

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

...

HCP No. 163/2025

Reserved on: 23.07.2026
Pronounced on: 30.07.2026
Uploaded on: 30.07.2026

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

Madan Lal

.....Petitioner(s)

Through: Mr. Akarshan Magotra, Advocate

Vs.

UT of J&K and others

.....Respondent(s)

Through Mr. Sumeet Bhatia, GA

CORAM: HON'BLE MR. JUSTICE RAJNESH OSWAL, JUDGE

JUDGMENT

1. Through the medium of the present petition, the petitioner has challenged the Order No. 11-PSA-2025 dated 11.09.2025 (hereinafter referred to as "the detention order") passed by respondent No. 5-the District Magistrate, Udhampur (hereinafter referred to as "the detaining authority"), whereby the petitioner has been detained under the provisions of the Jammu and Kashmir Public Safety Act, 1978, on the ground of his activities prejudicial to the maintenance of public peace and order.
2. The petitioner has assailed the detention order on the following grounds:
 - (i) That in FIR No. 71/1989 registered at Police Station, Chenani under Sections 382, 332 and 148 RPC; FIR No. 107/1989 registered at Police Station, Chenani under Sections 341, 323, 294, 354 and 34 RPC; FIR No. 116/1998 registered at Police Station, Chenani under Section 376 RPC; and FIR No. 130/2013 registered

at Police Station, Kud under Sections 294, 509 and 34 RPC, the petitioner has been acquitted by the learned trial courts. In FIR No. 36/2005 registered at Police Station, Kud under Sections 341 and 323 RPC, the matter was compromised. In FIR No. 17/2017 registered at Police Station, Kud under Sections 353, 458, 336, 341 and 506 RPC; FIR No. 37/2018 registered at Police Station, Kud under Sections 452, 504, 506, 323 and 34 RPC; FIR No. 29/2023 registered at Police Station, Kud under Sections 341 and 323 IPC; FIR No. 30/2024 registered at Police Station, Kud under Sections 341, 323, 382, 511 and 147 RPC; and FIR No. 07/2025 registered at Police Station, Kud under Sections 191(2), 304, 125, 351 and 352 of the BNS, the charge-sheets have been filed and the cases are pending trial. It is contended that the allegations forming the subject matter of the aforesaid FIRs pertain to isolated personal disputes having no nexus with the maintenance of public order. As such, the impugned order of detention is unsustainable in law.

- (ii) That the petitioner was not furnished the grounds of detention in a language understood by him, i.e. Hindi/Dogri. It is further contended that the detaining authority failed to arrive at the requisite subjective satisfaction before passing the impugned order of detention.
- (iii) That the detaining authority failed to forward the petitioner's representation to the Advisory Board within the prescribed time. It is submitted that the petitioner signed the representation dated 28.10.2025 at Central Jail, Kot Bhalwal, which was attested by the Assistant Superintendent, Central Jail, Kot Bhalwal on 30.10.2025. The representation was received in the office of the detaining authority on 04.11.2025 but was forwarded only on 10.11.2025. According to the petitioner, had the respondents acted with due promptitude and followed the prescribed procedure, the representation would have reached the Advisory Board before the confirmation of the detention. Thus, it is contended that the confirmation order dated 06.11.2025 is also vitiated in law.

- (iv) That the petitioner has been falsely implicated in FIR No. 07/2025 and that, thereafter, no further incident has occurred or been reported against him which could justify the passing of the impugned order of detention.
- (v) That the impugned order of detention has been passed with the sole object of circumventing the ordinary criminal law and depriving the petitioner of his legal remedies by confining him within the four walls of the jail, thereby preventing him from effectively defending himself in the pending criminal proceedings.

3. Counter-affidavit has been filed by respondent No. 5, wherein it is stated that the petitioner is a habitual criminal, against whom as many as ten FIRs have been registered. It is averred that, in order to prevent the petitioner from indulging in further criminal activities, his detention under the provisions of the Jammu and Kashmir Public Safety Act, 1978 became imperative, and accordingly, he was detained in terms of the impugned order of detention. It is further stated that a copy of the detention order, alongwith the notice of detention, grounds of detention, dossier and all other material relied upon by the detaining authority, was duly furnished to the detenu on 04.10.2025 through the Executing Officer, PSI, Syed Umar Shah. The contents of the detention order and the grounds of detention were read over and explained to the detenu in Hindi/Dogri languages understood by him, and, in token of having understood the same, the detenu acknowledged their receipt by affixing his signatures thereon. It is also stated that the detenu was informed of his right to make a representation against the order of detention to the detaining authority as well as to the Government. The specific stand taken by respondent No. 5 is that all the constitutional and procedural safeguards

envisaged under the Constitution and the Jammu and Kashmir Public Safety Act, 1978 were strictly complied with, both at the time of passing and executing the impugned order of detention.

4. Mr. Akarshan Magotra, learned counsel for the petitioner submitted that the last alleged activity attributed to the petitioner dates back to February 2025, when FIR No. 07/2025 was registered at Police Station, Kud. Since then, the petitioner has not engaged in any conduct justifying preventive detention under the Jammu and Kashmir Public Safety Act, 1978. In support, learned counsel relied upon the decision of a Coordinate Bench of this Court in **Abdul Karim v. Union Territory of J&K & Ors.**(HCP No. 132/2025, decided on 06.06.2026), contending that the DDR entries relied upon by the respondents could not carry identical serial numbers, as DDRs are legally maintained in a running numerical sequence.
5. Per contra, Mr. Sumeet Bhatia, learned Government Advocate, submitted that the petitioner is a habitual offender with a history of criminal involvement, leaving the Detaining Authority with no alternative but to issue the impugned detention order. He further contended that all procedural and constitutional safeguards under the Jammu and Kashmir Public Safety Act, 1978 and the Constitution of India were meticulously followed while passing and executing the detention order.
6. Heard learned counsel for the parties and perused the record, including the detention record.
7. So far as the judgment relied upon by learned counsel for the petitioner is concerned, it is pertinent to note that Daily Diary Reports (DDRs) are maintained on a daily basis, wherein serial numbering recommences from

No. 01 for each date, rather than running in an uninterrupted, continuous sequence across days. Consequently, while the dates of entries may differ, their corresponding serial numbers may coincide. Therefore, the reliance placed by the petitioner on the decision in **Abdul Karim v. Union Territory of J&K & Ors.** (supra) is misplaced and does not advance his case, nor does it afford a valid ground to quash the impugned detention order. The principles laid down by the Coordinate Bench in the cited judgment apply strictly to FIRs, which follow a continuous annual serial sequence, and have no application to DDR entries, which are reset daily.

8. However, the record demonstrates that the Senior Superintendent of Police, Udhampur, by way of a dossier dated 07.08.2025, proposed the petitioner's preventive detention under the Jammu and Kashmir Public Safety Act, 1978 to respondent No. 5. Acting upon the said dossier, the Detaining Authority formulated the grounds of detention and passed the impugned order. Perusal of the grounds of detention reflects that ten FIRs registered against the petitioner were taken into account. Crucially, both the dossier and the grounds of detention establish that the Detaining Authority was fully cognizant that the petitioner stood acquitted in four cases, that one case had culminated in a compromise, and that trial was pending in the remaining five FIRs.
9. In FIR No. 07/2025, the allegations against the petitioner are that on 17.02.2025 at about 1930 hrs, one Shamim Ahmad appeared at Police Station, Kud and submitted a written application in Urdu. In the said application, he alleged that he was awarded the contract for the construction of pillars from Karlah to Latti and on 15.02.2025, at about

5:30 p.m., while labourers were engaged in the construction of pillars at Gali, six unknown individuals suddenly arrived at the site, abused the labourers and, when questioned, started demolishing the constructed pillars. They also allegedly snatched the tools being used for the construction work. During investigation, one of the alleged assailants was identified as Mohan Lal. On the basis of the said complaint, FIR No. 07/2025 came to be registered at Police Station, Kud under Sections 191(2), 304, 125, 352 and 351 of the BNS.

10. In the opinion of this Court, the allegations in the aforementioned FIR fail to fall within the purview of activities adversely affecting public order in terms of Section 8 (3) (b) of the Act. The alleged conduct, at most, amounts to a breach of law and order. Consequently, the petitioner could not have been lawfully detained under the Act. The other FIRs are stale and remote, and therefore cannot form a valid basis for upholding the detention order.
11. In **“Banka Sneha Sheela v. State of Telangana”, (2021) 9 SCC 415**, the Hon’ble Apex Court has observed as under:

“13. As is well-known, the expressions “law and order”, “public order”, and “security of State” are different from one another. In *Ram Manohar Lohia v. State of Bihar*, the question before this Court arose under a preventive detention order made under Rule 30 of the Defence of India Rules, which permits apprehension and detention of a person likely to act in a manner prejudicial to the maintenance of public order. This Court set out the distinction between a mere law and order disturbance and a public order disturbance as follows:

“42. The Defence of India Act and the Rules speak of the conditions under which preventive detention under the Act can be ordered. In its long title and the preamble the Defence of India Act speaks of the necessity to provide for special measures to ensure public safety and interest, the defence of

India and civil defence. The expression “public safety” and interest between them indicate the range of action for maintaining security, peace and tranquillity of India whereas the expressions “defence of India” and “civil defence” connote defence of India and its people against aggression from outside and action of persons within the country. These generic terms were used because the Act seeks to provide for a congeries of action of which preventive detention is just a small part. In conferring power to make rules, Section 3 of the Defence of India Act enlarges upon the terms of the preamble by specification of details. It speaks of defence of India and civil defence and public safety without change but it expands the idea of public interest into maintenance of public order, the efficient conduct of military operations and maintaining of supplies and services essential to the life of the community. Then it mentions by way of illustration in clause (15) of the same section the power of apprehension and detention in custody of any person whom the authority empowered by the rules to apprehend or detain (the authority empowered to detain not being lower in rank than that of a District Magistrate), suspects, on grounds appearing to that authority to be reasonable—

- (a) of being of hostile origin; or
- (b) of having acted, acting or being about to act or being likely to act in a manner prejudicial to—
 - (i) the defence of India and civil defence;
 - (ii) the security of the State;
 - (iii) the public safety or interest;
 - (iv) the maintenance of public order;
 - (v) India's relations with foreign States;
 - (vi) the maintenance of peaceful conditions in any part or area of India; or
 - (vii) the efficient conduct of military operations.

It will thus appear that security of the State, public safety or interest, maintenance of public order and the maintenance of peaceful conditions in any part or area of India may be viewed separately even though strictly one clause may have an effect or bearing on another. Then follows Rule 30, which repeats the above conditions and permits detention of any person with a view to preventing him from acting in any of the above ways. The argument of Dr Lohia that the conditions are to be cumulatively applied is clearly untenable. It is not necessary to analyse Rule 30 which we quoted earlier and which follows the scheme of Section 3(15). The question is whether by taking power to prevent Dr Lohia from acting to the prejudice of “law

and order” as against “public order” the District Magistrate went outside his powers.

51. We have here a case of detention under Rule 30 of the Defence of India Rules which permits apprehension and detention of a person likely to act in a manner prejudicial to the maintenance of public order. It follows that if such a person is not detained public disorder is the apprehended result. Disorder is no doubt prevented by the maintenance of law and order also but disorder is a broad spectrum which includes at one end small disturbances and at the other the most serious and cataclysmic happenings. Does the expression “public order” take in every kind of disorders or only some of them? The answer to this serves to distinguish “public order” from “law and order” because the latter undoubtedly takes in all of them. Public order if disturbed, must lead to public disorder. Every breach of the peace does not lead to public disorder. When two drunkards quarrel and fight there is disorder but not public disorder. They can be dealt with under the powers to maintain law and order but cannot be detained on the ground that they were disturbing public order. Suppose that the two fighters were of rival communities and one of them tried to raise communal passions. The problem is still one of law and order but it raises the apprehension of public disorder. Other examples can be imagined. The contravention of law always affects order but before it can be said to affect public order, it must affect the community or the public at large. A mere disturbance of law and order leading to disorder is thus not necessarily sufficient for action under the Defence of India Act but disturbances which subvert the public order are. A District Magistrate is entitled to take action under Rule 30(1)(b) to prevent subversion of public order but not in aid of maintenance of law and order under ordinary circumstances.

52. It will thus appear that just as “public order” in the rulings of this Court (earlier cited) was said to comprehend disorders of less gravity than those affecting “security of State”, “law and order” also comprehends disorders of less gravity than those affecting “public order”. One has to imagine three concentric circles. Law and order represents the largest circle within which is the next circle representing public order and the smallest circle represents security of State. It is then easy to see that an act may affect law and order but not public order just as an act

may affect public order but not security of the State. By using the expression “maintenance of law and order” the District Magistrate was widening his own field of action and was adding a clause to the Defence of India Rules.”

14. There can be no doubt that for “public order” to be disturbed, there must in turn be public disorder. Mere contravention of law such as indulging in cheating or criminal breach of trust certainly affects “law and order” but before it can be said to affect “public order”, it must affect the community or the public at large.”

(emphasis added)

12. Furthermore, the record does not disclose that, subsequent to the aforesaid incident, the petitioner indulged in any further criminal activity prejudicial to the maintenance of public order. Reference has also been made to preventive proceedings under Section 129 of the Bharatiya Nagarik Suraksha Sanhita, 2023 (BNSS) dated 09.06.2025, as well as Daily Diary Report (DDR) Entries No. 13 dated 19.05.2025, No. 09 dated 16.06.2025, No. 04 dated 26.06.2025, No. 11 dated 01.07.2025, and No. 16 dated 11.07.2025, recorded at Police Station, Kud. Insofar as the preventive measures under Section 129 BNSS are concerned, the record attributes no fresh illegal activity to the petitioner. It merely reveals that the petitioner was produced before the Executive Magistrate 1st Class, Chenani, on 09.06.2025. The initiation of said proceedings, by itself, does not disclose any overt act or subsequent conduct on the part of the petitioner warranting his preventive detention.
13. So far as the other DDR entries for the year 2025 are concerned, including Entry No. 13 dated 19.05.2025, there is merely a general reference, without any specificity, alleging that the petitioner, Madan Lal, along with his sons, is involved in criminal activities prejudicial to the peace and tranquillity of the area, such as damaging forest land and creating an

atmosphere of fear among local residents. However, even these DDR entries fail to disclose any specific incident or fresh illegal activity directly attributable to the petitioner.

14. Thus, it is evident that, after the registration of FIR No. 07/2025 at Police Station, Kud under Sections 191(2), 304, 125, 351 and 352 of the BNS in February, 2025, no further illegal activities have been attributed to the petitioner. Had respondent No. 5 been genuinely satisfied that the activities of the petitioner were prejudicial to the maintenance of public order, the detention order would have been passed forthwith upon the registration of the aforesaid FIR on 17.02.2025, rather than after an unexplained delay. Instead, the impugned order of detention came to be issued only on 11.09.2025. There is, therefore, an unexplained delay of nearly seven months between the last alleged prejudicial activity attributed to the petitioner and the passing of the impugned order of detention. In the absence of any material indicating the petitioner's involvement in any intervening prejudicial activity, such unexplained delay snaps the live and proximate link between the alleged prejudicial activities and the purpose sought to be achieved by issuing the order of preventive detention.
15. It would be apt to take note of the judgment of the Apex Court in case titled, '**Saeed Zakir Hussain Malik vs. State of Maharashtra**' reported in **(2012) 8 SCC 233**. The relevant paragraph Nos. 27 and 28 read as under:-

“27) As regards the second contention, as rightly pointed out by learned counsel for the appellant, the delay in passing the detention order, namely, after 15 months vitiates the detention itself. 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. Though there is no hard and fast rule and no exhaustive guidelines can be laid down in that behalf, however, when there is undue and long delay between the prejudicial activities and the passing of detention order, it is incumbent on the part of the court to scrutinize whether the Detaining Authority has satisfactorily examined such a delay and afforded a reasonable and acceptable explanation as to why such a delay has occasioned.

28) It is also the duty of the court to investigate whether casual connection has been broken in the circumstance of each case. We are satisfied that in the absence of proper explanation for a period of 15 months in issuing the order of detention, the same has to be set aside. Since, we are in agreement with the contentions relating to delay in passing the Detention Order and serving the same on detainee, there is no need to go into the factual details.”

16. In view of the foregoing discussions, this Court is of the considered opinion that on this ground as well, the detention of the petitioner cannot be sustained.
17. Thus, the present petition is allowed and order No. 11-PSA of 2025 dated 11.09.2025, passed by respondent No. 5-the District Magistrate, Udhampur, is hereby quashed. The respondents are directed to release the petitioner forthwith from preventive custody, provided he is not required in connection with any other case.
18. The detention record, as produced, be returned to the learned GA.

(Rajnish Oswal)
Judge

Jammu
30.07.2026
Karam Chand

Whether approved for reporting: Yes/No