

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

HCP No. 133/2025

Reserved on: 16.07.2026

Pronounced on: 20.07.2026

Uploaded on: 20.07.2026

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

**Mohd. Qasim,
S/O Late Talib Hussain,
At present Central Jail, Jammu,**

...Petitioner(s)

**Through brother Jamat Ali.
S/O Late Talib Hussain,
R/O Gondha, Tehsil Khwas,
District Rajouri.**

Through: Mr. Sanchit Verma, Advocate.

Vs.

- 1. UT of Jammu & Kashmir through
Commissioner/Secretary (Home),
Civil Secretariat, Jammu/Srinagar.**
- 2. District Magistrate, Rajouri.**
- 3. Senior Superintendent of Police, Rajouri.**
- 4. Superintendent, Central Jail, Jammu.**

Respondent(s)

Through: Mr. Dewakar Sharma, Dy. AG

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

JUDGMENT

- 01.** Through the medium of this Habeas Corpus Petition, filed through his brother Jamat Ali, the petitioner-Mohd. Qasim (hereinafter called '**detenue**') seeks quashment of Order No. DMR/PSA/04 of 2025 dated 17.05.2025 (hereinafter called '**detention order**') passed by the

respondent No. 2-District Magistrate, Rajouri (hereinafter called '**detaining authority**') whereby and whereunder in terms of Section 8 of the Jammu and Kashmir Public Safety Act (for short, PSA), he had been ordered to be detained under preventive detention.

02. The impugned detention order has been challenged mainly on the grounds, firstly that there is no proximate link between the prejudicial activities and the detention order, secondly that the detainee has already been enlarged on bail in the case mentioned in the grounds of detention, thirdly that the detainee has not been informed about his right to make effective representation to the Government as well as to the detaining authority.

03. Pursuant to notice, the respondent No. 2 has filed the counter affidavit, asserting therein that the detention order was passed after careful consideration of the dossier submitted by the Sr. Superintendent of Police, Rajouri; that the detaining authority applied its mind to the material facts and arrived at a subjective satisfaction that the detainee's activities were prejudicial to the security of the State; that mere grant of bail in any earlier case does not, in any manner, dilute or negate the detainee's continuous involvement in activities prejudicial to the security of the State; that all the relevant documents have been provided to the detainee and he has

also been informed about his right to make a representation to the Government as well as to the detaining authority. Lastly, he has argued that the impugned detention order be upheld and the petition filed by the detainee, being devoid of any merit and substance, be rejected.

- 04.** Heard learned counsel for the parties, perused the detention record and considered.
- 05.** Detenue was ordered to be detained in preventive custody vide impugned order, conveyed to him vide communication dated 17.05.2025, informing him that he can make a representation against the detention order to the Government, if he so desired.
- 06.** The impugned detention order was passed by District Magistrate to prevent the detainee from the anti-social activities, highly prejudicial to the maintenance of security of the State, while making reference to his earlier involvement, for commission of offence under Section 212 of IPC in a case registered at Police Station, Budhal vide FIR No. 87/2023, with the accusation that he was found to have provided shelter to the terrorists, who had fired upon a Police party, and in the encounter, an unknown terrorist was killed on 06.08.2023 and that he was on the rolls of OGWs of Police Station, Manjakote.

Besides, five DDRs dated 25.04.2024, 11.09.2024, 27.11.2024, 23.12.2024 & 10.04.2025, recorded at Police Station, Budhal revealing that the detainee was working as OGW for terrorists, providing them all sorts of logistic support and shelter.

07. So far as the first ground of challenge that the detention order in question was based on stale reference of FIR of 2023 is concerned, the detaining authority ought to have considered this aspect of the matter while passing the impugned detention order inasmuch as the detainee's involvement has been shown in the said FIR, which ex facie shows that this FIR, by all stretch of reference, is too remote to be a live link to consider a case of preventive detention of a person to be passed in the year 2025, and is stale reference to have any nexus with the grounds of detention forming basis for subjecting the detainee to preventive detention custody.

08. In the case of "*Sama Aruna Vs State of Telangana & Ors.,*" **reported in (2018) 12 SCC 150** against a detention order dated 23.11.2016 upheld by the High Court, the Hon'ble Supreme Court of India in an appeal came to consider the relevance of 9 to 14 years' old incidents resulting in FIRs, through a grossly belated order of detention. Paragraphs No. 16 & 17, being relevant are extracted as under:-

“16. Obviously, therefore, the power to detain, under the Act of 1986, can be exercised only for preventing a person from engaging in, or pursuing or taking some action which adversely affects or is likely to affect adversely the maintenance of public order; or for preventing him from making preparations for engaging in such activities. There is little doubt that the conduct or activities of the detenu in the past must be taken into account for coming to the conclusion that he is going to engage in or make preparations for engaging in such activities, for many such persons follow a pattern of criminal activities. But the question is how far back? There is no doubt that only activities so far back can be considered as furnish a cause for preventive detention in the present. That is, only those activities so far back in the past which lead to the conclusion that he is likely to engage in or prepare to engage in such activities in the immediate future can be taken into account. In *Golam Hussain alias Gama v. Commissioner of Police, Calcutta and Ors.* (1974)4 SCC 530, this Court observed as follows:

“5. No authority, acting rationally, can be satisfied, subjectively or otherwise, of future mischief merely because long ago the detenu had done something evil. To Rule otherwise is to sanction a simulacrum of a statutory requirement. But no mechanical test by counting the months of the interval is sound. It all depends on the nature of the acts relied on, grave and determined or less serious and corrigible, on the length of the gap, short or long, on the reason for the delay in taking preventive action, like information of participation being available only in the course of an investigation. We have to investigate whether the causal connection has been broken in the circumstances of each case.

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Suffice it to say that in any case, incidents which are said to have taken place nine to fourteen years earlier, cannot form the basis for being satisfied in the present that the detenu is going to engage in, or make preparation for engaging in such activities.

17. We are, therefore, satisfied that the aforesaid detention order was passed on grounds which are stale and which could not have been considered as relevant for arriving at the subjective satisfaction that the detenu must be detained. The detention order must be based on a reasonable prognosis of the future behavior of a person based on his past conduct in light of the surrounding circumstances. The live and proximate link that must exist between the past conduct of a person and the imperative need to detain him must be taken to have been snapped in this case. ***A detention order which is founded on stale incidents, must be regarded as an order of punishment for a crime, passed without a trial, though purporting to be an order of preventive detention. 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. See G. Reddeiah v. Government of Andhra Pradesh and Anr. (2012) 2 SCC 389, and P.U. Iqbal v. Union of India and Ors. (1992) 1 SCC 434.”

In the case of “*Khaja Bilal Ahmed Vs State of Telangana & Ors.*,” **(2020) 13 SCC 632** the Hon’ble Supreme Court of India again came up dealing with the case of preventive detention based upon stale grounds. In this case, the Hon’ble Supreme Court of India making reference to its judgment in the case of ***Sama Aruna Vs State of Telangana & Ors.*** (*supra*), held in paragraph No. 23, which is beneficially extracted as follows:-

“.....The satisfaction to be arrived at by the detaining authority must not be based on irrelevant or invalid grounds. It must be arrived at on the basis of relevant material; material which is not stale and has a live link with the satisfaction of the detaining authority. The order of detention may refer to the previous criminal antecedents only if they have a direct nexus or link with the immediate need to detain an individual. If the previous criminal activities of the appellant could indicate his tendency or inclination to act in a manner prejudicial to the maintenance of public order, then it may have a bearing on the subjective satisfaction of the detaining authority. However, in the absence of a clear indication of a causal connection, a mere reference to the pending criminal cases cannot account for the requirements of Section 3. It is not open to the detaining authority to simply refer to stale incidents and hold them as the basis of an order of detention. Such stale material will have no bearing on the probability of the detenu engaging in prejudicial activities in the future.”

- 09.** Second ground of challenge is that the detenu has already been enlarged on bail in the case mentioned in

the grounds of detention at the time of issuance of impugned detention order. The fact that the detainee had already been enlarged on bail in the case relied upon in the grounds of detention does not justify preventive detention. Preventive detention cannot be used as a substitute for the ordinary criminal law or to nullify a judicial order granting bail. Once a competent criminal court has enlarged the detainee on bail, the detaining authority was required to demonstrate, on the basis of cogent and fresh material, that despite the bail order there existed a real and imminent possibility of the detainee engaging in activities prejudicial to public order, necessitating preventive detention. In the absence of such compelling reasons, the detention order cannot be sustained in law and deserves to be quashed and set aside.

- 10.** So far as third ground of challenge that the detainee has not been informed about his right to make effective representation to the Government as well as to the detaining authority, it is established from the perusal of record that detaining authority has not mentioned either in the detention order or in the grounds of detention about the right of the detainee to make a representation to the detaining authority. The detaining authority, as noticed earlier had informed detainee that he may make

representation to the Government, but omitted to inform that such a representation can be made to the detaining authority, in communication dated 17.05.2025 addressed to the detainee. The same constitutes a violation of Article 22(5) of the Constitution. The constitutional guarantee of making a representation is meaningful only when the detainee is clearly informed of the authorities before whom such representation can be made and the earliest opportunity to exercise that right. Non-communication of this valuable constitutional right deprives the detainee of an effective opportunity to challenge the detention at the earliest stage, thereby vitiating the detention order. Since the procedural safeguards governing preventive detention are mandatory and must be strictly complied with, such omission vitiates the detention order illegal and liable to be set aside.

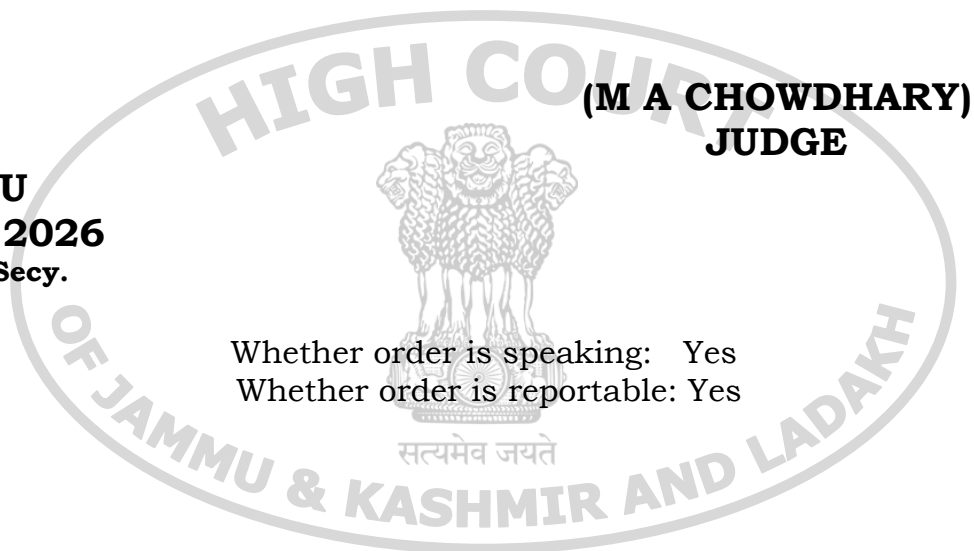
- 11.** On perusal of the grounds of detention, it reveals that the detaining authority has passed the order, without application of mind, stating that detainee was on OGW roll of P/S Manjakote, there being no supporting material and the DDRs recorded at P/S, Budhal also do not indicate any specific prejudicial activity attributed to the detainee, except general and vague assertions, against which even no representation could be made. The only case registered vide an FIR in the year 2023, as

discussed earlier was also remote in time to base impugned detention order.

12. As a sequel to the aforementioned discussion and observations made hereinabove, the present petition is **allowed**. Consequently, impugned detention order is quashed. The detenue is directed to be released forthwith if not required in any other case(s). The detention record be returned to the learned counsel for the respondents.

13. Disposed of accordingly.

JAMMU
20.07.2026
Naresh/Secy.



Whether order is speaking: Yes
Whether order is reportable: Yes