

HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT SRINAGAR

HCP No. 161/2025

Reserved on: 09.04.2026

Pronounced on: 17.04.2026

**Arshid Ahmad Khan @ Abu Musa
S/O Mohammad Altaf Khan
R/O Wayil Wooder Gutlibagh
District Ganderbal, through
his father.**

...Petitioner(s)

Through: Advocate N.A.Tabasum.

Vs.

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

2. District Magistrate, Ganderbal.

...Respondent(s)

Through: Govt. Advocate Waseem Gull.

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

JUDGMENT

1. Through the medium of this petition, the petitioner has challenged the detention Order No. **01-DMG-PSA-2025 dated 05.04.2025** issued by District Magistrate, Ganderbal - respondent No. 2 (for short detaining authority) by virtue of which the petitioner (for short 'detenue') has been ordered to be detained under Section 8 of the Jammu & Kashmir Public Safety Act, 1978 (for short '*the Act*') to prevent him from activities prejudicial to the security of the State.

1. It is stated in the petition that the detenue was initially arrested and was falsely implicated in FIR No. 199/2020 registered in Police Station, Ganderbal for the commission of offences under Sections 13, 18, 20, 23, 39 UA(P) Act and Section 7/25 IA Act, wherein he was bailed out. Thereafter, the detenue was called by the Police Station, Ganderbal and told that in view of incoming Independence Day and in view of ongoing Amarnath Ji Yatra he will have to be in custody for some days, however, the detenue was, thereafter, detained under the provisions of J&K Public Safety Act, 1978 vide detention Order No. 03/DMG/PSA of 2023 dated 10.08.2023; that the said order of detention was challenged by the detenue through the medium of writ petition HCP No. 116/2023 and the said order was quashed by virtue of the judgment dated 14.10.2024. It is further alleged that after 5½ months the detenue was detained vide another detention order arbitrarily, impugned in the instant petition; that the detenue has filed representation against his detention but the same has not been considered by the authorities.
2. The detenue has questioned the impugned order of detention *inter alia* on the grounds that the constitutional as well as procedural safeguards as envisaged under the Constitution of India as well as under the Public Safety Act have not been complied with by the Detaining Authority while passing the order of detention. The material that has been relied upon by the Detaining Authority has not been furnished to the detenue thereby depriving him of his valuable right of making effective representation against preventive detention. The order of detention has been passed after a gap of not more than 06 months, as such, the order of detention has been passed on stale grounds.

3. Respondents have filed their counter affidavit, in which they have stated that the detainee has been detained, pursuant to the order of detention passed by the respondent No. 2 and while doing so, the procedural as well as statutory safeguards enshrined under Article 22(5) of the Constitution of India and Section 13 of the Act, have been complied with by the respondents; that all the requisite documents have been supplied to the detainee, so as to enable him to make an effective representation to the Detaining Authority and to the Government. The order of detention was executed and the detainee was taken into preventive custody after the contents of the detention order/warrant and the grounds of detention were read over and explained to him in the language which he fully understood and the detainee was also informed of his right to make an effective representation to the Detaining Authority. The Detaining Authority found it necessary to detain the detainee under the Act to prevent him from the activities prejudicial to the security of the State.
4. Heard learned counsel for the parties and considered the rival submissions.
5. Learned counsel for the detainee while reiterating the grounds of challenge, has vehemently argued that as the subsequent impugned order of detention has been passed substantially on the same grounds on the basis of which the earlier detention order was passed, as such, the order of detention is bad in law and is liable to be quashed.
6. Learned GA appearing for the respondents, *ex adverso*, contended that all the documents have been served upon the detainee. He has also contended that the detention order is legal and all procedural and statutory safeguards have been complied with, while passing the order

of detention, as such, the order of detention is sustainable in the eyes of law and prayed that the same be upheld.

7. From the perusal of the material placed on file, it transpires that the order impugned has been passed on the similar grounds as narrated in the earlier grounds of detention on the basis of which the earlier order of detention was passed. FIR No. 199/2020 based in both the detention orders, as narrated in the grounds of detention, reveals that the detainee, with regard to his past activities, was involved in the said FIR and the investigation of the case was finally concluded into a charge sheet which was produced before the competent court of law. It is worth to mention here that the said FIR is of the year 2020, whereas the earlier detention order was passed in the year 2023, meaning thereby that on the basis of said FIR, the detention order was not found to be sustainable. The grounds of detention of the earlier detention order have been taken into consideration while passing the present impugned order of detention by the Detaining Authority. The same grounds could not have been relied upon by the respondents for issuance of the fresh detention order.
8. The law is well settled that if the order of detention comes to an end either by revocation or by the expiry of the period of order of detention, there must be fresh facts for passing a subsequent order of detention. When the detention order has been quashed by the Court, the grounds of said detention order are not to be taken into consideration, either as a whole or in part, even along with the fresh grounds of detention in order to pass a fresh detention order and, if such previous grounds of detention are taken into consideration while passing a fresh detention order, the order of detention will be vitiated.

9. In the judgment rendered in case '**Chhagan Bagwan Kahar v. N.L. Kalna, reported as (1989) 2 SCC 318**', the Hon'ble Apex Court has discussed the above issue meticulously, relevant paragraph of the judgment is reproduced as under :-

"12. It emerges from the above authoritative judicial pronouncements that even if the order of detention comes to an end either by revocation or by expiry of the period of detention there must be fresh facts for passing a subsequent order. A fortiori when a detention order is quashed by the court issuing a high prerogative writ like habeas corpus or certiorari the grounds of the said order should not be taken into consideration either as a whole or in part even along with the fresh grounds of detention for drawing the requisite subjective satisfaction to pass a fresh order because once the court strikes down an earlier order by issuing rule it nullifies the entire order."

10. Having regard to the facts of the case that the detinue was ordered to be detained vide impugned order on the almost same grounds, by which he was detained earlier in the year 2023 and that order was quashed on being challenged by the detinue vide order dated 14.10.2024 passed in HCP No.116/2023 and the aforestated law laid down by the Apex Court in the law of precedence reported as **(1989) 2 SCC 318**. It is needless to repeat the other aspects when impugned order is found to be liable to be quashed on the aforestated ground.
11. In view of the above, this petition is allowed. Impugned detention Order No. **01-DMG-PSA-2025 dated 05.04.2025**, is, hereby, quashed. As a

result, detainee namely Arshid Ahmad Khan @ Abu Musa S/O Mohammad Altaf Khan R/O Wayil Wooder Gutlibagh, Ganderbal, is ordered to be released from the preventive custody forthwith, provided he is not required in any other case(s).

12. **Disposed of** accordingly.

(M. A. CHOWDHARY)
JUDGE

Srinagar
17.04.2026
Muzammil. Q

Whether the order is reportable: *Yes / No*

