

**IN THE HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT SRINAGAR**

...
(Through Virtual Mode)

Reserved on: 27.08.2026
Pronounced on: 03.09.2026
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Whether the operative part or full
judgment is pronounced: Full

HCP No. 150/2025

Tariq Ahmad War, Aged 49 years
S/o Late Ghulam Rasool War,
R/o Wailoo, Kralpora, District Baramulla
through his sister Mumtaza Akhter

.....Petitioner(s)

Through:
Mr. Ajaz Ahmad Bedar Advocate

Versus

1. UT of Jammu and Kashmir through Principal Secretary to Government,
Home Department, Civil Secretariat, Srinagar.
2. District Magistrate Baramulla.

.....Respondent(s)

Through:
Mr. Hakim Aman Ali, Dy.AG

CORAM:

HON'BLE MS JUSTICE MOKSHA KHAJURIA KAZMI, JUDGE

JUDGMENT

1. Petitioner, sister of *Tariq Ahmad War Son of Late Ghulam Rasool War Resident of Wailoo, Kralpora, District Baramulla*, for short detenue, is challenging the detention order No. 19/DMB/PSA of 2024 dated 12.04.2024, for short “impugned order” issued by District Magistrate Baramulla-respondent No. 2 herein, whereby, the detenue has been placed under preventive detention, on the grounds taken in the memo of petition.

BRIEF FACTS

2. The case of the petitioner is that the detenue has been arrested by the respondents on vague, irrelevant and non-existing grounds. The detenue is stated to be an innocent peace-loving citizen who has been falsely detained without any allegations against him warranting exercise of such power. The petitioner *inter alia* challenges the impugned detention order on the grounds that he has not been furnished all the material which has been relied upon by the detaining authority in making the detention order; the subjective satisfaction has not been derived by the detaining authority itself; the grounds of detention have been virtually formulated by the concerned SSP as the dossier submitted by the SSP is the verbatim copy of the grounds of detention; the respondent No. 2 in derogation of law, has not applied his mind as to whether the detention order was required to be passed against the detenue; the detention order is based on stale grounds in the background of detenue's involvement in case FIR No. 165/2015 of Police Station Pattan, for the commission of offences punishable in terms of Sections 302 RPC and 7/25 Arms Act and the representation submitted by the detenue has not been considered violating thereby the constitutional mandate as provided under Article 22(5) of the Constitution of India; the detenue was being tried by the competent court of law under substantive laws and had been granted bail also.

3. *Per contra*, it is stated by the respondents in their counter affidavit that the detenue was acting as an OGW of Hizbul Mujahideen terrorist outfit facilitating transportation of militants; the detenue has a secessionist ideology; the constitutional safeguards have been fulfilled in letter and spirit; the representation filed by the detenue against his detention have also been considered and rejected being devoid of merit.

4. Heard learned counsel for the parties, considered the submissions made and perused the detention record.

5. The perusal of the material placed on record would reveal that the detainee has been arrested in connection with his involvement in case FIR no. 165/2015 of Police Station Pattan for the commission of offences punishable in terms of Sections 302 RPC and 7/25 Arms Act.

6. The respondents have not effectively controverted the pleas raised by the detainee in his petition. Nothing is said by the respondents insofar as the subjective satisfaction of the detaining authority is concerned. The grounds of detention reflects at various places that the activities of the detainee had been found prejudicial to the maintenance of peace but they have not specified such activities anywhere in the grounds of detention or in the counter affidavit. The respondents, furthermore, reflect in the grounds of detention that:

“Reports received from field agencies are indicative of the fact that you have been assigned a very important role in carrying forward the illegal/anti-national activities in view of the upcoming General Election to Lok Sabha-2024.”

7. In view of above stated position, as reflected in the grounds of detention, the respondents appear to have taken precautions to ensure that the General Election of Lok Sabha-2024 were smoothly conducted; however, the said elections are now well over.

8. Another aspect of the matter is that the detainee has been involved in case FIR no. 165/2025 of Police Station Pattan, a criminal case,

reference whereof is made in the grounds of detention which presumably forms a significant ground for passing detention order against the detenue, however, the detention order, impugned in this petition, has admittedly been passed in the year 2024 almost a decade later the date of FIR supra. This in itself would suggest that the detention order has been based on stale grounds, the practice deprecated by the Apex Court. Reference in this behalf can be made to the judgment delivered in case titled ***Khaja Bilal v. State of Telangana***, reported as ***(2020) 13 SCC 32***.

9. The detenue has also been granted bail by the competent court of law in the aforesaid case and the respondents though having taken note of the said fact in the grounds of detention, but nothing has been said anywhere, either in the grounds of detention or in the counter affidavit, as to what constrained them to believe that the substantive laws were not sufficient to curb the evil and preventive detention is a necessity. This would unambiguously suggest that the detaining authority has not applied its own mind while passing the detention order which is sufficient to render the detention order unsustainable in law. It has consistently been held by the Courts of law that violation of any of the constitutional rights of the detenue, by the detaining authority, puts under cloud the whole detention order. Reliance in this behalf is placed on the recent Judgment of Supreme Court delivered in case titled as ***Joyi Kitty Joseph v. Union of India & Ors.***, reported as ***{2025} SCR 419***. Paragraphs 21 and 22 being relevant are taken note of:-

“21. The criminal prosecution launched and the preventive detention ordered are on the very same allegations of organised smuggling activities, through a network set up, revealed on successive raids carried on at various locations, on specific information received, leading to recovery of huge cache of contraband. When

bail was granted by the jurisdictional Court, that too on conditions, the detaining authority ought to have examined whether they were sufficient to curb the evil of further indulgence in identical activities; which is the very basis of the preventive detention ordered. The detention order being silent on that aspect, we interfere with the detention order only on the ground of the detaining authority having not looked into the conditions imposed by the Magistrate while granting bail for the very same offence; the allegations in which also have led to the preventive detention, assailed herein, to enter a satisfaction as to whether those conditions are sufficient or not to restrain the detenu from indulging in further like activities of smuggling.

22. We, hence, allow the appeal and set aside the order of detention. The detenu shall be released forthwith, if still in custody.”

10. The respondents cannot be expected to take recourse to hollow assertions only, as they were obliged, by law, to see that the detenu has indeed indulged in the similar activities for which he was granted bail and there were reasonable prognosis about his future conduct, in light of the well-articulated circumstances, that similar activities would likely be repeated by the detenu. The Supreme Court has been consistently holding that the grounds of detention should always be proximate, pertinent and relevant as the subjective satisfaction of the detaining authority is not immune to judicial review though an exclusive domain of the detaining authority.

11. The judgment of Apex Court of which reference and reliance is made by the learned counsel for the petitioner delivered in case titled *Sushanta Kumar Banik v. State of Tripura & others* reported as 2022 LiveLaw (SC) 813 is quite relevant to the facts of the instant. The paragraph No. 23 being relevant is taken note of herein, thus:

“A plain reading of the aforesaid provision would indicate that the accused arrested under NDPS Act, 1985 can be ordered to be released on bail only if the Court is

satisfied that there are reasonable grounds for believing that the accused is not guilty of such offence and that he is not likely to commit any offence while on bail. If the appellant herein was ordered to be released on bail despite the rigours of Section 37 of the NDPS Act, 1985, then the same is suggestive that the Court concerned might not have found any prima facie case against him. Had this fact been brought to the notice of the detaining authority, then it would have influenced the mind of the detaining authority one way or the other on the question whether or not to make an order of detention. The State never thought to even challenge the bail orders passed by the special court releasing the appellant on bail.”

12. The impugned order has been issued on 12.04.2024 and was valid till 12.04.2026, therefore, the impugned order has outlived its life also.

13. Viewed thus, the petition is allowed and detention order No. 19/DMB/PSA of 2024 dated 12.04.2024, issued by Deputy Commissioner, Baramulla-respondent No. 2, detaining the detainee Tariq Ahmad War Son of Late Ghulam Rasool War Resident of Wailoo, Kralpora, District Baramulla, is quashed and the respondents are directed to release the detainee forthwith.

14. The detention record be returned to the learned counsel for the respondents against receipt.

15. Disposed of.

(MOKSHA KHAJURIA KAZMI)
JUDGE

Jammu

03.09.2026

Mohammad Yasin Dar, PS

Whether the Judgment is reportable: Yes/No.

Whether the Judgment is speaking: Yes.