

**IN THE HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT SRINAGAR
(THROUGH VIRTUAL MODE)**

Case No: LPA No.115/2025

*Reserved on: 29.12.2025
Pronounced on: 13.02.2026
Uploaded on: 13.02.2026*

*Whether the operative part or full
Judgment is pronounced : **Full***

Sharik Ahmad Bangroo.

...Petitioner(s)/Appellant(s)

Through: Mr. S.T.Hussain, Sr. Advocate with Ms. Nida
Nazir, Advocate.

v/s

Union Territory of J&K and
others

Through: Mr. Mohsin Qadri, Sr. AAG with Ms. Maha
Majeed Assisting Counsel.

**CORAM: HON'BLE THE CHIEF JUSTICE
HON'BLE MR. JUSTICE RAJNESH OSWAL, JUDGE.**

JUDGMENT

PER OSWAL-J

1. The appellant was detained pursuant to the detention Order No. DMA/PSA/23/2024 dated 05.09.2024, issued by the District Magistrate, Srinagar-respondent No. 2 under the provisions of the Jammu and Kashmir Public Safety Act 1978 (hereinafter referred to as "the Act"). The appellant assailed the said detention order by filing

HCP No. 309/2024, titled “*Sharik Ahmad Bangroo Vs. Union Territory of J&K and others*”, but the same was dismissed vide judgment dated 15.05.2025.

2. Being aggrieved of the impugned judgment dated 15.05.2025, the appellant has assailed the same on the grounds that the learned Writ Court has failed to properly appreciate and consider the grounds urged in the petition. It is contended that although the detinue submitted a representation against the order of detention, but the Government, instead of independently considering and deciding the same, mechanically forwarded it to the Advisory Board, which ultimately rejected it. It is further contended that the mere endorsement of the Executing Officer stating that the detention order and connected material were served upon the detinue does not satisfy the legal requirement. In law, an affidavit of the serving/executing officer was required to be filed to substantiate due service of the detention order and the material relied upon. The learned Writ Court, however, has failed to notice and consider this fatal procedural infirmity, thereby rendering the impugned judgment unsustainable.
3. Mr. S. T. Hussain, learned Senior Advocate, appearing along with Ms. Nida Nazir, Advocate, has submitted that the representation submitted by the appellant was not independently considered and decided by the Government. It is contended that such non-consideration vitiates the order of detention. It was further submitted that the learned Writ Court has failed to correctly appreciate and adjudicate upon the issues raised by the appellant in the petition challenging the detention order.

4. *Per contra*, Mr. Mohsin Qadri, learned Senior Additional Advocate General, appearing along with Ms. Maha Majid, Advocate, has submitted that the learned Writ Court has rightly dismissed the petition filed by the appellant. He further urged that all procedural as well as constitutional safeguards, as envisaged under the Act and the Constitution of India, were strictly followed and complied with, therefore, no interference is warranted.
5. Heard learned counsel appearing for the parties and perused the record.
6. A bare perusal of the detention record reveals that the sponsoring agency, i.e. respondent No. 2, through the medium of a dossier, recommended the detention of the appellant under the provisions of the Act. The allegations levelled against the appellant, as reflected in the dossier, are that, with a view to prevent him from indulging in illegal activities, he was bound down on several occasions under Sections 107/151 of the Code of Criminal Procedure and Sections 126/170 of the Bharatiya Nagarik Suraksha Sanhita, by the Police Division Bana Mohalla. It is further alleged that there was an apprehension that the appellant was planning to form a gang with intention to disrupt the Assembly Elections- 2024, the apprehension, according to the sponsoring agency, necessitated his preventive detention under the Act. Acting upon the dossier and the connected material placed before him, respondent No. 2 formulated the grounds of detention and, upon taking note of the alleged activities of the appellant, issued the detention order dated 05.09.2024.

7. The appellant pleaded before the learned Writ Court that a representation against the order of detention was submitted to respondent No. 2. However, in the counter-affidavit filed before the Court, the respondents have stated that the representation submitted by the father of the detenu was duly considered and rejected.
8. A perusal of the detention record reveals that the appellant's father submitted two representations. The first, addressed to the Principal Secretary, Home Department, Srinagar, sought a personal hearing before the Advisory Board; this was considered and rejected, as evidenced by the Board's report dated 27.09.2024. The second representation dated 16.10.2024, was forwarded to the Additional Director General, CID J&K, for comments but was not rejected until 05.12.2024. This timeline indicates a substantial and unexplained delay in considering the representation. Furthermore, there is no evidence that either the appellant or his father was ever informed of this rejection. Such delay, coupled with the failure to communicate the decision to the detenu, is fatal to the detention order.
9. In **“Sarabjeet Singh Mokha vs. District Magistrate, Jabalpur and others”**, (2021) 20 SCC 98, the Supreme Court addressed the legal impact of a delay in considering a detenu's representation, as well as the failure to communicate the decision to the detenu, on the overall validity of the detention. The governing principle as laid down in **paragraph 47** of the judgment is extracted as under:

“47. By delaying its decision on the representation, the State Government deprived the detenu of the valuable right which emanates from the provisions of Section 8(1) of having the representation being considered expeditiously. As we have noted

earlier, the communication of the grounds of detention to the detenu “as soon as may be” and the affording to the detenu of the earliest opportunity of making a representation against the order of detention to the appropriate government are intended to ensure that the representation of the detenu is considered by the appropriate government with a sense of immediacy. The State Government failed to do so. The making of a reference to the Advisory Board could not have furnished any justification for the State Government not to deal with the representation independently at the earliest. The delay by the State Government in disposing of the representation and by the Central and State Governments in communicating such rejection, strikes at the heart of the procedural rights and guarantees granted to the detenu. It is necessary to understand that the law provides for such procedural safeguards to balance the wide powers granted to the executive under the NSA. The State Government cannot expect this Court to uphold its powers of subjective satisfaction to detain a person, while violating the procedural guarantees of the detenu that are fundamental to the laws of preventive detention enshrined in the Constitution.”

10. We further observe that the appellant was detained primarily in view of the Assembly Elections-2024. Since those elections have already concluded, a considerable period has elapsed, and the apprehension that the appellant may disrupt the electoral process has lost its relevance. Consequently, the live and proximate link between the appellant's past activities and the necessity for preventive detention has been severed.

11. A perusal of the judgment rendered by the learned writ Court reveals that the pivotal issues noticed by us hereinabove have escaped the consideration of the learned writ Court.

12. In light of the above, we are of the considered view that the judgment impugned in this appeal is not sustainable in the eyes of law and accordingly, the same is set aside. Resultantly, the order of detention bearing Order No. DMA/PSA/23/2024 dated 05.09.2024, issued by

the District Magistrate, Srinagar (respondent No. 2) under Section 8 of the Jammu and Kashmir Public Safety Act, being unsustainable in law is, accordingly, quashed. The appellant shall be released forthwith, if not required in connection with any other case.

13.The record shall be returned to the learned counsel appearing for the respondents.

14.Disposed of.

(Rajnish Oswal)
Judge

(Arun Palli)
Chief Justice

Jammu
13.02.2026
Madan Verma-Secy

Whether order is speaking? **Yes.**
Whether order is reportable? **No.**

