

HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT SRINAGAR

HCP No.17/2026

Reserved on: 03.09.2026
Pronounced on: 15.09.2026
Uploaded on: 15.09.2026
Operative part or full judgment: Full

Subzar Ahmad Ganie

S/O Ghulam Nabi Ganie
R/O Cheki Choland,
Tehsil Hermain, District Shopian.

...Petitioner(s)

Through: Adv. Bhat Shafi.

Vs.

1. Union Territory of J&K

through Principal Secretary to Govt.
Home Department,
Civil Sectt. Srinagar.

2. District Magistrate,
Shopian.

3. Sr. Superintendent of Police,
Shopian.

4. Superintendent of Central Jail,
Jammu.

...Respondent(s)

Through: Dy.AG Bikramdeep Singh with
AC Nadiya Abdullah.

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

JUDGMENT

1. The petitioner, through the medium of the instant petition,
has questioned the legality and validity of the preventive
detention Order No.**17/DMS/PSA/2025** dated
24.12.2025 passed by respondent No.2-District

Magistrate, Shopian, whereby the petitioner/detenué has been detained under the provisions of the **J&K Public Safety Act, 1978** with a view to prevent him from acting in any manner prejudicial to the 'security of the State'.

2. The case set up by the petitioner is that the impugned order of detention is constitutionally unsustainable; that the grounds of detention being vague, non-specific and incapable of affording the detenué an opportunity of making an effective representation; that the material relied upon by the Detaining Authority was not furnished to the detenué in its entirety; that the consideration of the representation was also not in accordance with the constitutional mandate contained in Article 22(5) of the Constitution of India.

3. Per contra, the respondents opposed the petition, pleading in their counter affidavit, that the Detaining Authority after considering the material placed before it, arrived at the requisite subjective satisfaction that preventive detention of the detenué was necessary; that the detenué had been bound down on three different occasions; that the material placed before the Detaining Authority disclosed his association with elements inimical to the security of the State; that the representation submitted on behalf of the detenué was duly considered and rejected, therefore, no prejudice can be said to have been caused to him.

4. Heard learned counsel for the parties, perused the detention record and considered the matter.
5. There can be no dispute with the settled proposition that preventive detention is an exceptional measure and constitutes a serious inroad into the personal liberty of an individual guaranteed under Article 21 of the Indian Constitution. The power of preventive detention, though constitutionally permissible, is hedged in, by the safeguards contained in Article 22(5) of the Constitution.
6. The Supreme Court in **Khudiram Das v. State of West Bengal** reported as **(1975) 2 SCC 81** emphasised that the constitutional requirement is that the basic facts and particulars which influenced the mind of the Detaining Authority in arriving at the requisite satisfaction must be communicated to the detainee so as to afford him an effective opportunity of making a representation. The Supreme Court also made it clear that the courts are entitled to examine whether the statutory and constitutional requirements have been complied with.
7. It is equally well settled that although the sufficiency or adequacy of the material cannot ordinarily be examined by the Court as an appellate authority over the subjective satisfaction of the Detaining Authority, the Court can certainly examine whether the satisfaction is based on relevant material, whether the grounds are sufficiently precise, whether there is application of mind, and whether

the constitutional safeguards have been scrupulously observed.

8. Coming to the facts of the present case, one of the principal grounds relied upon by the respondents is the alleged association of the detainee with persons/elements described as terrorists/OGWs. However, on a careful examination of the grounds of detention, what is conspicuously absent is any clear and specific description of the particular overt acts or activities attributed to the detainee which, according to the Detaining Authority, rendered his preventive detention necessary.

9. A mere description of a person as an “OGW” or an assertion that he is associated with terrorists, cannot by itself constitute sufficient communication of the grounds of detention. The Detaining Authority was required to spell out the material particulars which led it to arrive at the conclusion that the detainee was likely to act in a manner prejudicial to the security of the State.

10. Preventive detention cannot rest upon conclusions detached from the factual material which constitutes the foundation of those conclusions. The detainee is not required merely to know the conclusion reached by the Detaining Authority, he must know the basic facts and particulars forming the foundation of such conclusion, so that he can effectively controvert the same.

11. In **Khudiram Das (supra)**, the Supreme Court held that the constitutional requirement under Article 22(5) insists upon communication of the basic facts and particulars which influenced the Detaining Authority in arriving at the requisite satisfaction.
12. In the present case, the reference to the detainee as being associated with terrorist elements, without furnishing adequate particulars of his alleged activities, assumes significance because the very object of the detention order is stated to be prevention of acts prejudicial to the security of the State. The more serious the consequence of the detention, the greater is the necessity for the grounds to contain sufficient factual particulars enabling the detainee to meet the allegations.
13. A vague assertion that the detainee was an OGW, without specifying what he did, when he did it, with whom, in what manner, and how such conduct had a nexus with the anticipated prejudicial activity, cannot be treated as an adequate communication of the grounds.
14. The respondents have also relied upon the fact that the detainee was allegedly bound down on three occasions on different dates. However, the mere existence of such proceedings cannot, in the absence of particulars and a clear nexus with the prejudicial activity contemplated in the detention order, automatically justify preventive detention.

15. The Detaining Authority was required to demonstrate how those previous instances constituted relevant material for arriving at the subjective satisfaction that there was a real and imminent necessity to detain the petitioner with a view to prevent him from acting prejudicially to the security of the State.

16. Preventive detention is not intended to be punitive in character. It is a precautionary measure based upon a reasonable prognosis of future conduct. Therefore, the material relied upon must have a rational and proximate connection with the necessity for detention. The detention order cannot be sustained merely by reproducing antecedents or previous proceedings without demonstrating their live nexus with the apprehended prejudicial activity.

17. Another important aspect which arises for consideration is the grievance regarding supply of the material relied upon by the Detaining Authority. Article 22(5) mandates not only communication of the grounds of detention but also affords the detenue the earliest opportunity of making a representation against the order of detention. The two requirements are intrinsically connected.

18. The Supreme Court has repeatedly held that documents relied upon by the Detaining Authority must be supplied to the detenue so that he can effectively challenge

the basis of his detention. In **Jaseela Shaji v. Union of India** reported as **2024 INSC 702**, the Supreme Court reiterated that while every document merely referred to in the grounds need not necessarily be supplied, every document relied upon by the Detaining Authority which affects the detainee's right to make an effective representation must be furnished to him. Failure to furnish such relied-upon material violates Article 22(5). The Supreme Court in **Ichhu Devi Choraria v. Union of India** reported as **(1980) 4 SCC 531**, has explained that it is difficult for a detainee to make an effective representation unless copies of the documents, statements and other material relied upon in the grounds of detention are furnished to him. The principle has subsequently been consistently reiterated.

19. The respondents contend that the representation of the detainee was considered and rejected and that there was no delay attributable to the authorities. The record shows that the representation was filed on **07.01.2026** and was decided on **24.02.2026**. It is true that there is no statutorily prescribed period within which every representation must necessarily be disposed of. Nevertheless, the constitutional obligation under Article 22(5) is to consider the representation, as expeditiously as possible and with utmost promptitude. The Supreme Court in **Jaseela Shaji (supra)** has recently reiterated that

the obligation to afford the earliest opportunity of making a representation and the corresponding obligation to consider it expeditiously are constitutional imperatives.

20. The safeguards contained in Article 22(5) are not matters of mere formality. They constitute substantive constitutional protection against arbitrary deprivation of personal liberty. The Supreme Court has repeatedly emphasised that the right of the detinue to make an effective representation is a fundamental right and that failure to furnish relied-upon material, where such failure prejudices the detinue's ability to represent, vitiates the detention.

21. The Court cannot substitute its own satisfaction for that of the Detaining Authority. However, it is equally true that the Court cannot permit a detention order to survive when the constitutional safeguards designed to protect personal liberty have not been complied with.

22. On an overall consideration of the detention record, this Court is of the considered view that the impugned detention order cannot be sustained for the following cumulative reasons:

- (i) the grounds of detention, insofar as they attribute association with terrorist/OGW elements to the detinue, do not furnish adequate and specific particulars of the activities allegedly undertaken by him;

- (ii) the material relating to the detainee having allegedly been bound down on three occasions has not been shown to have been connected through a clear and live nexus with the necessity of preventive detention;
- (iii) the material relied upon by the Detaining Authority was not communicated to the detainee in its entirety; and
- (iv) in the absence of full and effective communication of the relied-upon material, the detainee was deprived of the meaningful and effective opportunity guaranteed to him under Article 22(5) of the Constitution.

23. This Court is very much conscious that preventive detention is an area in which the Court must exercise restraint while examining the subjective satisfaction of the Detaining Authority, but judicial restraint does not mean abdication of the constitutional duty to protect personal liberty. Where the constitutional safeguards have been breached, the Court is bound to intervene.

24. For the foregoing reasons, the petition is **allowed**. The impugned detention Order No. **17/DMS/PSA/2025** dated **24.12.2025** passed by respondent No.2-District Magistrate, Shopian against the detainee/petitioner herein, is hereby **quashed**. The respondents are directed to release

the detainee forthwith, if his custody is not required in connection with any other case(s).

25. Scanned detention record, as produced by learned counsel for the respondents, is directed to be sent back through him.

26. The petition stands **disposed of** in the above terms.

Srinagar
15.09.2026
Muzammil. Q

