

HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT SRINAGAR

HCP No. 109/2025

Reserved on: 12.05.2026

Pronounced on: 18.05.2026

Uploaded on: 19.05.2026

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

**Nazir Ahmad Chak
S/O Late Ab. Salam Chak,
R/O Odura,
Tehsil & District Kulgam.**

...Petitioner(s)

Through: Adv. Zahid Hussain Dar.

Vs.

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

2. District Magistrate, Kulgam.

3. Senior Superintendent of Police, Kulgam.

...Respondent(s)

Through: GA Zahid Qais Noor.

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

JUDGMENT

1. Through the present petition filed under Article 226 of the Constitution of India, the petitioner seeks quashment of Detention Order No. 01/DMK/PSA/2025 dated 30.04.2025 passed by respondent No.2- District Magistrate Kulgam, under Section 8 of

the Jammu and Kashmir Public Safety Act, 1978, whereby he has been placed under preventive detention in order to deter him from acting in a manner prejudicial to the 'security of the State'.

2. The main grounds urged by learned counsel for the petitioner are that the detainee is already facing trial in FIR No. 61/2019 under section 143, 153 RPC and 13 of the Unlawful Activities (Prevention) Act registered at Police Station Kulgam and has been enlarged on bail by the competent Court of law; that the respondents have not challenged the said bail order and, therefore, the impugned detention order is unsustainable; that the detainee has already been taken into preventive measures on six earlier occasions i.e., on 27.01.2023, 18.05.2023, 04.04.2024, 23.04.2024, 01.08.2024 and 23.04.2025, and despite that no fresh prejudicial activity has been specifically attributed to him; that whole of the material relied upon by the detaining authority was not supplied to the detainee, thereby disabling him from making an effective and meaningful representation against the order of detention; that the grounds of detention are vague and bereft of particulars.

3. Per contra, learned counsel appearing for the respondents submits that the detention order has been passed, strictly in accordance with law, after the detaining authority derived subjective satisfaction from the material placed before it; that the detainee has remained continuously involved in activities prejudicial to the security of the State; that the detainee has been bound down on six occasions but despite preventive measures taken earlier, he did not mend his activities; that the detainee has

been working as an Over Ground Worker (OGW) of 'HM' and 'LeT' banned terrorist outfits and has been providing logistic support and assistance to them; that all the material relied upon, including dossier, grounds of detention and other relevant documents, were supplied to the detainee against proper receipt and explained to him in the language understood by him.

4. Heard learned counsel for the parties, perused the detention record produced by the respondents and considered the matter.
5. The first contention raised by the petitioner is that since the detainee has been granted bail in FIR No. 61/2019 and the said order has not been challenged by the respondents, the preventive detention could not have been ordered. The argument is devoid of merit. 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 categorically 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 Paras 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.

6. A perusal of the grounds of detention reveals that the detaining authority has specifically referred to the involvement of the detainee in FIR No. 61/2019 and has also noticed the factum of grant of bail in his favour. Thus, the relevant circumstance regarding 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 detainee's activities prejudicial, non-challenge to the bail order by the respondents would not render the detention illegal.
7. The record further demonstrates that the detainee has repeatedly come to the notice of law enforcement agencies and has been subjected to preventive measures on several occasions. The respondents have specifically stated that the detainee was bound down six times, however, despite such preventive action, he continued to indulge himself in activities aimed at supporting terrorist elements by providing logistic assistance and acting as an 'OGW'. Preventive detention laws are intended to prevent recurrence of prejudicial activities and the past conduct of a

detenue constitutes a relevant factor for drawing subjective satisfaction.

8. The contention that the grounds of detention are vague also does not merit acceptance. The grounds supplied to the detenue contain sufficient particulars relating to his activities, association and role in facilitating militant activities. The detaining authority has narrated the manner in which the detenue remained involved in extending support to terrorist elements and how his activities were considered detrimental to security and public order. It is well settled that sufficiency or adequacy of material cannot be gone into by the Court exercising writ jurisdiction in preventive detention matters, once subjective satisfaction is based on relevant material.
9. So far as the plea regarding non-supply of material is concerned, the detention record produced before the Court contains the execution report and receipts bearing signatures of the detenue acknowledging receipt of the grounds of detention and the material relied upon by the detaining authority. The record further indicates that the contents were explained to the detenue in the language understood by him i.e., Urdu/Kashmiri language. No specific document which was allegedly withheld has been identified by the petitioner. A vague assertion regarding non-supply of material, in the face of official record, cannot be accepted.
10. The scope of judicial review in matters of preventive detention is limited. The Court is not required to sit in appeal over the subjective satisfaction recorded by the detaining authority.

Interference is warranted only when procedural safeguards are violated or the order suffers from non-application of mind, *mala fides* or absence of material. In the present case, none of these infirmities are made out.

11. From the material placed on record, this Court is satisfied that the detaining authority has passed the detention order after due application of mind and on the basis of relevant material indicating that the activities of the detainee were prejudicial to the 'security of the State'. Procedural safeguards envisaged under law have also substantially been complied with.
12. Accordingly, finding no merit in the petition, the same is **dismissed** and the impugned detention order is upheld.
13. Scanned detention record is directed to be sent back.

(M. A. CHOWDHARY)
JUDGE

Srinagar
18.05.2026
Muzammil. Q

Whether the order is reportable: Yes / No