

HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT SRINAGAR

HCP No.130/2025

Reserved on: 10.09.2026
Pronounced on: 19.09.2026
Uploaded on: _____
Operative part or full judgment: Full

Numan Qayoom Ganie
S/O Abdul Qayoom Ganie
R/O Methan, Chanpora,
District Srinagar.

...Petitioner(s)

Through: Adv. Wajid Mohammad Haseeb.

Vs.

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

2. District Magistrate,
Srinagar.

3. Sr. Superintendent of Police,
Srinagar.

...Respondent(s)

Through: Sr.AAG Mohsin Qadri with
Assisting Counsel Haris Khan.

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

JUDGMENT

1. The petitioner herein has invoked the jurisdiction of this Court seeking quashment of detention Order No. **DMS/PSA/07/2025** dated **29.04.2025** passed by respondent No.2-District Magistrate, Srinagar under

Section 8 of the Jammu and Kashmir Public Safety Act, 1978 (for short, "*the Act*"), whereby the petitioner has been placed under preventive detention, in order to prevent him from his activities prejudicial to the maintenance of 'security of the State'.

2. The case of the petitioner, as projected in the petition, is that the detention order is legally unsustainable, *inter alia*, on the grounds that the material relied upon by the detaining authority is stale; that the criminal case relied upon against the petitioner is **FIR No. 53/2022** under Sections 121, 121-A IPC and Sections 16, 17, 18 & 40 of UA(P) Act registered at Police Station Saddar; that the petitioner had already been admitted to bail in the said FIR; that there is no proximate intervening activity disclosed in the grounds which could furnish a live link between the alleged past conduct and the necessity of preventive detention in the year 2025; that the detaining authority has failed to demonstrate the requisite application of mind; that the detention order was executed on **03.05.2025**; that the representation made by the petitioner came to be considered and rejected; that the mere fact that the representation was subsequently considered cannot, by itself, cure an otherwise invalid detention founded upon stale or irrelevant material.

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 detainee was necessary; that the detainee had been bound down in terms of Section 126/170 BNSS with regard to his continuous involvement in anti-national and unlawful activities in the area; 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 detainee 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. Preventive detention is an exceptional measure and constitutes a serious inroad into the fundamental right to personal liberty guaranteed under Article 21 of the Constitution. The power is preventive and not punitive. The material relied upon by the detaining authority must, therefore, have a live and proximate link with the object sought to be achieved by the detention. The Supreme Court in ***Rekha v. State of Tamil Nadu***, reported as **(2011) 5 SCC 244**, and ***Sama Aruna v. State of Telangana***, reported as **(2018) 12 SCC 150**, has repeatedly emphasized that stale incidents cannot ordinarily constitute the foundation of preventive detention

unless the record discloses circumstances establishing continuity and proximity.

6. In the present case, the criminal antecedent relied upon is **FIR No. 53/2022** registered under Sections 121, 121-A IPC and Sections 16, 17, 18 & 40 of UA(P) Act at Police Station Saddar, whereas the detention order came to be passed in the year **2025**. Thus, there is a substantial temporal gap between the alleged criminal activity and the preventive detention. More importantly, the record placed before the Court does not disclose any sufficiently proximate intervening prejudicial activity which could bridge this temporal gap and establish a live link between the alleged past conduct and the subjective satisfaction recorded by the detaining authority. The mere reference to vague antecedents cannot substitute the requirement of a live and proximate nexus. Antecedents may be relevant material, but they cannot, by themselves, transform stale material into proximate material warranting preventive detention.

7. Another circumstance which assumes considerable significance is that the petitioner had already been granted bail in **FIR No. 53/2022**. Where the person sought to be preventively detained is already in custody or has been released on bail, the detaining authority is required to demonstrate conscious consideration of that circumstance and the existence of cogent material showing that there

was a real possibility of the person engaging in prejudicial activities notwithstanding his release. The Supreme Court has consistently held that a mere awareness of the fact of bail is not sufficient where the circumstances otherwise do not disclose the necessity for preventive detention.

8. In the present case, the detention order read in the light of the material placed before this Court, does not satisfactorily disclose what subsequent circumstance, contravention of bail conditions, fresh prejudicial activity or other compelling material persuaded the detaining authority that ordinary criminal law had become insufficient and that preventive detention had become necessary. The distinction between punitive detention for an offence already committed and preventive detention to prevent future prejudicial conduct cannot be lost sight of.

9. The grounds of detention are required to reflect an independent and conscious consideration by the detaining authority of the material placed before it. The subjective satisfaction contemplated by the public Safety Act cannot be an empty formality or a mechanical reproduction of the police dossier. If the grounds merely reproduce the allegations contained in the dossier without demonstrating why those allegations, viewed in the circumstances prevailing on the date of detention, necessitated preventive detention, the satisfaction of the detaining authority becomes vulnerable on the ground of non-application of

mind. In the present case, the reliance upon the old FIR, coupled with the failure to satisfactorily account for the intervening period and the grant of bail to the petitioner, assumes significance in determining whether the requisite subjective satisfaction was independently reached.

10. There is yet another fundamental infirmity in the detention. **Section 15** of the Jammu and Kashmir Public Safety Act, 1978 provides that:

“In every case where a detention order has been made under this Act, the Government shall, within four weeks from the date of detention under the order” place the grounds of detention and the representation, if any, before the Advisory Board.”

11. Thus, the reference to the Advisory Board is not an optional or directory exercise. The statutory scheme makes such reference a mandatory safeguard in every case of detention. **Section 16** of the Public Safety Act requires the Advisory Board to consider the material placed before it and submit its report, while **Section 17** of the Public Safety Act provides for the action to be taken by the Government upon such report. The purpose of this safeguard is evident. Preventive detention, by its very nature, deprives a person of liberty without a regular criminal trial. The legislature has, therefore, incorporated

an independent statutory scrutiny by the Advisory Board as an additional safeguard against arbitrary or unjustified deprivation of liberty. In the present case, the respondents have failed to place on record material demonstrating that the petitioner's case was duly referred to the Advisory Board within the period prescribed under **Section 15** of the Public Safety Act.

12. The absence of such reference constitutes a serious statutory infirmity. The continued detention of the petitioner cannot be sustained merely on the strength of the original detention order when the mandatory statutory safeguard contemplated under Section 15 has not been shown to have been complied with. It is, thus, not necessary for this Court to examine whether every procedural step subsequent to the detention order was otherwise duly undertaken. Once the very foundation of the detention is found to be infirm on account of stale and remote material, absence of a live and proximate link, failure to properly account for the grant of bail, and non-compliance with the mandatory statutory safeguard relating to the Advisory Board, the continued detention cannot be permitted to stand. The subsequent consideration or rejection of the representation cannot validate an order which was otherwise vitiated at its inception.

13. For the reasons recorded hereinabove, this Court is of the considered view that the impugned detention order suffers from fundamental legal infirmities. The reliance upon **FIR No. 53/2022**, in the absence of any satisfactorily disclosed proximate intervening prejudicial activity, does not establish the requisite live nexus with the detention ordered in **2025**. The fact that the petitioner had already been granted bail in the said FIR has not been shown to have been meaningfully considered in the context of the necessity for preventive detention. The grounds further fail to demonstrate the requisite independent application of mind. Additionally, the respondents have failed to demonstrate compliance with the mandatory requirement of reference to the Advisory Board under **Section 15** of the Public Safety Act.

14. Consequently, the detention of the petitioner cannot be sustained and is found liable to be set aside. The petition is, accordingly, **allowed**. The impugned detention Order No. **DMS/PSA/07/2025** dated **29.04.2025** passed under Section 8 of the Jammu and Kashmir Public Safety Act, 1978 against the petitioner herein is hereby **quashed**. The respondents are directed to release the petitioner-detenué forthwith, if his custody is not required, in connection with any other case(s).

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

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

(M. A. CHOWDHARY)
JUDGE

Srinagar
19.09.2026
Muzammil. Q

Whether the order is reportable: Yes / No

