

HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT JAMMU

HCP No.159/2025
CM No.7157/2025

Reserved on: 09.07.2026

Pronounced on:13.07.2026

Uploaded on: 13.07.2026

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

**Mohammad Rizwan S/o Altaf Hussain,
R/o Gurian
Tehsil and District Kishtwar
Through his father
Altaf Hussain**

...Petitioner(s)

Through: Mr. Tayyab Javed Qureshi, Advocate.

Vs.

- 1. Union Territory of Jammu & Kashmir through
its Commissioner/Secretary, Home Department,
Civil Secretariat, Jammu.**
- 2. Director General of Police, J&K Jammu.**
- 3. District Magistrate, Kishtwar;**
- 4. Sr. Superintendent of Police (SSP),
District Kishtwar;**
- 5. Superintendent of Police (SP),
District Kishtwar;**
- 6. Station House Officer,
Police Station, Kishtwar.**

...Respondent(s)

Through: Mr. Adarsh Bhagat, GA.

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

JUDGMENT

- 1. Vide detention Order No. 3rd/DMK/PSA of 2025 dated
21.07.2025 (for short '**impugned order**') passed by
respondent No.3-District Magistrate, Kishtwar, the petitioner
was ordered to be detained under preventive custody in terms
of **Section 8(2) of J&K Public Safety Act, 1978** (for short**

‘the Act’) with a view to prevent him from acting in any manner prejudicial to the ‘maintenance of the public order’.

2. By way of the present petition, the petitioner seeks the quashment of the aforesaid order of detention, inter alia, on the grounds that the impugned detention order was neither approved nor subsequently confirmed by the Government within the period prescribed under the provisions of the Act; that the detainee was not furnished with the material and other relevant documents relied upon by the detaining authority, nor were the same read over and explained to him in a language understood by him, thereby depriving him of an effective opportunity to make a meaningful representation; that the detainee was not informed of his valuable right to submit a representation before the competent authority, resulting in a serious infringement of his constitutional and statutory safeguards; lastly that since the detainee was granted bail in FIR No. 05/2025, the preventive detention could not have been ordered.

3. Pursuant to the notices issued by this Court, respondent No. 3–District Magistrate, Kishtwar, has filed a detailed counter affidavit vehemently opposing the writ petition. It is contended that, having regard to the prejudicial activities of the detainee, the impugned order of preventive detention was passed with a view to preventing him from acting in any manner prejudicial to the maintenance of public order; that the detention is neither punitive nor reformatory in nature,

but is purely preventive, having been ordered by the detaining authority upon due consideration of the police dossier and the material placed on record, coupled with the independent application of mind; that, despite having been enlarged on bail, the detainee failed to mend his ways and continued to indulge in activities detrimental to the maintenance of public order, thereby necessitating the issuance of the preventive detention order and lastly that no constitutional or statutory right of the detainee has been infringed and that the impugned detention order was passed and executed strictly in accordance with law in the larger interest of preserving public order and ensuring public security.

4. Heard learned counsel for the parties, perused the detention record produced by learned counsel for the respondents and considered.
5. The first contention urged by the learned counsel for the petitioner is that the impugned order of detention was neither approved nor subsequently confirmed by the Government within the period prescribed under the provisions of the Act. The said contention, however, does not merit acceptance. A perusal of the detention record reveals that the impugned detention order dated **21.07.2025** was duly approved by the Government of Jammu and Kashmir, Home Department, on **24.07.2025**, well within the statutory period prescribed under the Act. Equally devoid of merit is the further contention that the detention order was not confirmed within the prescribed

period. The record clearly demonstrates that, following its approval, the Government of Jammu and Kashmir, Home Department, confirmed the impugned detention order on **18.08.2025**. Thus, the first contention of the learned counsel for the petitioner on this count is found to be factually incorrect.

- 6.** The second contention advanced by the learned counsel for the petitioner is that the detainee was neither furnished with the material and other relevant documents relied upon by the detaining authority nor were the contents thereof read over and explained to him in a language understood by him, thereby depriving him of an effective opportunity to make a meaningful representation against the order of detention. The said contention also is equally devoid of merit. A perusal of the detention record reveals that, at the time of execution of the impugned detention order, as many as **99 leaves** comprising the grounds of detention and all the relevant material relied upon by the detaining authority were duly supplied to the detainee against proper receipt. The record further reflects that the contents of the detention order and the accompanying material were read over to the detainee in English and explained to him in **Urdu/Kashmiri**, the languages understood by him, and that he acknowledged the receipt thereof by affixing his signatures. Thus, the said contention is wholly misconceived and devoid of any merit, and consequently deserves to be rejected.

7. The third contention urged on behalf of the petitioner is that the detenue was not informed of his valuable right to submit a representation against the order of detention before the competent authority. The contention cannot be accepted. The Execution Report, which forms part of the detention record, clearly demonstrates that the detenue was duly informed of his right to make a representation to the Government against the impugned detention order, if he so desired. The official record, therefore, completely belies the petitioner's plea. Consequently, the contention is found to be wholly misconceived and devoid of any merit.
8. Fourth ground raised by the petitioner is that since the detenue was granted bail in FIR No. 05/2025, the preventive detention could not have been ordered. A perusal of the grounds of detention reveals that the factum of grant of bail was very much within the consideration of the detaining authority while arriving at subjective satisfaction. Once the authority has taken note of the bail order and still found the detenue's activities prejudicial, the detention order would not be rendered illegal. Preventive detention and criminal prosecution operate in different fields. Acquittal or grant of bail in a criminal case does not *ipso facto* debar the competent authority from passing an order of preventive detention if the authority is satisfied that the activities of a person are prejudicial to the security of the State or maintenance of public order. The Hon'ble Supreme Court in "**Haradhan Saha**

v. State of West Bengal & Ors” reported in **(1975) 3 SCC 198** has authoritatively held that prosecution in a criminal case and preventive detention are not synonymous and that an order of detention can validly be passed even when prosecution is pending. Relevant portion in paragraphs No. 32 to 34 of the judgment for the ease of reference is extracted below:-

"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.

34. The recent decisions of this Court on this subject are many. The decisions in Borjahan Gorey v. State of W. B., Ashim Kumar Ray V. State of W. B.; Abdul Aziz V. District Magistrate, Burdwan and

Debu Mahato V. State of W. B. correctly lay down the principles to be followed as to whether a detention order is valid or not. The decision in Biram Chand v. State of U. P. which is a Division Bench decision of two learned Judges is contrary to the other Bench decisions consisting in each case of three learned Judges. The principles which can be broadly stated are these. First, merely because a detenu is liable to be tried in a criminal court for the commission of a criminal offence or to be proceeded against for preventing him from committing offences dealt with in Chapter VIII of the Code of Criminal Procedure would not by itself debar the Government from taking action for his detention under the Act. Second, the fact that the Police arrests a person and later on enlarges him on bail and initiates steps to prosecute him under the Code of Criminal Procedure and even lodges a first information report may be no bar against the District Magistrate issuing an order under the preventive detention. Third, where the concerned person is actually in jail custody at the time when an order of detention is passed against him and is not likely to be released for a fair length of time, it may be possible to contend that there could be no satisfaction on the part of the detaining authority as to the likelihood of such a person indulging in activities which would jeopardise the security of the State or the public order. Fourth, the mere circumstance that a detention order is passed during the pendency of the prosecution will not violate the order. Fifth, the order of detention is a precautionary measure. It is based on a reasonable prognosis of the future behaviour of a person based on his past conduct in the light of the surrounding circumstances."

Similarly, in **"Union of India v. Paul Manickam** reported in **(2003) 8 SCC 342"**, it has been held that merely because a person is in custody or has been granted bail does not

preclude the detaining authority from invoking preventive detention laws if there exists compelling necessity for doing so.

- 9.** The detaining authority, before invoking the preventive detention, discussed various grounds for detention, incorporating that the detainee has been involved in serious criminal activities, including theft, burglary and other anti-social activities and as many as four FIRs bearing FIR No. 218/2022, 100/2024, 05/2025 and 20/2025 have been registered against the detainee; that the activities of the subject is affecting the welfare of the people of District Kishtwar and caused fear among the business community as well as to the local people; that the detainee poses a serious threat to the maintenance of public order and the safety of law abiding citizens particularly due to his repeated indulgence in thefts, burglaries and acts of public nuisance.
- 10.** Perusal of the detention record would indicate that the detainee is a habitual offender and a hard core criminal who has consistently remained involved in unlawful and anti-social activities that are gravely prejudicial to the maintenance of public order. It is further asserted that upon careful examination of the material on record, the detaining authority is of the considered opinion that the activities of the detainee are gravely prejudicial to the maintenance of public order and the said activities of the detainee persuaded the detaining

authority in order to curb his activities to order detention of the detainee under the provisions of Public Safety Act.

11. 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.

12. 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.

- 13.** 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 deter- mine 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.”

- 14.** 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.
- 15.** 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.
- 16.** 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

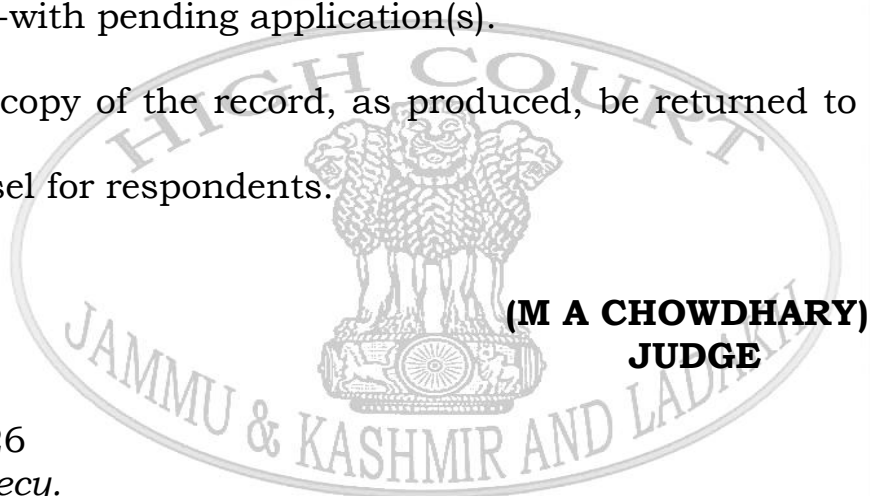
requires. Preventive detention is devised to afford protection to society. The object is not to punish a man for having done something but to intercept before he does it and to prevent him from doing. Justification for such detention is suspicion or reasonable probability and not criminal conviction, 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.

17. 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.

18. 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).

19. Photocopy of the record, as produced, be returned to learned counsel for respondents.



JAMMU
13.07.2026
Naresh/Secy.

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