HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT SRINAGAR

HCP No.21/2026
CM No.905/2026

Reserved on: 18.09.2026
Pronounced on: 25.09.2026
Uploaded on: _____
Operative part or full judgment: Full

Tariq Ahmad Dar
S/O Ghulam Hassan Dar
R/O Raiwattan Asnoor, Manzgam
Tehsil D.H.Pora, District Kulgam.

...Petitioner(s)

Through: Adv. Parvaiz Amin.

Vs.

1. **Union Territory of J&K**
   through Principal Secretary to Govt.
   Home Department,
   Civil Sectt. Srinagar.

2. District Magistrate,
   Kulgam.

3. Sr. Superintendent of Police,
   Kulgam.

4. Station House Officer,
   Police Station, Manzgam, Kulgam.

5. Superintendent/Incharge District Jail,
   Udhampur.

...Respondent(s)

Through: GA Waseem Gul.

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

JUDGMENT

1. Through the medium of the present petition, the petitioner-detenue has called in question the detention

Order No. **07/DMK/PSA/2025** dated **13.12.2025** passed by respondent No.2-District Magistrate, Kulgam, whereby he has been detained under Section 8 of the Jammu and Kashmir Public Safety Act, 1978 with a view to prevent him from acting in any manner prejudicial to the maintenance of 'Public Order'.

2. Briefly stated facts of the case are that the detenue is involved in as many as eleven FIRs for the commission of offences punishable under Sections 331(4), 305 BNS, relating to offences concerning theft of livestock/cattle; that the detaining authority has noticed the repeated involvement of the detenue in such activities; that the charge-sheets have been filed in the cases and the detenue has obtained bail in the said cases; that on consideration of the entire material placed before it, the detaining authority has recorded its subjective satisfaction that the activities of the detenue are not isolated incidents affecting merely an individual but have acquired such continuity and potentiality as to disturb the even tempo of public life and thereby adversely affect maintenance of 'public order'.

3. Learned counsel for the petitioner has assailed the detention order on several grounds and has contended that the activities attributed to the detenue constitute at the highest, violations of ordinary law and order, and could be dealt with under the ordinary criminal law; that the detenue was arrested in all the criminal cases and in some

of them was admitted to bail; that the bail orders referred to in the grounds of detention were not supplied to the detenue and consequently he was deprived of an effective opportunity of making a representation; that the grounds of detention are in English, whereas the detenue is stated to be a Labourer by profession and not conversant with the English language; that no translated copies of the grounds were supplied to him and, therefore, the constitutional guarantee contained in Article 22(5) of the Constitution of India and the corresponding requirement under Section 13 of the Public Safety Act, stand violated.

4. Learned counsel appearing for the respondents, ex-adverso, defended the detention order and argued that the detaining authority considered the entire material placed before it and, upon an independent assessment thereof, arrived at the requisite subjective satisfaction; that the detenue was furnished the grounds of detention and the relevant material and the contents thereof were explained to him in a language understood by him; that the bail orders were only referred to for indicating the present status of the criminal cases and were not relied upon as substantive material forming the basis of the subjective satisfaction.

5. Heard learned counsel for both sides, perused the entire material placed on record and considered the matter.

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6. Preventive detention is an exceptional measure, and the safeguards contained in Article 22(5) of the Constitution and Section 13 of the Jammu and Kashmir Public Safety Act have to be scrupulously observed. At the same time, the scope of judicial review in preventive detention matters is limited. The Court is required to examine whether the constitutional and statutory safeguards have been complied with and whether the subjective satisfaction of the detaining authority is founded upon relevant material. The Court does not sit in appeal over the sufficiency of the material or substitute its own satisfaction for that of the detaining authority.

7. The Supreme Court has reiterated that preventive detention is preventive and precautionary in character and that the Court cannot substitute its own assessment for the subjective satisfaction of the detaining authority, provided the satisfaction is founded upon relevant material and the statutory safeguards have been complied with. In the present case, the material placed on record shows that the detaining authority has not proceeded merely on the basis of one isolated criminal case. The grounds refer to eleven FIRs involving similar allegations concerning theft of livestock/cattle and indicate repeated involvement of the detenue in such activities. The fact that charge-sheets have been filed and that the detenue has been enlarged on bail in the criminal cases, has also been noticed.

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8. The mere fact that criminal proceedings are pending against a person does not, by itself, preclude recourse to preventive detention. Preventive detention operates in a different field. The relevant question is whether, notwithstanding the availability of ordinary criminal law, the antecedent activities and their continuing tendency furnish material for the satisfaction that the detenue is required to be prevented from acting prejudicially to public order.

9. It is true that there is a distinction between a mere disturbance of 'law and order' and an activity prejudicial to 'public order'. The distinction cannot be determined merely by the nomenclature of the offence, the nature, frequency, continuity and impact of the activities upon the community have to be considered. The Supreme Court has emphasised that the question is whether the activities affect the even tempo of public life and thereby transcend the ordinary law-and-order domain. In the case on hand, the detaining authority has relied upon the repeated nature of the alleged activities, the number of criminal cases and the continuing pattern attributed to the detenue. The satisfaction recorded by the detaining authority, therefore, cannot be characterised as being founded upon a solitary or stale incident. This Court, while exercising its limited jurisdiction in a Habeas Corpus Petition, cannot substitute its own assessment of the

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material for the satisfaction recorded by the competent authority.

10. The contention regarding the bail orders also does not, in the facts of the present case, persuade this Court to invalidate the detention order. The grounds themselves disclose that the detaining authority was conscious of the fact that the detenue had been granted bail in the criminal cases. Thus, the existence and effect of the bail orders were not concealed from the detenue. The reference to the bail orders in the grounds is essentially to demonstrate that, notwithstanding his release in the criminal cases, the detenue was at liberty and there existed an apprehension of recurrence of the activities attributed to him.

11. The position would undoubtedly be different if a document which constituted the very foundation of the subjective satisfaction was withheld from the detenue. The constitutional requirement is that the material relied upon by the detaining authority must be made available so as to enable the detenue to make an effective representation. In the present case, however, the bail orders, on the material placed before this Court, have not been shown to constitute such independent foundational material; their substance/status is already reflected in the grounds themselves.

12. The more substantial challenge relates to the language of the grounds. It is settled that the grounds of

detention have to be communicated to the detenue in a language which he understands so as to enable him to make an effective representation. The Supreme Court has reiterated that mere physical service of grounds in a language not understood by the detenue would not satisfy Article 22(5) of Indian Constitution. However, the question in every such case is ultimately one of effective communication and effective knowledge**.** The Court has also recognised that where the record affirmatively establishes the detenue's understanding of the language and his actual knowledge of the grounds, the detention cannot be invalidated on the basis of a purely formal objection concerning the language of the document. In ***Sarfaraz Alam v. Union of India*** *reported as* ***2024 INSC 18***, the Supreme Court found compliance with Article 22(5) on the basis of the contemporaneous record demonstrating the detenue's knowledge of English and his reading and understanding of the grounds and relevant documents.

13. In the present case, the material placed before the Court as also the counter Affidavit filed by the respondents, demonstrates that the contents of the detention order and grounds were communicated and explained to the detenue in a language understood by him and that he was informed of his right to make a representation. The petitioner has not been able to

demonstrate any specific aspect of the grounds which remained beyond his comprehension or any actual prejudice occasioned to his right of representation. The mere fact that the original grounds were prepared in English cannot, in the circumstances of the present case, be viewed in isolation from the manner in which the grounds were actually communicated to the detenue and the contemporaneous record relating to their service and explanation. The constitutional requirement is directed towards securing an effective opportunity of representation and the Court has to examine the substance of compliance rather than merely the form. It is also significant that the petitioner has not been able to point out any material circumstance which was concealed from him and which, if furnished, would have altered his opportunity to make an effective representation. The grounds disclose the FIRs, the nature of the allegations, the antecedents, conduct attributed to the detenue and the basis upon which the detaining authority apprehended recurrence of such activities.

14. On a cumulative consideration of the material placed before this Court, it cannot be held that the subjective satisfaction recorded by the detaining authority is based on irrelevant or extraneous considerations. Nor can it be said that the satisfaction is founded merely upon one isolated criminal case. The material discloses repeated

involvement in similar activities, spread over a number of criminal cases, which the detaining authority has considered in the context of their impact upon 'public order'. It may not be out of place to say that the repeated commissions of thefts, even after his release on being admitted to bail, amounts to create fear psychosis in the local population, worrying about the safety of their properties, alarming them to be alert, spoiling their peace of mind.

15. It needs to be emphasised that this Court is not required to determine whether the detenue is guilty of the offences forming the subject matter of the FIRs. The criminal liability of the detenue is to be adjudicated by the competent criminal courts in accordance with law. The limited question before this Court is whether the preventive detention order suffers from any constitutional or statutory infirmity warranting interference. On the material available, this Court finds no such infirmity.

16. For the foregoing reasons, the grounds urged by the petitioner do not merit acceptance. The impugned detention order reflects due application of mind to the relevant material and the safeguards governing preventive detention have, in the facts placed before this Court, been substantially complied with and the impugned order is not vitiated in any manner, so as to warrant it to be quashed.

17. The petition is, accordingly, **dismissed** along with pending application(s) and the impugned detention order is **upheld**.

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

(M. A. CHOWDHARY)
JUDGE

Srinagar
25.09.2026
Muzammil. Q

Whether the order is reportable: *Yes / No*

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