

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

HCP No. 143/2025

Mohd. Saleem

.....Petitioner(s)

Through: Mr. Sanchit Verma, Advocate.

Vs

UT of J&K & Ors.

.....Respondent(s)

Through: Mr. Suneel Malhotra, GA.

Coram: HON'BLE MR. JUSTICE RAHUL BHARTI, JUDGE

ORDER
(09.04.2026)

1. Heard Mr. Sanchit Verma, learned counsel for the petitioner and Mr. Suneel Malhotra, learned Government Advocate for the respondents.
2. Perused the respective side pleadings and the documents accompanying therewith and also the detention record produced from the end of Mr. Suneel Malhotra, learned Government Advocate.
3. The petitioner, acting through his son, came to petition this Court on **07.10.2025** thereby seeking issuance of a writ of habeas corpus for quashment of preventive detention custody slapped upon him under Jammu and Kashmir Public Safety Act (PSA), 1978 by respondent No. 2-District Magistrate, Kathua.
4. The petitioner came to be taken into preventive detention custody on **21.03.2025**.
5. The Senior Superintendent of Police (SSP), Kathua, by virtue of a letter No. Prose/25/12226-29/DPOK dated 28.02.2025, had submitted a dossier to the respondent No. 2-District Magistrate,

Kathua thereby reporting the purported state of activities of the petitioner which were reckoned by the District Police to be prejudicial to the security of the State, particularly, in the District Kathua which warranted preventive detention of the petitioner in order to prevent him from carrying forward his alleged state of activities.

6. In said dossier, the Senior Superintendent of Police (SSP), Kathua referred to the petitioner being a person involved in anti-social/anti-national activities having links with anti-national activities and agencies rendering him a great sympathizer of banned terrorist organizations to the extent of providing all possible help like transportation, internet, food and shelter and in the process becoming an over ground worker of unnamed terrorist organization.

7. Insofar as, actual adverse antecedents of the petitioner are concerned, the dossier refers to proceedings undertaken against the petitioner under section 126 of the Bharatiya Nagarik Suraksha Sanhita (BNSS), 2023 on three occasions being reproduced as under:

S. No.	Preventive Action	Name of Police Station	Istghasa No/date
1	U/S 126 BNSS	Malhar	Istghasa No. 10/6-10 produced in the EMIC Lohai Malhar on 25.11.2024
2	U/S 126 BNSS	Malhar	Istghasa No. 02/6-10 produced in the EMIC Lohai 02.01.2025
3	U/S 126 BNSS	Malhar	Istghasa No. 04/6-10 produced in the EMIC Lohai Malhar on 05.01.2025

8. In addition, the Daily Dairy Report (DDR) of **31.12.2024** and **10.01.2025** of the Police Station, Malhar formulated the basis for the Senior Superintendent of Police (SSP), Kathua to reckon the petitioner amenable to suffer preventive detention custody under Jammu and Kashmir Public Safety Act (PSA), 1978.

9. In addition, the Senior Superintendent of Police (SSP), Kathua has also made a purported reference to statements of four persons who are said to have come forward before the SHO Police Station, Malhar to serve a statement all recorded on **01.02.2025** thereby impressing upon the District Police to frame a dossier against the petitioner.

10. Acting upon said dossier, the respondent No. 2-District Magistrate, Kathua purportedly drew subjective satisfaction by formulating grounds of detention on the basis whereof felt persuaded to order preventive detention of the petitioner which resulted in passing of the detention order No. **PSA/148** dated **13.03.2025** thereby holding that the petitioner's remaining at large involves a greater risk to the security of the State rendering it necessary to detain him on the basis of grounds in support of the detention order.

11. The grounds of detention as formulated by him had led the respondent No. 2-District Magistrate, Kathua to come to the conclusion that after careful consideration of the dossier and all relevant materials as submitted it stands determined that preventive

detention of the petitioner under Jammu and Kashmir Public Safety Act (PSA), 1978 is imperative to prevent him from continuing his criminal/anti national activities and, thus, ordering his detention and confinement in the Central Jail, Kot Bhalwal, Jammu.

12. The petitioner, thus, came to be taken into preventive detention custody on **21.03.2025** when the preventive detention warrant came to be executed.

13. The approval to the preventive detention order so passed by the respondent No. 2-District Magistrate, Kathua came to be accorded by the Home Department, Government of UT of J&K vide Government Order No. **Home/PB-V/496 of 2025** dated **20.03.2025** and the case was forwarded for the opinion of the Advisory Board under the Jammu and Kashmir Public Safety Act (PSA), 1978 which came to be tendered on file No. **Home/PB-V/93-2025** dated **07.04.2025** holding the detention of the petitioner to be based on justifiable grounds so as to prevent him from acting in any manner prejudicial to the security of the State.

14. On the basis of the Advisory Board's opinion, the preventive detention of the petitioner came to be confirmed in terms of Government Order No. **Home/PB-V/584 of 2025** dated **09.04.2025** by serving six months detention period at first instance w.e.f., **21.03.2025** till **20.09.2025** for the petitioner to stay confined in the Central Jail, Kot Bhalwal.

15. The petitioner's detention period came to be further extended for another six months from **21.09.2025** till **20.03.2026** in terms of Government Order No. **Home/PB-V/1711 of 2025** dated **15.09.2025**.

16. At the time of hearing of this writ petition taking place, 2nd time extension of the petitioner's detention period obviously has come to expire and this Court is safe to guess that the petitioner's detention has further been extended rendering the petitioner expecting his release from preventive detention custody only in terms of adjudication of the writ petition taking place.

17. In the writ petition, the petitioner has assailed his preventive detention custody on the basis of the grounds as set up out in Para-13 (a to z).

18. The exercise of jurisdiction at the end of the respondents No. 1 to 3 has been assailed as being illegal, arbitrary and without any application of mind whatsoever on the part of the respondent No. 2 as well as respondent No. 3.

19. The petitioner has referred to the entire basis of his detention as resting upon concoction without any factual basis. The petitioner has termed the grounds of detention being imaginary and drawn from colorable exercise of power at the end of the respondents No. 2 & 3.

20. Learned counsel for the petitioner has referred to the judgments of the Hon'ble Supreme Court of India to assail the preventive detention of the petitioner as being illegal.

21. Counter affidavit to the writ petition came to be filed on 26.02.2026 by the successor District Magistrate, Kathua justifying the detention of the petitioner on the basis as set out in the grounds of detention.

22. When this Court examines facts and circumstances of the case, this Court is led to an irresistible conclusion that the preventive detention slapped upon the petitioner is nothing but short-circuiting of the proceedings which otherwise were intended and initiated against the petitioner under section 126 of the Bharatiya Nagarik Suraksha Sanhita (BNSS), 2023.

23. The dossier submitted by the Senior Superintendent of Police (SSP), Kathua refers the factual basis of the case for seeking preventive detention of the petitioner by purported reference to the proceedings under section 126 of the Bharatiya Nagarik Suraksha Sanhita (BNSS), 2023 and two Daily Diary Reports on the basis whereof the petitioner's profiling was that of literally a quasi terrorist but without any overt or covert act of omission or commission amounting to any act of terrorism finding mention in the entire dossier. In fact, not even a single criminal act stands attributed to the petitioner rendering him liable to be booked in a criminal case before a criminal court of law.

24. It appears that the purported references of preventive proceedings under section 126 of the Bharatiya Nagarik Suraksha Sanhita (BNSS), 2023 were only for the purpose of preparing a case for preventive detention under Jammu and Kashmir Public Safety Act (PSA), 1978 against the petitioner. Otherwise, it is inconceivable, as is borne out from the record produced, that none of the three proceedings under section 126 of the Bharatiya Nagarik Suraksha Sanhita (BNSS), 2023 culminated in final order/s under section 130 of the Bharatiya Nagarik Suraksha Sanhita (BNSS), 2023 to bind the petitioner to execute bond, personal as well as surety, for maintaining and keeping peace so as to serve security from his end to stay away from alleged state of activities.

25. Initiating proceedings under section 126 of the Bharatiya Nagarik Suraksha Sanhita (BNSS), 2023 is one thing and taking said proceedings to a logical end before an Executive Magistrate resulting in passing of a final order under section 130 of the Bharatiya Nagarik Suraksha Sanhita (BNSS), 2023 is another thing.

26. In the present case, on all three occasions, the purported proceedings surely have not been taken to the logical end and what has been taken to the logical end interjecting the proceedings is preventive detention under the Jammu and Kashmir Public Safety Act (PSA), 1978 invoked against the petitioner.

27. The respondent No. 2-District Magistrate, Kathua was never apprised by the respondent No. 3-Senior Superintendent of

Police (SSP), Kathua about the actual state of proceedings of section 126 of the Bharatiya Nagarik Suraksha Sanhita (BNSS), 2023. It also did not bother the respondent No. 2-District Magistrate, Kathua to enquire and cross-check from the respondent No. 3-Senior Superintendent of Police (SSP), Kathua as to why the preventive action under section 126 of Bharatiya Nagarik Suraksha Sanhita (BNSS), 2023 against the petitioner on three occasions has not resulted in final order/s getting passed before the Executive Magistrate concerned.

28. If this Court were to encapsulate the preventive detention case of the petitioner in given the facts and circumstances of the case, then the summary to come forth is that the State, which is UT of J&K, did not have a case to carry forward preventive action under section 126 of the Bharatiya Nagarik Suraksha Sanhita (BNSS), 2023 against the petitioner but on the same very basis Jammu and Kashmir Public Safety Act (PSA), 1978 was pressed into service for ordering the preventive detention of the petitioner and this is where the respondents No. 1 to 3 faltered in undertaking exercise of jurisdiction under Jammu and Kashmir Public Safety Act (PSA), 1978 rendering the preventive detention of the petitioner illegal.

29. In addition, the assessment and subjective satisfaction of the respondent No. 2-District Magistrate, Kathua is also short of the satisfaction which is relatable to the security of the State by co-relation to the prejudicial activities of the petitioner. The respondent

No. 2-District Magistrate, Kathua has not arrived at satisfaction that the alleged state of activities of the petitioner are prejudicial to the security of the State and instead the respondent No. 2-District Magistrate, Kathua has reckoned the activities of the petitioner to be criminal and anti-national activities.

30. Criminal/anti-national activities bear not even remote reference and mention in section 8 of the Jammu and Kashmir Public Safety Act (PSA), 1978 to order preventive detention of a person for the end purpose of denying him personal liberty and, therefore, on this sole ground the order of detention of the petitioner is good enough to suffer quashment.

31. Cumulative effect of the aforesaid discussion is that preventive detention order No. PSA/148 dated 13.03.2025 passed by the respondent No. 2 read with approval/confirmation/extension orders passed by the Government of UT of Jammu & Kashmir through its Home Department is held to be illegal and is hereby quashed.

32. The petitioner is directed to be restored to his personal liberty forthwith by the Senior Superintendent of Police (SSP), Kathua of the Central Jail, Kot Bhalwal or for that matter any other Jail wherever the petitioner may be serving the preventive detention custody by reference to the present case. Any delay in releasing the petitioner from the concerned Jail whichever shall be at the risk and cost of the District Magistrate, Kathua.

33. Disposed of.

34. Detention record produced is to be returned to Mr. Suneel Malhotra, learned Government Advocate.

(RAHUL BHARTI)
JUDGE

JAMMU
09.04.2026
Shivalee

Whether order is speaking: Yes/No
Whether order is reportable: Yes/No

