

HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT SRINAGAR

HCP No.37/2026

Reserved on: 15.09.2026

Pronounced on: 25.09.2026

Uploaded on: _____

Operative part or full judgment: Full

Firdous Ahmad Shah

S/O Bashir Ahmad Shah
R/O Shart-Muqam, Lolab,
District Kupwara.

...Petitioner(s)

Through: Adv. B.A.Tak.

Vs.

1. Union Territory of J&K

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

2. District Magistrate,
Kupwara.

3. Sr. Superintendent of Police,
Kupwara.

...Respondent(s)

Through: GA Faheem Nisar Shah.

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

JUDGMENT

1. Through the medium of the instant petition, the petitioner-detinue, has called in question the detention Order No. **17-DMK/PSA of 2025** dated **01.05.2025** passed by respondent No.2-District Magistrate, Kupwara, whereby the petitioner has been placed under preventive detention in exercise of powers conferred by Section 8(1)(a)(i) read

with Clause (ii) of Sub Section (2) of Section-8 of the Jammu and Kashmir Public Safety Act, 1978 (for short, "the Act"), with a view to prevent him from acting in any manner prejudicial to the 'security of the UT of Jammu and Kashmir'.

2. The challenge to the impugned detention order has been made, *inter alia*, on the grounds that the material relied upon by the detaining authority is stale; that there is no live and proximate link between the alleged activities and the necessity of preventive detention; that the grounds of detention are vague; that the petitioner had earlier been detained under the provisions of the Public Safety Act and the earlier detention orders had either been quashed or revoked; that the petitioner had been admitted to bail in the criminal cases relied upon by the detaining authority; that the ordinary criminal law was sufficient to deal with the allegations; that the alleged activities pertaining to the years **2018** and **2019** have become hopelessly stale and cannot furnish the requisite live link for an order of preventive detention at this stage; that the petitioner had been enlarged on bail in the criminal cases and in relation to FIR No. **67/2023** under Sections 7/25 Arms Act, Sections 13, 18, 23, 39 UA(P) Act of Police Station Lalpora, the investigation/prosecution had undergone a material change, inasmuch as the petitioner was discharged from certain UA(P) Act offences and was proceeded against

under the Arms Act; that such circumstances completely dilute the basis of the detention.

3. Respondents have filed their counter affidavit wherein it has been submitted that the present detention order is not founded merely on the old FIRs or on the grounds which had formed the basis of the earlier detention order; that the material concerning the earlier cases constitutes, at best, the antecedent background, whereas the present subjective satisfaction has been arrived at on the basis of subsequent and independent material including FIR No. **67/2023** and the developments emanating therefrom; that the fact that the petitioner was granted bail or that some of the offences initially invoked during investigation did not ultimately survive, does not by itself render the preventive detention illegal; that the preventive detention proceeds on a different consideration i.e., whether on the basis of the material placed before the detaining authority there exists a reasonable basis to apprehend that the person, if allowed to remain at large, may indulge in activities prejudicial to the security of the State/Union Territory; that the detention order, impugned in the present petition, be upheld.
4. Heard learned counsel for both the sides, perused the detention record and considered the matter.
5. Learned counsel for the petitioner, while assailing the impugned order, argued that the petitioner has been

repeatedly subjected to preventive detentions, on substantially the same set of allegations. Reference has been made to the earlier criminal cases, including FIR No. **91/2018** and the proceedings emanating therefrom, as also the earlier detention orders which came to be revoked/quashed; that the earlier detention order having ceased to exist, the same material could not have been resurrected for recording fresh subjective satisfaction; that the grounds supplied to the petitioner are vague and do not disclose with sufficient clarity the material which weighed with the detaining authority; that the record contains inconsistencies regarding the chronology of events and that certain documents appear to have been prepared or introduced subsequently only to sustain the detention order.

- 6.** Learned counsel for the respondents, on the other hand, would argue that the challenge proceeds on an erroneous premise that preventive detention is a substitute for criminal prosecution; that the two jurisdictions operate in different fields; that the purpose of the present detention is not to punish the petitioner for any past offence but to prevent his future activities prejudicial to the 'security of the Union Territory'; that the grounds of detention were duly communicated to the detainee in a language understood by him and that the requisite material was supplied to him enabling him to make an effective

representation; that the allegation that the grounds are vague or that the documents were manufactured is stated to be without any substance.

7. Before examining the individual grounds of challenge, it would be apposite to notice the settled parameters governing judicial review of an order of preventive detention. Section 8 of the Jammu and Kashmir Public Safety Act, 1978 empowers the competent authority to order detention where it is satisfied that such detention is necessary with a view to prevent a person from acting in any manner prejudicial to the 'security of the Union Territory' or maintenance of 'public order'. Section 13 of the Public Safety Act read with Article 22(5) of the Constitution of India, obligates the authority to communicate the grounds of detention in a language understandable to the detainee and afford him the earliest opportunity of making a representation.

8. Preventive detention is, undoubtedly, an exceptional measure and the procedural safeguards surrounding it have to be strictly observed. At the same time, the Court, while exercising jurisdiction in a Habeas Corpus Petition, does not sit as an appellate authority over the subjective satisfaction of the detaining authority. The Court examines whether the satisfaction has been arrived at on the basis of relevant material, whether there has been application of mind, whether the constitutional and statutory safeguards

have been complied with and whether the grounds have the requisite nexus with the object of detention. The Supreme Court has repeatedly emphasised that the adequacy or sufficiency of material is ordinarily not to be re-appreciated by the Court as if it were deciding a criminal trial.

9. The main submission on behalf of the petitioner is that earlier detention orders have either been quashed/revoked and, therefore, the respondents could not have relied upon the same grounds again to invoke detinue fresh detention vide impugned order. It is borne from the record that the detinue was detained firstly under PSA on 18.09.2018, after his involvement in case FIR No. 91/2018 registered at Police Station Lalpora, which was quashed by this Court on 31.12.2018; secondly detained on 28.01.2019 which was quashed on 11.07.2019 and thirdly on 02.08.2019 which was revoked by the Government of J&K itself on 12.04.2020. Therefore, this in his fourth detention under PSA.

10. There can be no quarrel with the proposition that where an earlier detention order has been quashed by a Court, the grounds which stood nullified cannot be treated as the foundation of a subsequent detention order. The subsequent order must have its foundation in fresh and independent material. This principle has also been recognized in the context of the J&K Public Safety Act.

However, the said principle does not mean that the subsequent conduct of a detainee becomes immune from consideration merely because he had earlier been subjected to preventive detention. The real question is whether the impugned order is substantially founded upon the very grounds which had earlier been nullified or whether there is fresh material which independently furnishes the basis for the present subjective satisfaction.

- 11.** On examination of the material placed before this Court, the present case falls in the latter category. The impugned detention order cannot, on the material placed before the Court, be characterised as a mere reproduction or revival of the earlier detention order(s). The subsequent involvement of the petitioner in **FIR No. 67/2023** coupled with the material and developments arising therefrom, constitutes an independent subsequent circumstance. The earlier cases, insofar as they have been referred to, have to be understood as antecedental background and not as the sole foundation of the present detention. This distinction assumes significance. Had the present order been based exclusively on the same very grounds which had earlier been quashed, the challenge would have had considerable force. But where subsequent material has intervened and the detaining authority has considered that material along with the antecedents of the petitioner, the mere existence of an earlier detention orders which were quashed/revoked

cannot, by itself, invalidate the subsequent order. The argument that the incidents of **2018** and **2019** are stale also cannot be examined in isolation from the subsequent conduct attributed to the petitioner.

12. The doctrine of "live link" undoubtedly constitutes an important safeguard in preventive detention jurisprudence. A detention order cannot ordinarily be founded upon remote incidents having no rational or proximate connection with the necessity of detention. At the same time, the question of proximity has to be examined in the context of the entire chain of circumstances and the nature of the alleged activities.

13. In the present case, the material does not stop with the incidents of the years **2018-2019**. The record refers to subsequent criminal activity resulting into registration of **FIR No.67/2023** and the subsequent investigation/prosecution. Thus, the Court is unable to accept the submission that the impugned detention order rests solely upon stale incidents or the same incidents which were basis of earlier detentions. The Supreme Court has consistently held that preventive detention is concerned with a reasonable prognosis of future conduct drawn from past conduct and surrounding circumstances; the relevant question is whether the material relied upon retains a rational nexus with the apprehension sought to be prevented.

14. The present case, therefore, cannot be equated with a case where an isolated incident several years old is suddenly resurrected without any intervening conduct. The subsequent FIR and the material arising from it constitute the intervening circumstances which, according to the detaining authority, demonstrate the continuing propensity of the petitioner. Whether such material is ultimately sufficient to secure a conviction is not the question before this Court. The Court is concerned with the legality of the subjective satisfaction recorded for preventive detention.

15. The argument that the petitioner has been enlarged on bail or that certain charges did not survive in the criminal proceedings also does not, by itself, demolish the detention order. The Constitution Bench in **Haradhan Saha v. State of West Bengal** reported as **(1975) 3 SCC 198**, made a distinction between punitive detention following a finding of guilt and preventive detention, the latter being directed towards preventing anticipated prejudicial conduct. The pendency of, or even proceedings under, the ordinary criminal law does not, by itself, bar recourse to preventive detention. Likewise, in **Kamarunnissa v. Union of India**, reported as **(1991) 1 SCC 128**, the Supreme Court recognised that a detention order may validly be passed even in respect of a person who is in custody, provided the detaining authority is

aware of the custody, there is reliable material indicating a real possibility of release and there is a reasonable basis to apprehend prejudicial activity upon release. This principle becomes even more apposite where the detinue has already been released on bail and the detaining authority, on the basis of subsequent material, records satisfaction that his remaining at large poses a continuing threat sought to be prevented by the preventive detention law.

16. The fact that the petitioner was discharged from particular offences, or that the prosecution ultimately proceeded under a different statutory provision, cannot automatically be equated with a judicial declaration that the factual material underlying the incident was false or non-existent. Preventive detention is not dependent upon the eventual result of a criminal trial. The Court, however, has carefully examined whether the detaining authority was aware of the developments in the criminal case. On the material placed before it, this Court finds no sufficient basis to hold that the impugned satisfaction was arrived at by suppressing or ignoring such material.

17. The next contention is that the grounds of detention are vague. The constitutional requirement is not that the grounds should satisfy the standard of a charge-sheet or a judgment of a criminal court. The requirement is that the detinue must be placed in a position to understand the substance of the allegations and the material which has

led the detaining authority to form the requisite satisfaction so that he can make an effective representation. The Supreme Court has repeatedly treated communication of clear and intelligible grounds as a vital safeguard under Article 22(5). In the present case, the grounds refer to the relevant criminal case, the antecedents of the petitioner, the material considered by the detaining authority and the apprehension regarding his future conduct. The grounds were also supplied/explained to the detinue in the language understandable to him.

18. The fact that the grounds contain considerable factual narration cannot make them vague. Vagueness arises when the detinue is left without sufficient particulars to understand what conduct is attributed to him and what has weighed with the detaining authority. That situation is not demonstrated in the present case.

19. The record further indicates that the material relied upon by the detaining authority was furnished to the detinue and the requisite opportunity of representation was made available to him. Section 13 of the Act specifically requires communication of the grounds in a language understandable to the detinue and an opportunity to make a representation. The Supreme Court has clarified that the crucial consideration in a challenge based upon non-supply of documents is whether the

alleged omission actually impaired the detainee's constitutional right to make an effective representation.

20. In the present case, no specific relied-upon document has been identified before this Court, the non-supply of which has demonstrably prejudiced the petitioner's ability to make an effective representation. The allegation, in general terms, that the record was incomplete or that documents were subsequently introduced cannot justify interference with the detention order.

21. It bears repetition that the Court is not required to determine whether the petitioner will ultimately be convicted in FIR No. **67/2023** or whether the prosecution will succeed. Those are matters for the competent criminal court. The Court is equally conscious that the power of preventive detention cannot be exercised casually. Personal liberty is a cherished constitutional value and preventive detention must remain within the confines of the statute and the Constitution. However, where the competent authority has considered relevant material, recorded the requisite subjective satisfaction, communicated the grounds in an intelligible manner and afforded the detainee an opportunity of representation, the Court cannot substitute its own assessment for that of the detaining authority merely because another view may also be possible.

22. On an overall consideration of the detention record, this Court is satisfied that:

- (i) the impugned detention order is founded upon relevant material;
- (ii) the present detention cannot be said to be merely a revival of the earlier detention orders;
- (iii) the subsequent FIR No. **67/2023** and the material arising therefrom provide a subsequent factual basis for the present subjective satisfaction;
- (iv) the earlier cases, insofar as referred to, do not constitute the sole foundation of the impugned order;
- (v) the plea of staleness and absence of live link, when examined in the backdrop of the subsequent material, is not made out;
- (vi) the grounds of detention are sufficiently clear and intelligible and cannot be characterized as vague;
- (vii) the fact of bail/discharge or alteration of the offences in the criminal proceedings does not, by itself, invalidate the preventive detention; and
- (viii) no violation of Article 22(5) of the Constitution or the mandatory procedural safeguards contained in the Act has been demonstrated.

23. The contention that the respondents have resorted to preventive detention merely because the ordinary criminal law has failed, or that the detention is punitive in

character, is also not borne out from the record. The object of the impugned order is preventive only in order to prevent the petitioner from indulging in activities considered prejudicial to the security of the Union Territory. The distinction between punitive and preventive detention has been repeatedly recognised by the Supreme Court.

24. It is, therefore, not possible for this Court to hold that the subjective satisfaction recorded by the detaining authority is vitiated by non-application of mind, irrelevant material, vagueness, staleness or absence of proximity.

25. For the foregoing reasons, the impugned detention Order No. **17-DMK/PSA of 2025** dated **01.05.2025** passed by respondent No.2-District Magistrate, Kupwara under the provisions of the Jammu and Kashmir Public Safety Act, 1978, is **upheld**. The instant petition fails and is, accordingly, **dismissed**.

26. 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