

HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT SRINAGAR

WP(Cr.) No. 373/2022

Reserved on: 09.04.2026

Pronounced on: 18.04.2026

**Mohammad Syed Rehman Shamus
S/O Shamus Ammer-U-Din
R/O West Bengal A/P Hubi Colony,
Sikhabagh, Lal Bazar, Srinagar.**

...Petitioner(s)

Through: Advocate N.A.Ronga.

Vs.

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

2. District Magistrate, Srinagar.

3. Senior Superintendent of Police, Srinagar.

...Respondent(s)

Through: Assisting counsel Maha Majid vice
Sr.AAG.Mohsin Qadri.

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

JUDGMENT

- 1.** District Magistrate, Srinagar-Respondent No.2 (for short 'Detaining Authority') in exercise of powers conferred on him under **Section 8 of the J&K Public Safety Act, 1978** has passed the Detention Order No. **DMS/PSA/97/2021 dated 07.12.2021** (for short 'impugned order'), in terms whereof the detenue was ordered to be detained to prevent him from the activities prejudicial to the maintenance of Public Order.

1. The order of detention is challenged by the detenue through the medium of this petition, *inter alia*, on the grounds that the respondents have not followed due procedure of law while detaining the detenue under the preventive law which renders his detention illegal; that the illegal activities attributed to the detenue are all imaginary and based on surmises and are false, baseless and concocted; that the detenue was illegally implicated in FIR Nos. 56/2011 and 41/2021 under Section 13 of Unlawful Activities (Prevention) Act; that the detaining authority has not applied its mind while preparing the grounds of detention and has acted as spokesman of the Police agencies and has framed the grounds of detention at their behest; that there is no cogent material to detain the detenue under the preventive law; that the satisfaction is illusory and not valid one; that after registration of FIR Nos. 56/2011 and 41/2021, there are no fresh allegations leveled against the detenue, therefore, the detention of the detenue is patently illegal and against the law and deserves to be quashed.
2. Respondents, pursuant to notice, have filed their reply affidavit, wherein it is stated that the order of detention is based on a reasonable prediction of future behavior of the detenue. The detenue's anti-national and illegal activities have posed a serious threat to the maintenance of public order of the UT of J&K. It is submitted that the preventive detention is devised to afford protection to the Society and the object is not to punish a man for having done something but to intercept him before he does it and to prevent him from doing. It is further stated that any preventive

measures, even if they involve some restraint or hardship upon individuals, do not contribute in any way the nature of punishment.

3. Learned counsel for the detainee has raised the plea of vagueness in the grounds of detention. It is being stated that the allegations leveled in the grounds of detention relate to the year 2011 and 2021 and those activities have no proximity with present time for the purpose of preventive detention unless any fresh activity is not attributed to the petitioner. It is also contended by the learned counsel for the petitioner that it is not mentioned in the impugned detention order that normal law was ever invoked before taking recourse to preventive detention law and that too was applied merely on the basis of surmises and conjectures.
4. Learned counsel for the respondents, on the other hand, has supported the detention order of the detainee. He contended that the detainee's continuous anti-national and illegal activities has made it imperative to detain the detainee under the provisions of Public Safety Act and there were sufficient grounds available for such detention. It is further contended that the live link is still sustaining, as the detainee is still involved in the anti-national activities and the adverse reports led the sponsoring agency to recommend the detainee for preventive detention under the provisions of the Public Safety Act.
5. Heard, perused the material available on record and considered the same.
6. The allegations leveled against the detainee that he was involved in instigating disgruntled elements to resort to large scale violence and was indulged in illegal activities which are aimed to create law and

order problems, is all vague and in such a situation the detenu would not be in a position to submit an effective and a meaningful representation before the detaining authority or the competent authority in the Government, to have a fresh look into the matter. Vagueness does invalidate the detention order in the circumstance. In this regard reliance can be placed on the judgment of the Apex Court, in case titled '**Chaju Ram Vs. State of J&K**' reported as **AIR 1971 SC 263**, wherein it has been observed and enunciated that:-

“Even as to the grounds, we have something to say. The grounds charge him with having conspired with some leaders of Democratic Conference and having incited landless people of R.S.Pura Tehsil to forcibly occupy the land comprised in Nandpur Mechanised Farm and to have persuaded them to resist violently any attempt to evict them. No details of the leaders of the Conference or of the persons incited or the dates on which he conspired or incited the squatters or the time when such conference took place, are mentioned. It would be impossible for anybody to make a representation against such grounds. These grounds, on the authorities of this Court, too numerous to be cited here, must be held to be vague. Therefore on both the twin grounds, namely, that he was deprived of his right to make a representation and also because the grounds in themselves were very vague, we must hold that there was no compliance with the law as laid down in the Jammu and Kashmir Preventive Detention Act. The result, therefore, is that the detention must be declared to be unlawful and Chaju must be declared to be entitled to his liberty. He is ordered to be released. The detenu was questioned by us and he expressed a desire that he may not be released in Delhi, because he has no means of going back. He asked to be released in Jammu. We direct therefore that he shall be taken back to the place where he was in detention in Jammu and released within the shortest possible time.”

7. It is the further argument of learned counsel for the petitioner that the grounds of impugned detention order is a verbatim copy of the dossier and no other material has been considered by the detaining authority which speaks volumes about the non-application of mind

on the part of the detaining authority which does not justify the preventive detention and the detention order requires quashment.

8. In a case titled '**Jai Singh & Ors. v. State of Jammu & Kashmir**' reported as **AIR 1985 SC 764**, it has been observed that if the detention order is verbatim copy of the dossier, it would amount to non-application of mind by the detaining authority. Para-13 of the judgment being relevant is reproduced as under:-

"13. Applying the settled legal position to the facts of the present case, I find that the order impugned cannot stand as it is based on grounds of detention, which is only verbatim copy of police dossier. The order of detention, for the reasons, exhibit total non- application of mind on the part of detaining authority and therefore, the petition is allowed and the detention order No. PSA/104 dated 16.10.2020 passed by the District Magistrate, Kathua-respondent No. 2 directing the detention of Balbir Chand S/O Rana R/O Chack Drab Khan, Tehsil and District Kathua is quashed. Respondents are directed to release the detainee forthwith, provided he is not required in connection with any other case".

9. On perusal of dossier prepared and submitted by the police to the detaining authority and the impugned order passed by him, based thereon, it is found that the impugned order, particularly the grounds therefor, and the grounds mentioned in the dossier by the police are almost verbatim, except for some cosmetic changes. The impugned order is, thus, not sustainable on this account alone.

10. It is also notable that normal law in the instant case had to be assumed to be sufficient to disable the detainee to indulge in any such activity which may have been in the estimation of the detaining authority to be treated prejudicial to the maintenance of public order. The preventive detention is not a quick alternative to normal process, is what has been laid down by the Hon'ble Apex Court in its three-

Judge Bench judgment “**Rekha Vs. State of Tamil Naidu & Anr.**”

reported as (2011) 5 SCC, wherein it has observed that:-

“29. Prevention detention is, by nature, repugnant to democratic ideas and an anathema to the rule of law. No such law exists in the USA and in England (except during war time). Since, however, Article 22(3)(b) of the Constitution of India permits preventive detention, we cannot hold it illegal but we must confine the power of preventive detention within very narrow limits, otherwise we will be taking away the great right to liberty guaranteed by Article 21 of the Constitution of India which was won after long, arduous and historic struggles. It follows, therefore, that if the ordinary law of the land (the Penal Code and other penal statutes) can deal with a situation, recourse to a preventive detention law will be illegal.

30. Whenever an order under a preventive detention law is challenged one of the questions the court must ask in deciding its legality is: Was the ordinary law of the land sufficient to deal with the situation? If the answer is in the affirmative, the detention order will be illegal. In the present case, the charge against the detenu was of selling expired drugs after changing their labels. Surely the relevant provisions in the Penal Code and the Drugs and Cosmetics Act were sufficient to deal with this situation. Hence, in our opinion, for this reason also the detention order in question was illegal.”

- 11.** In view of the legal position as stated hereinabove, the impugned detention order passed on vague grounds, verbatim copy of police dossier and failure on the part of the detaining authority to record

satisfaction that normal law proved insufficient to restrain the detainee. The impugned order is, therefore, liable to be quashed on these counts.

12. Resultantly, this petition is allowed. The impugned Detention Order bearing No. **DMS/PSA/97/2021 dated 07.12.2021**, is, hereby quashed. The detainee namely Mohammad Syed Rehman Shamus S/O Shamus Ammer-U-Din R/O West Bengal A/P Hubi Colony, Sikhbagh, Lal Bazar, Srinagar, is directed to be released from custody forthwith, if not required in any other case(s).

13. Disposed of, in terms of the above.


(M. A. CHOWDHARY)
JUDGE

Srinagar
18.04.2026
Muzammil. Q

Whether the order is reportable: Yes / No