

HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT SRINAGAR

HCP No. 174/2025

Reserved on: **07.05.2026**

Pronounced on: **14.05.2026**

Uploaded on: _____

*Whether the operative part or full
judgment is pronounced- **Full***

Mumtaz Ahmad Mir
S/O Muzamil Hussain Mir,
R/O Sultandaki, Tehsil Uri,
District Baramulla.

...Petitioner(s)

Through: Sr.Adv. T.H.Khawaja with
Adv. Naveed Bukhtiyar.

Vs.

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

2. District Magistrate, Baramulla.

...Respondent(s)

Through: Dy.AG Hakim Aman Ali.

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

JUDGMENT

1. Through the instant petition filed under Article 226 of the Constitution of India, the petitioner seeks quashment of Detention Order No. **13/DMB/PSA/2025** dated **07.05.2025** passed by respondent No. 2-District Magistrate, Baramulla under the provisions of the Jammu and Kashmir Public Safety Act, 1978, whereby detinue namely Mumtaz Ahmad Mir @ Billa has been

placed under preventive detention in order to curb his activities prejudicial to the maintenance of 'security of the State'.

2. The case of the petitioner is that the impugned order of detention is illegal, arbitrary and unconstitutional inasmuch as the grounds of detention are vague, non-existent and irrelevant. It is contended that the detainee was arrested in a case registered vide FIR No.15/2021 under sections 7/27 Arms Act and 2/3 EIMCO at Police Station Uri, merely on the allegation that his cousin and uncle are associates of militants, without there being any material showing involvement of the detainee, himself, in any activity prejudicial to the security of the State. It is further pleaded that the constitutional and statutory safeguards guaranteed to the detainee were violated as the material relied upon by the detaining authority was not furnished to him, thereby depriving him of making an effective representation against the order of detention.

3. Respondents have filed their reply/counter affidavit, wherein it is stated that the detainee had played a key role in strengthening the underground network of anti-national elements operating in the Valley; that the detainee had acted as a courier, transporting arms, ammunition and communications between militants and their handlers; that the detainee was in close touch with his cousin-Safeer Ahmad Mir, who exfiltrated to Pakistan occupied Kashmir (PoK) in the year 1990 and has not returned till date; that the maternal uncle of detainee namely Sarfaraz Ahmad Mir, affiliated with 'HM' outfit, underwent arms training in PoK, infiltrated back into the Valley and got neutralized during an

encounter with Security Forces at Dulanga Uri, on 09.02.2021; that the grounds of detention gave complete account of the activities of the detainee which on the face of it are highly prejudicial to the security of the UT of J&K, as such, there was no option left to the detaining authority but to order detention of the detainee under PSA, 1978.

4. Heard learned counsel for the parties, perused the detention record and considered the same.
5. Learned counsel for the petitioner vehemently argued that preventive detention being an exception to the normal rule of personal liberty, the procedural safeguards enshrined under Article 22(5) of the Constitution are required to be strictly complied with; that the allegations in the grounds of detention are vague and based solely upon relationship of the detainee with certain relatives alleged to be militant associates, which cannot by itself furnish a valid basis for preventive detention. It is also argued that the entire material and the allied documents, relied upon by the detaining authority, were not supplied to the detainee, thereby rendering his right to make an effective representation illusory.
6. Learned counsel for the respondents, on the other hand, supported the order of detention and submitted that the detaining authority has derived subjective satisfaction on the basis of material placed before it; that the detainee's continuous anti-national and illegal activities made it imperative to detain the detainee under the provisions of Public Safety Act and there were sufficient grounds available for such detention; that the live link is

still sustaining, as the detainee is still involved in the anti-national activities and the adverse reports projected by the sponsoring agency to recommend the detainee for preventive detention under the provisions of the Public Safety Act.

7. A perusal of the grounds of detention reveals that the detainee has been detained primarily on the allegation that his cousin and uncle are associates of militants and that he is in touch with them. Except for such omnibus assertions, there is no specific allegation indicating any overt act, involvement or prejudicial activity attributable to the detainee himself. No particulars regarding dates, places, nature of alleged activities or specific role of the detainee have been indicated in the grounds.
8. It is settled law that vague and indefinite allegations deprive a detainee of making an effective representation against the order of detention. In **Chaju Ram v. State of Jammu & Kashmir** reported as **AIR 1971 SC 263**, the Hon'ble Supreme Court held that vague allegations without particulars render detention illegal, the relevant portion of the judgment reads as under:-

“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.”

Similar view has been taken in **Shalini Soni v. Union of India** reported as **(1980) 4 SCC 544**; and **Jahangirkhan Fazalkhan Pathan v. Police Commissioner, Ahmedabad** reported as **(1989) 3 SCC 590**, wherein it has been held that grounds lacking material particulars violate Article 22(5) of the Constitution.

9. Preventive detention cannot be sustained merely on the basis of relationship or association with persons allegedly involved in unlawful activities unless there exists cogent material demonstrating independent involvement of the detenu in prejudicial activities. In **Khudiram Das v. State of West Bengal** reported as **(1975) 2 SCC 81**, the Supreme Court held that subjective satisfaction is open to judicial review where the detention is based upon irrelevant or non-existent material. Likewise, in **Anant Sakharam Raut v. State of Maharashtra** reported as **AIR 1987 SC 137**, it was held that mere suspicion or association without proximate prejudicial acts cannot justify preventive detention.
10. The detention record further reveals that copies of the dossier, statements, and other material relied upon by the detaining

authority were not furnished to the detainee. Though the respondents claim that grounds of detention were read over and explained to him, there is nothing on record to demonstrate that the entire material relied upon was supplied, except order of detention, warrant, grounds of detention and Police dossier.

11. Article 22(5) of the Constitution mandates that the detainee must be communicated the grounds of detention and afforded the earliest opportunity of making a representation against the order. Such right can be exercised effectively only when whole of the material relied upon by the detaining authority is furnished to the detainee. Failure to supply the relevant material vitiates the detention order. In **Sophia Ghulam Mohammad Bham v. State of Maharashtra** reported as (1999) 6 SCC 593, the Hon'ble Supreme Court held that all material relied upon by the detaining authority must be supplied to the detainee. The said observation is reproduced as under:-

“The right to be communicated the grounds of detention flows from Article 22(5) while the right to be supplied all the material on which the grounds are based flows from the right given to the detainee to make a representation against the order of detention. A representation can be made and the order of detention can be assailed only when all the grounds on which the order is based are communicated to the detainee and the material on which those grounds are based are also disclosed and copies thereof are supplied to the person detained, in his own language.”

Similar view has been reiterated in **Thahira Haris v. Government of Karnataka** reported as **(2009) 11 SCC 438**, wherein it has been held that non-supply of relied upon documents, infringes the constitutional guarantee under Article 22(5) and renders the detention unsustainable.

12. In the present case, non-supply of relied upon material has unquestionably prejudiced the detinue in making an effective representation against his detention. Consequently, the valuable constitutional right guaranteed under Article 22(5) stands infringed.
13. Preventive detention is a serious invasion upon personal liberty protected under Article 21 of the Constitution of India. Since, such detention is based on subjective satisfaction of the detaining authority without trial, the constitutional safeguards provided under Article 22(5) assume great significance and are required to be strictly adhered to. The Hon'ble Supreme Court in **Ichchu Devi Choraria v. Union of India** reported as **(1980) 4 SCC 531**, observed that the procedural safeguards in preventive detention matters are sacrosanct and even the slightest infraction thereof would vitiate the detention. Similarly, in **Rekha v. State of Tamil Nadu** reported as **(2011) 5 SCC 244**, the Apex Court has held that preventive detention laws, being repugnant to democratic ideas and an anathema to the rule of law, must be strictly construed. Relevant extract of the said judgment is as under:-

“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.”

14. For the foregoing reasons, this Court is of the considered opinion that the impugned detention order cannot withstand judicial scrutiny. The grounds of detention are vague and lacking in material particulars, and the constitutional safeguards available to the detenu have also been violated due to non-supply of relevant material relied upon by the detaining authority
15. Viewed thus, the petition is **allowed** and Detention Order No. **13/DMB/PSA/2025 dated 07.05.2025** passed by respondent No. 2-District Magistrate, Baramulla, is, hereby quashed.

Respondents are directed to release the detainee from preventive custody forthwith, provided he is not required in connection with any other case(s).

16. Scanned detention record, is directed to be sent back.

**(M. A. CHOWDHARY)
JUDGE**

Srinagar
14.05.2026
Muzammil. Q

Whether the order is reportable: Yes / No

