner prejudicial to the security of the State.

- 2) On behalf of the petitioner/*detenu*, issuance of writs in the nature of Certiorari and Mandamus, have been sought for quashment of the impugned detention order and consequent release of the petitioner/*detenu*.
- 3) The impugned detention order has been challenged through the medium of the instant petition on the grounds, *inter alia*; that the same has been prima facie passed by the detaining authority without the application of mind, to all the relevant circumstances lacking requisite subjective satisfaction, as would be clear from the perusal of the contents of Detention Order compared with the Dossier which is based on materials extraneous to the scope of the PSA. That the grounds basing the order impugned are the exact verbatim of the Police Dossier except few sentences here and there. That it clearly shown that the impugned order has been passed in huff and haste manner, without independent and impartial application of mind by the detaining authority which is a strict requirement while determining the legality of a preventive detention order as mandated by ***Hon'ble Supreme Court of India in case reported as Amina Begum v.***

State of Telangana - 2023 LiveLaw (SC) 743 (Para 25). That out of the two case FIR Nos basing the impugned detention order, it is not mentioned or given consideration to the fact that the petitioner-detenu has been discharged in F.I.R No.27/2023, by the court of Ld. Principal Sessions Judge, Kathua vide Order dated 22.08.2024. That the detaining authority undisputedly has not applied its mind to ascertain the facts and assume subjective satisfaction before issuing the impugned detention order. That the mention of a case FIR in the grounds of detention, in which the petitioner had already been discharged, amounts to misrepresentation & suppression of material facts, and shows malafides on part of respondent no. 2. That sponsoring authority did not place the important fact of Discharge of petitioner which could have made a different effect on the subjective satisfaction allegedly assumed by the detaining authority. That the detention order cannot sustain and needs to be quashed. That in F.I.R. No.09/2021 u/s 457/323/1456/34 RPC, the petitioner has been enlarged on bail by JMFC Billawar. That in FIR No. 27/2023 u/s 341/457/354 IPC, the petitioner has been discharged. That the offences under case FIR o. 09 of 2021 by no stretch of legal interpretation or judicial precedent, fall within the ambit of "**Security of the State**" which forms the sole basis for the impugned detention order. That These sections pertain primarily to offences involving property trespass, simple assault, and minor bodily offences, which may at best fall within the domain of "law and order", and not Public Order. That it is a settled legal position that for invoking preventive detention on the ground of "Security

of the State", the activities of the detenu must be of such a grave and serious nature, so as to pose a real threat to the sovereignty, integrity, or to safety of the State. That the invocation of such a serious ground in the absence of any overt act or material to indicate threat to the State machinery is nothing but a colourable exercise of power. That reliance on the FIRs, which bear no nexus with the alleged ground, is legally untenable, and the Detention Order is liable to be quashed on this ground alone. That the constitutional and legal scheme under preventive detention law draws a clear and categorical distinction between "Law and Order", "Public Order", and "security of the State" each representing escalating levels of threat and invoking different thresholds of preventive action. That the *Hon'ble Supreme Court in Dr. Ram Manohar Lohia v. State of Bihar, AIR 1966 SC 740*, has clearly laid down that the acts that disturb '**law and order**' are many times of a much lesser gravity than those which affect '**public order**', and in turn, those that affect 'public order' are of a lesser magnitude than those that threaten '**security of the State**'. That these terms are not to be used loosely or interchangeably. That Six DDR extracts reproduced in the Detention Order, which are dated 07.04.2024, 31.07.2024, 01.08.2024, 12.08.2024, 22.09.2024 and 12.01.2025 respectively contain very vague and ill-informed contents devoid of particulars and genuineness. That all the extracts though variously dated have the same language and not a word here and there and are verbatim of each other. That these Daily Diary Entries are self serving documents prepared by police in quick perpetual succession to increase the

volume of the Dossier. That none of these reports have resulted in any fresh F.I.R. That these reports are non-reliable, vague, filled with non-existent facts and cannot form the basis for curtailment of personal liberty of petitioner. That the copy of detention record as provided to the petitioner is illegible with several pages being half-cut and entirely blackened and, unreadable. That this gross defect in the communication of the grounds of detention has seriously prejudiced the fundamental right of the petitioner to make an effective representation against the said order as guaranteed under Article 22(5) of the Constitution of India. That it is a settled position of law, reiterated in plethora of Judgments that proper and complete communication of the grounds of detention is sine qua non for the continued validity of a preventive detention order. That in the absence of legible and complete copy, the petitioner is deprived of the opportunity to challenge the detention order effectively. That the documents duly supplied to the wife of the petitioner did not contain the total number of pages/leaves, so provided. That further contents of the incomplete documents were not read over and explained to the detenu in his local language understandable by him. That the timeline, in which, the process of sponsoring, approving, ordering, and executing of the Detention Order was carried out, is wholly out of live and proximate link of the Detention Order with alleged activities of petitioner prejudicial to the Security of State. That the last F.I.R. registered against the accused/petitioner was in 2023 and the last DDR is dated 12.01.2025. The Detention Order was passed after 2 years of last

F.I.R. The genuineness of the DDR's is disputed, as they cannot be a ground for detention, being copy paste version of each other. That the execution of the order was carried out on 30.06.2025, i.e. almost a month after the Detention Order was passed. That no reason for the above-mentioned delay is given in any document and moreover, the information letter of the detenu appended with the Order is dated 24.05.2025, but it was however provided to the petitioner on 01.07.2025. That, there is no live and proximate link of the alleged activities of the petitioner with the passing of Detention Order and the timelines are in contravention of essential requirements under detention laws, thereby rendering the order unsustainable in the eyes of law. That the sponsoring authority has annexed with the record a purported statement attributed to Sh. Kishore Kumar, DDC, Badnota, Lohai Malhar, District Kathua, Chowkidar, Panchayat Halqa, Lohai Malhar and Sh. Des Raj, Chowkidar, Panchayat Halqa, Lohai Malhar, bearing their official stamps and signatures, however, the said paras categorically disowned the attributed statement/documents. That this amounts to the malafides on part of respondent no.3, rendering the Detention Order as punitive rather preventive. That the respondent no. 3 has dropped to a places where statements of the local representatives are taken forcibly to frame an innocent social worker and project him as a hardcore facilitator of anti-national activities. That the detenu has been referred to as a Surrendered Militant and OGW, when that is not the case, as he was government employee having completed his service after superannuation. That the action of the authorities involved in

detaining the petitioner is not only patently arbitrary in nature but also an abuse of power and leads to violation of the fundamental rights of petitioner under Articles 14, 21, and 22 of the Constitution of India. That the learned Detaining Authority was under an obligation to furnish translated copies of the FIR and the statements of witnesses to the petitioner/detenu, so as to enable him to understand the same in his local language. That the petitioner/detenu is innocent and has never indulged in any activity prejudicial to the security of the State and the allegations leveled against him in the memo of grounds of detention are totally false. That the petitioner/detenu has never been an Over Ground Worker (OGW) of any banned outfit, nor has he ever carried out any anti-national activity. That the petitioner/detenu has never provided any logistic support to any terrorists or any of their associates. That the grounds relied upon by the learned Detaining Authority are not only obsolete, stale, ambiguous, indefinite and untrue, but also lack in essential details, thus having no nexus with the purpose sought to be achieved under the provisions of PSA. That the petitioner/detenu is the lone bread earner of his family and on account of his continued detention, his family members have been badly suffering for want of maintenance. That the learned Detaining Authority while passing the order impugned, has violated all the procedural safeguards guaranteed under Article 22 (5) of the Constitution of India and the petitioner/detenu has got no other alternate or efficacious remedy available to him, except to file the instant petition before this Court.

- 4) The petition has been resisted by the respondents through the memo of objections on the grounds that same is not maintainable in view of the fact that detention of the petitioner stands ordered in terms of a valid and legal order issued by the learned competent authority in exercise of his powers vested in it u/s 8 of PSA.

That none of the legal, fundamental & statutory rights of the petitioner have been violated by the answering respondent.

That the detention of the petitioner/detenu was ordered after due consideration of the dossier received from Senior Superintendent of Police (SSP) Kathua vide No. Pros/27898- 901/DPOK dated 16-05-2025.

That the petitioner was found continuously and repeatedly involved in anti national activities, thereby posing a persistent threat to security of State.

That the Preventive detention of the petitioner, was necessary to maintain the security of the state.

That the material relied upon, including FIRs, showed a continuous pattern of conduct threatening law and order as such the writ petition is liable to be dismissed.

That the petitioner/detenu is a known facilitator of terrorist activities and has consistently remained involved in formulating strategies aimed at disturbing the public peace and tranquility in the area.

That a grave threat to the security and sovereignty of the State, necessitated the taking of preventive measures.

That having regard to the gravity of the situation and after due and careful application of mind, the petitioner/detenu was detained under the provisions of the PSA.

That the grounds of detention, detention warrant, and all other relevant documents- comprising a total of 65 leaves were duly read over in English and explained to the detenu in Dogri/Urdu language, which he fully understood.

That the petitioner/detenu was informed through this office communication No. DMK/JC/2025-26/480-85 dated 24.05.2025 regarding his detention under the PSA.

That he was also provided a full and fair opportunity to make a representation against the said order to the Government within the stipulated time period.

That the Home Department vide communication No. Home/PB-V/333/2025/(7651581) dated 06.08.2025 intimated the Respondents about the representation received on behalf of the petitioner/detenu, which was found to be without merit.

That the copy of the communication No. Home/PB-V/333/2025/(7651581) dated 06.08.2025 was also endorsed to Superintendent, District Jail Udhampur with the directions to inform the petitioner/detenu regarding the disposal of his representation.

That the Superintendent, District Jail Udhampur vide his office letter No. DJU/MS/25/8437-40 dated 10.08.2025 has informed the petitioner/detenu as also to Sh. Johan Mohd (son of detenu) regarding disposal of representation filed by him before the Respondents.

That as per the dossier received from the Senior Superintendent of Police, Kathua, vide No. Pros/27898- 901/DPOK dated 16.05.2025, and considering the continuous and repeated involvement of the petitioner/ detenu in Anti- National activities, his detention was ordered.

That the petitioner/detenu was detained under the provisions of the PSA, in order to maintain public peace and tranquility in the region.

That the petitioner is known to have a criminal mindset and is reportedly involved in several anti-national activities.

That the petitioner's persistent unlawful conduct and criminal inclination, had become a challenge for prevention of the same, from being escalated.

That the details of FIR's/cases registered against petitioner/detenu are as follows:-

- | | | | | | | | | |
|----|-----|-----|---------|-----|----------------|-----|-----|--------|
| a) | FIR | No. | 09/2021 | U/S | 457/323/456/34 | RPC | P/S | Malhar |
| b) | FIR | No. | 27/2023 | U/S | 341/376/354-D | IPC | P/S | Malhar |

That apart from the FIRs, the information regarding the involvement of subject in Anti-National activities preventive measures were also taken against him which are as under:-

- a) Preventive measures DDR u/s 107 Cr.P.C of P/S Malhar dated 07.04.2024
- b) Preventive measures DDR u/s 126 BNSS of P/S Malhar dated 31.07.2024
- c) Preventive measures DDR u/s 126 BNSS of P/S Malhar dated 01.08.2024
- d) Preventive measures DDR u/s 126 BNSS of P/S Malhar dated 12.08.2024
- e) Preventive measures DDR u/s 126 BNSS of P/S Malhar dated 22.09.2024
- f) Preventive measures DDR u/s 126 BNSS of P/S Malhar dated 12.01.2025.

That there exists a clear and consistent pattern of anti-national activities carried out by the subject.

That there is little or no likelihood of the subject being dissuaded from engaging in such illegal, anti- social, and anti-national behaviour.

That the subject has been actively involved in terrorist-related activities and has been responsible for creating serious law and order problems.

That the subject, while repeatedly evading the process of law, has now started functioning as an Over Ground Worker (OGW) for a terrorist organization.

That the petitioner/detenu is a known facilitator of terrorist activities and has consistently remained involved in formulating

strategies aimed at disturbing the public peace and tranquility in District Kathua.

That the activities of the petitioner pose a grave threat to the security and sovereignty of the State, which necessitated preventive measures. It is further submitted that the Hon'ble Supreme Court in case *State of T.N. v. Nabila*, (2015) 12 SCC 127 has held that:

"...The power of preventive detention is qualitatively different from punitive detention. The power of preventive detention is a precautionary power exercised in reasonable anticipation. It may or may not relate to an offence. It is not a parallel proceeding. It does not overlap with prosecution even if it relies on certain facts for which prosecution may be launched or may have been launched. An order of preventive detention may be, made before or during prosecution. An order of preventive detention may be made with or without prosecution and in anticipation or after discharge or even acquittal. The pendency of prosecution is no bar to an order of preventive detention. An order of preventive detention is also not a bar to prosecution".

That the action taken against the petitioner/detenu in the past under substantive laws has not proved fruitful in deterring him from indulging in Anti National activities.

That the law laid down by the Hon'ble Supreme Court in *Haradhan Saha v. State of W.B.* (1975) 3 SCC 198 at Paragraphs 32 and 33 of the judgment being relevant herein is reproduced hereunder:

"32. The power of preventive detention is qualitatively different from punitive detention. The power of preventive detention is a precautionary power exercised in reasonable anticipation. It may or may not relate to an offence. It is not a parallel proceeding. It does not overlap with prosecution even if it relies on certain facts for which prosecution may be launched or may have been launched. An order of preventive detention, may be made before or during prosecution. An order of preventive detention may be made with or without prosecution and in anticipation or after discharge or even acquittal. The pendency of prosecution is no bar to an order of

preventive detention. An order of preventive detention is also not a bar to prosecution.

33. Article 14 is inapplicable because preventive detention and prosecution are not synonymous. The purposes are different. The authorities are different. The nature of proceedings is different. In a prosecution an accused is sought to be punished for a past act. In preventive detention, the past act is merely the material for inference about the future course of probable conduct on the part of the detenu."

That the Hon'ble Supreme Court in case *Sunil Fulchand Shah v. Union of India*, (2000) 3 SCC 409, held as under:

"...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. However, where individual liberty comes into conflict with an 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."

That the Hon'ble Supreme Court has also held that there is no parallel between prosecution in a Court of law and a detention order under the Public Safety Act. One is a punitive action and the other is a preventive act. In one, case a person is punished to prove his guilt and the standard is proof beyond reasonable doubt whereas in preventive detention a man is prevented from doing something which it is necessary for reasons mentioned in the Act. The relevant part of the judgment is reproduced as under:-

"The essential concept of preventive detention is that the detention of a person is not to punish him for something he has done but to prevent him from doing it. The basis of detention is the satisfaction of the executive of a reasonable probability of the likelihood of the detenu acting in a manner similar to his past acts and preventing him by detention from doing the same. A criminal conviction on the other hand is for an act already done which can only be possible by a trial and legal evidence. There is no

parallel between prosecution in a Court of law and a detention order under the Act. One is a punitive action and the other is a preventive act. In one, case a person is punished to prove his guilt and the standard is proof beyond reasonable doubt whereas in preventive detention a man is prevented from doing something which it is necessary for reasons mentioned in section 3 of the Act to prevent."

5) I have heard the learned counsel for the petitioner Mr.Ajay Gandotra Sr. Advocate and Mr. Suneel Malhotra, learned GA., for the respondents.

6) Learned counsel for the petitioner while reiterating his stand taken by him as per the averments of the petition, contended that the petitioner/*detenu* is innocent and has never been involved in the alleged activities. That the petitioner/*detenu* has never been an OGW of any banned outfit and he has also never provided any support or assistance to any terrorist(s) as alleged. He contended that the petitioner/*detenu* was taken from his home and involved in case FIR No. 09/2021 by the Police Station, Malhar. That the learned Trial Court granted him bail in the said case FIR, whereafter he was instead of releasing detained under the garb of the impugned detention order dated 24.05.2025. That the same case FIR bearing No. 09/2021 registered with Police Station, Malhar, in which the petitioner/*detenu* was released on bail by the competent Trial Court, has been made the main basis for passing of the impugned detention order. He further contended that the case FIR No. 09/2021 was investigated for the commission of the alleged offences punishable under Section 457/323/456/34 RPC and the final police report/charge sheet was also produced by the

police concerned before the competent Trial Court, in which the petitioner/*detenu* was enlarged on bail. The learned counsel for the petitioner further contended that since offence under Sections 457/323/456/34 RPC Act fall under “**law and order regime**” and not “Security of State”, as such, it is understood that the competent Trial Court granted the concession of bail to the petitioner/*detenu* for the said offence upon his satisfaction to the effect that accusation against him is not *prima facie* true.

The learned counsel further contended that there appears to be no live link or proximity between the alleged act of the petitioner/*detenu* leading to the registration of last case last FIR 27/2023 with the PS Malhar, as he stands already discharged in the same. The learned counsel also contended that the charge against the petitioner/*detenu* as per case FIR No. 09/2021 of PS Malhar, is totally baseless and fabricated, as no objectionable material has been recovered from him which fact is clear from the evidence recorded at the trial of the said case FIR, pending disposal before the learned Trial Court.

The learned counsel for the petitioner/*detenu* also contended that the procedural guarantees under Article 22 (5) and Section 13 of the PSA were observed in breach as the copies of FIR and the statements of witnesses recorded during the investigation of the case as well as the grounds of detention, were not furnished to the petitioner/*detenu* in time, thus disabling him to make an earliest representation against his detention. He also argued that while the criminal case was pending trial against

the petitioner/*detenu*, there was no justification for his preventive detention in parallel and the respondents even if aggrieved, could have assailed the bail order, which has not been done.

The learned counsel in support is his arguments, placed reliance on the judgments of this Court passed in **“Bashir Ahmad Dar vs Union Territory of J&K and Anr, WP(Crl) No. 06/2021 decided on 15th July, 2022; Imtiyaz Ahmad Chikla vs Union Territory of J&K and Anr, WP(Crl) No. 150/2021, decided on 18th July, 2022; and Sajjid Zahoor Khan vs Union Territory of J&K and Anr, WP(Crl) No. 35/2023, decided on 25th August, 2023.”**

The learned counsel for the petitioner prayed for setting aside of the impugned order of detention and release of the petitioner/*detenu*.

7) *The* learned counsel representing for the respondents Mr. Suneel Malhotra Id GA, also reiterated his stand taken in the reply affidavit. He contended that the detention order impugned in the petition does not suffer from any illegality or perversity, as the same was passed by the learned Detaining Authority in exercise of its powers vested in it, in terms of the provisions of Section 8 (1) (a) (i) of the PSA, upon his due application of mind, having regard to the conduct of the petitioner/*detenu* and his apprehension of repeating the commission of unlawful activities. He submitted that the object of the preventive detention is to prevent an individual from committing any illegal activity prejudicial to the security of the State or the maintenance of the

social order and not to punish him. He further contended that the preventive detention is not the parallel proceeding of a trial, which is held by a court and is concluded on the basis of the evidence. He further contended that the petitioner/*detenu* was working as an upper ground worker of banned outfits, who was carrying out anti-national activities including transportation of terrorists and providing shelter to them. It was also contended by the learned GA that the learned Advisory Board constituted under Section 14 of the PSA on reference, examined the case against the petitioner/*detenu* and made its opinion in favour of the detention order. That the preventive detention of the petitioner/*detenu* was felt to be imperative, with a view to prevent him from acting in any manner prejudicial to the security of the State.

He further contended that the procedural formalities as mandated under Article 22(5) of the PSA were complied with by furnishing to the petitioner/*detenu* copies of detention order and the grounds of detention immediately upon his arrest and the grounds of detention were read over and explained to him in his local language. He contended that even the grant of bail in criminal offence cannot debar the Detaining Authority to order the preventive detention of an individual, which appears to be imperative and unavoidable. He also contended that the preventive detention is aimed at to protect the society and that there is immediate and direct link between the petitioner/*detenu*'s past conduct and likelihood of his repetition of the same.

The learned UT counsel while placing reliance on the authoritative judgments of the Hon'ble Apex Court cited as ***“Hardhan Saha vs State of West Bengal (1975) 3 SCC 198; State of Bombay v. Atma Ram Shridhar Vaidya, AIR 1951 SC 157; .”***submitted that it has been observed in the said cases that, *there is no parallel between the prosecution in a court of law and a detention order under the PSA. That one is punitive action and the other is preventive act. That in one case, a person is punished to prove his guilt and the standard is proof beyond reasonable doubt, whereas in preventive detention, a man is prevented from doing something, which it is necessary for the reasons mentioned in the Act, to prevent.*

On the strength of the reliance placed on the above referred judgments, the learned UT counsel contended that it has been held in the cited judgments that preventive detention is devised to afford protection to the society. That Court must be conscious that the satisfaction of the Detaining Authority is “subjective” in nature and the court cannot substitute its opinion for the subjective satisfaction of the Detaining Authority and interfere with the order of detention. That it was also held in one of the relied upon cases that, **“however, where an individual’s liberty comes in conflict with the interests 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.”**That there is a direct and immediate link between the petitioner/detenu’s past conduct and his apprehended future

activities. That the collective assessment of the grounds of detention has led the learned Detaining Authority to reach subjective satisfaction for placing the petitioner/*detenu* under the preventive detention. That the petitioner/*detenu* indulged in various anti-national activities, which facilitated the strengthening of the network of OGW workers on ground. That the activities in which the petitioner/*detenu* has indulged, are highly objectionable and prejudicial, which are adversely affecting the peace and tranquility in the society. That the petitioner/*detenu* was found in close touch with the terrorists of different organizations for the purpose of carrying out subversive activities. That the petitioner/*detenu* was working as OGW of banned outfit and, as such, his preventive detention was imperative. That he is involved in the case FIR No. 09/2021 under Section 457/323/456/34 RPC of Police Station Malhar. That the details of the illegal activities of the petitioner/*detenu* are delineated in the grounds of detention as also in the dossier. That the learned Advisory Board constituted under Section 14 of the PSA upon examination of the case of the petitioner/*detenu*, accorded approval as per its opinion on reference.

8) I have perused the instant petition, reply affidavit filed by the respondents and the copies of documents enclosed with the same. I have also gone through the copy of the detention record produced by the learned counsel for the respondents. It appears from the perusal of the record that admittedly the registration of case FIR No. 09/2021 under Sections 457, 323, 456, 34 RPC in P/S

Malhar is the main basis for issuance of the impugned detention order by the respondents, in addition to the other allegations/inputs against the petitioner/detenu regarding his involvement in the commission of unlawful activities.

9) It was contended by the learned counsel for the petitioner/detenu that the petitioner/detenu was bailed out in the case FIR No. 09/2021 of PS Malhar U/Ss 457/323/456/34 RPC in P/S Malhar, only after the competent Trial Court was convinced in the light of the evidence that the allegations/charge against the petitioner/detenu does not seem to be *prima facie* true. The learned counsel for the petitioner contended that the petitioner/detenu stands already discharged in case FIR N. 27/2023 of Police Station Malhar by the trial court of Ld Principal District & Sessions Judge, Kathua vide his order dated 22.08.2024 passed on the said criminal case. The petitioner/detenu has placed on record a copy of the said order dated 22.08.2024 as annexure-III to the petition.

10) It is thus, clear that petitioner/detenu stood already discharged in the aforesaid case FIR 27/2023 at Police Station Malhar at the time of passing of the detention, when the same case FIR constitutes a main basis of the passing of the detention order.

11) So far as case FIR No. 09/2021 of Police Station Malhar is concerned, the offences alleged therein fall within the ambit of ordinary criminal law infractions. There is no offence under the said FIR which constitutes an offence against the security of the State.

12) The DD Reports dated 07.04.25, 31.07.25, 01.08.24, 12.08.24, 22.08.24 and 12.01.25 cannot justify the preventive detention against the detenu. The contents of the said DD Reports pertain to some allegations without being backed by formal complaints or proceeded by formal registration of case FIRs cannot justify the preventive detention of the detenu. It is well settled that the preventive detention cannot be based on the DD Reports being unverified. The perusal of the said DDRs also reveals that as admittedly contended by the learned counsel for the petitioner, they are the true copies of each other having the same phraseology.

13) In the opinion of this Court, there appears to be no proximate or live link between the allegations leading to the registration of case FIR No. 09/2021 of PS Malhar and need for issuance of the impugned detention order, maintaining a gap of more than four years. The impugned detention order on this account, appears to be suffering from illegality. This Court feels fortified in its opinion by the authoritative judgment of the Hon'ble Supreme Court reported in ***“Rajinder Arora Vs. Union of India and others” AIR 2006 (4) SCC 796, decided on 10.03.2006***”. The relevant paras of the judgment are reproduced as hereunder:-

“The conspectus of the above decisions can be summarized thus: The question whether the prejudicial activities of a person necessitating to pass an order of detention is proximate to the time when the order is made or the live link between the prejudicial activities and the purpose of detention is snapped depends on the facts and circumstances of each case. No hard and fast

rule can be precisely formulated that would be applicable under all circumstances and no exhaustive guidelines can be laid down in that behalf. It follows that the test of proximity is not a rigid or mechanical test by merely counting number of months between the offending acts and the order of detention. However, when there is undue and long delay between the prejudicial activities and the passing of detention order, the court has to scrutinize whether the detaining authority has satisfactorily examined such a delay and afforded a tenable and reasonable explanation as to why such a delay has occasioned, when called upon to answer and further the court has to investigate whether the causal connection has been broken in the circumstances of each case.

Similarly when there is unsatisfactory and unexplained delay between the date of order of detention and the date of securing the arrest of the detenu, such a delay would throw considerable doubt on the genuineness of the subjective satisfaction of the detaining authority leading to a legitimate inference that the detaining authority was not really and genuinely satisfied as regards the necessity for detaining the detenu with a view to preventing him from acting in a prejudicial manner.”

14) The learned Detaining Authority has not addressed the aspect as to how normal criminal law is inadequate to deal with the petitioner/detenu. The petitioner/detenu was admitted to bail by the competent Trial Court with strict conditions appended to the bail order. Said conditions seem to be sufficient to regulate and keep a surveillance on the activities of the petitioner/detenu. It is not the case of the learned Detaining Authority that the bail order was assailed before any competent forum and prayer of the UT for cancellation of the bail was not allowed. It is also not the case of the respondents that the petitioner/detenu immediately after his release in the case FIR No. 09/2021 of PS Malhar pursuant to the bail order granted by the Judicial Magistrate Billawar, indulged in any illegal activity, with any specific

allegation. On this account also, the issuance of the impugned detention order was not unavoidable.

- 15) In ***“Rekha Vs. State of Tamil Nadu, (2011) 5 SCC 244”***, the observations made by the Hon’ble Apex Court at Paras 21, 29 & 30 deserve a needful mention

“21. It is all very well to say that preventive detention is preventive not punitive. The truth of the matter, though, is that in substance a detention order of one year (or any other period) is a punishment of one year’s imprisonment. What difference is it to the detenu whether his imprisonment is called preventive or punitive?”

29. Preventive detention is, by nature, repugnant to democratic ideas and an anathema to the Rule of law. No such law exists in the USA and in England (except during war time). Since, however, Article 22(3)(b) of the Constitution of India permits preventive detention, we cannot hold it illegal but we must confine the power of preventive detention within very narrow limits, otherwise we will be taking away the great right to liberty guaranteed by Article 21 of the Constitution of India which was won after long, arduous and historic struggles. It follows, therefore, that if the ordinary law of the land (the Penal Code and other penal statutes) can deal with a situation, recourse to a preventive detention law will be illegal.”

“30. Whenever an order under a preventive detention law is challenged one of the questions the court must ask in deciding its legality is: was the ordinary law of the land sufficient to deal with the situation? If the answer is in the affirmative, the detention order will be illegal. In the present case, the charge against the detenu was of selling expired drugs after changing their labels. Surely the relevant provisions in the Penal Code and the Drugs and Cosmetics Act were sufficient to deal with this situation. Hence, in our opinion, for this reason also the detention order in question was illegal.”

- 16) In ***“Vijay Narain Singh Vs. State of Bihar, (1984) 3 SCC 14”***, the Hon’ble Apex Court has held at Para 32 of the judgment

through Hon'ble E.S.Venkataramiah, J. (as the Chief Justice then was)
as under:-

“32....It is well settled that the law of preventive detention is a hard law and therefore it should be strictly construed. Care should be taken that the liberty of a person is not jeopardized unless his case falls squarely within the four corners of the relevant law. The law of preventive detention should not be used merely to clip the wings of an Accused who is involved in a criminal prosecution. It is not intended for the purpose of keeping a man under detention when under ordinary criminal law it may not be possible to resist the issue of orders of bail, unless the material available is such as would satisfy the requirements of the legal provisions authorizing such detention. When a person is enlarged on bail by a competent criminal court, great caution should be exercised in scrutinizing 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.”

17) In “*A.K.Roy Vs. Union of India, (1982) 1 SCC 271*” it was held at Para 70 of the judgment as under:-

“70. *** We have the authority of the decisions in ... for saying that the fundamental rights conferred by the different articles of Part III of the Constitution are not mutually exclusive and that therefore, a law of preventive detention which falls within Article 22 must also meet the requirements of Articles 14, 19 and 21.”

18) This Court is also in full agreement with the authoritative law relied upon by counsel for the respondents Mr. Suneel to the effect that the object of the preventive detention of an individual is preventive in nature and not punitive. Admittedly, the preventive detention cannot be supposed to be a parallel proceeding. The object of the preventive detention is to deter a person in advance from indulging in any anti-national or anti-social activities prejudicial to the security of the State and/or interests of the society. Admittedly, where an individual liberty

and the right of the entire society to a peaceful life are pitted together, the individual liberty has to give way to the social interest or the interest of the State, as the case may be. However, as hereinbefore mentioned, there does not appear to be a live link between the alleged acts, resulting in the registration of case FIR No. 09/2021 with Police Station Malhar and the need for issuance of the impugned detention, order with a gap of more than four years. It is also not the case of the respondents that the petitioner/detenu upon his release pursuant to the bail order, repeated the alleged unlawful activities.

19) The DD Reports finding the place in the grounds of detention as a basis for the impugned detention order cannot be relied upon as being unverified and without being proceeded by the formal registration of case FIRs.

20) It is very needful to mention that the offences in the case FIR 09/2021 of Police Station Malhar do not cover any allegations of activities prejudicial to the security of the State.

21) The petitioner had already been discharged in the another case FIR before passing of the impugned detention order. The mention of the same in the grounds of the detention as a strong basis reflects the non-application of the mind on the part of the learned detaining authority.

22) The petitioner/detenu is reported to be a man of advanced age suffering from various age related ailments.

23) The preventive detention needs to be passed with great care and caution keeping in mind that a citizens most valuable and inherent

human right is being curtailed. The arrests in general and the preventive detentions in particular are an exception to the most cherished fundamental right guaranteed under Article 21 of the Constitution of India. The preventive detentions are made on the basis of subjective satisfaction of the detaining authority in relation to an apprehended conduct of the detenu by considering his past activities without being backed by an immediate complaint as in the case of the registration of the FIR and, as such, is a valuable trust in the hands of the trustees. The provisions of Clauses (1) and (2) of Article 22 of our Constitution are not applicable in the case of preventive detentions. So, the provisions of Clause (5) of the Article 22 of our Constitution, with just exception as mentioned in Clause (6), together with the relevant provisions of the Section 8 of PSA requiring for application of mind, subjective satisfaction, inevitability of the detention order, proper and prompt communication of the grounds of detention and the information of liberty to make a representation against the detention order, are the imperative and inevitable conditions rather mandatory requirements for passing of a detention order.

24) In ***“Vijay Narain Singh Vs. State of Bihar, (1984) 3 SCC 14”***, the Hon’ble Apex Court has held at Para 32 of the judgments as under:-

“32. It is well settled that the law of preventive detention is a hard law and therefore it should be strictly construed. Care should be taken that the liberty of a person is not jeopardized unless his case falls squarely within the four corners of the relevant law. The law of preventive detention should not be used merely to clip the wings of an Accused who is involved in a criminal prosecution. It is not intended for the purpose of keeping a man under detention when under ordinary criminal law it may not be possible to resist the issue of orders of

bail, unless the material available is such as would satisfy the requirements of the legal provisions authorizing such detention. When a person is enlarged on bail by a competent criminal court, great caution should be exercised in scrutinizing 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.”

25) For the foregoing discussion, this Court is of the opinion that it may meet the ends of justice in case the impugned detention order bearing No. PSA/161 24.05.25, issued by the respondent No. 2, is set aside and the petitioner/*detenu* is ordered to be released from his preventive detention under the aforesaid order.

26) **It is accordingly ordered.**

27) Copy of this order be immediately forwarded to the Respondents 2 to 4 for compliance.

28) Copy of the detention record is ordered to be returned to the learned G A, concerned.

29) ***Disposed*** of.

(MOHD. YOUSUF WANI)
JUDGE

SRINAGAR:

28.04.2026

“Ayaz”

- i) Whether the Judgment is reportable in law books/journals: ? **No.**
- ii) Whether judgment is reportable in Media(Print/Electronic) ? **No.**