

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

Reserved on: 06.08.2026
Pronounced on: 18.08.2026
Uploaded on: 19.08.2026
Whether the operative part or full
judgment is pronounced: Full

HCP No. 178/2025

**Abid Parvaiz Hajam, aged 26 Years,
S/O Parvaiz Ahmad Hajam,
R/O Andergam, Pattan, Baramulla
Through his father**

....Petitioner

Through: Mr. Saleem Gul, GA

v.

- 1. Union Territory of J&K through
Principal Secretary to Govt., Home Department
Civil Secretariat Srinagar/Jammu**
- 2. District Magistrate, Baramulla**
- 3. Superintendent District Jail Kathua,
Jammu**

...Respondents

Through: Mr. Hakim Aman Ali, Dy.AG

CORAM

HON'BLE MS JUSTICE MOKSHA KHAJURIA KAZMI, JUDGE

JUDGMENT

01) Through the medium of present petition, the petitioner, father of Abid Parvaiz Hajam S/O Parvaiz Ahmad Hajam R/O Andergam Pattan, Baramulla, has challenged detention order bearing No. 15/DMB/PSA/2025 dated 07.05.2025, [hereinafter for short to be referred as “impugned order”], passed by respondent No.2, District Magistrate, Baramulla, whereby Abid Parvaiz Hajam [hereinafter “detenu”] has been detained under the provisions of

Public Safety Act to prevent him from acting in any manner prejudicial to the security of the state.

FACTUAL MATRIX:

- 02) The detenu is stated to have been arrested on 26.06.2020 by Police Station, Pattan, for his alleged involvement in case FIR No. 234/2020, for the commission of offences punishable in terms of Sections 7/25 Arms Act, 18 and 39 of ULA (P) Act. The detenu, after remaining in incarceration for a period of three years, was released on bail by the Additional Sessions Judge, (Designated Special Court, NIA) vide order dated 12.05.2023.
- 03) The detenu, after having been released on bail vide order dated 12.05.2023, was detained under the provisions of Public Safety Act in terms of detention order bearing No. 41/DMB/PSA/2023 dated 22.05.2023 and was lodged in Central Jail Kot Bhalwal, Jammu, for indulging in activities prejudicial to the maintenance of security of state. The detenu, through his father challenged the said detention order through the medium of a writ petition bearing WP(Crl) No. 240/2023 titled "*Abid Parvaiz Hajam vs. Govt of J&K and Ors.*", before this court, and this court, upon consideration, allowed the same and quashed the detention order in terms of judgment dated 02.05.2024.
- 04) Subsequent thereto, the respondents issued the impugned detention order against the detenu, which is being challenged by the petitioner, *inter alia* on the grounds that no cogent reasons have been given for invoking the preventive detention against the

detenu; the grounds of detention are non-existent, baseless, vague and ambiguous and no prudent man can make an effective representation against his detention on the basis of the said grounds; that the bases of the impugned detention order are originating from FIR No. 234/2020, for which a case was registered against him wherein he was granted bail by the competent court; that the previous detention was also passed on the same grounds; that no details regarding involvement of detenu in any specific incident except for the alleged incidents of FIR No. 234/2020 of Police Station, Pattan have been provided; that the detenu, somehow, managed to move a representation which was not considered by the respondents in accordance with law.

- 05) Learned counsel for the petitioner submits that vide order dated 02.05.2024, passed in WP(Crl) No. 240/2023, the previous detention order was quashed and the detenu was directed to be released from the preventive custody forthwith, however, he was again detained in terms of the impugned detention order, which, on the face of it, is verbatim of the previous detention order and suffers from non-application of mind of the detaining authority.
- 06) Upon notice, the respondents appeared and filed the counter affidavit, resisting the claim of the petitioner. It is stated in the counter affidavit that the detenu came to be detained validly and legally, all statutory requirements and constitutional guarantees have been fulfilled and complied with. The contents of the detention order were read over and explained to the detenu in the

language he understood and in lieu whereof the detenu subscribed the signatures on the execution order.

- 07) Heard learned counsel for the parties, considered the submissions made and perused the detention record made available.
- 08) Although the petitioner has taken number of grounds in the instant petition to assail the impugned order of detention, however the learned counsel for the petitioner has laid emphasis on the grounds of impugned detention order being same as of the previous detention order, for which the detenu was already released from preventive custody on the orders of this court as were passed in terms of the judgment dated 02.05.2024.
- 09) The petitioner has also pointed out the non-application of mind on the part of detaining authority in detaining the detenu for not having taken into account the quashing of previous detention order in terms of judgment dated 02.05.2024, passed by this court in WP (Crl) No. 240/2023, as well as the bail order dated 12.05.2023, granted in favour of the detenu.
- 10) Furthermore, no specific fresh activity has been attributed to the petitioner after his release from detention except for him having reactivated the contacts with terrorists.
- 11) The submission of the learned counsel for the petitioner that the order impugned is bad in law, having been passed without proper application of mind, carries substance as the detenu has not been linked with any of the alleged prejudicial activities after his release from the previous preventive custody. The impugned

order, in the said background, has obviously been passed on stale grounds, the practice that has been deprecated by the Supreme Court of India.

12) It appears that the respondents have, in fact, based their opinion on the contents of the FIR No. 234/2020 and detained the detenu under preventive detention in total disregard of the judgment of this court delivered in WP(Crl) 240/2023 and the order of bail passed by the court of Additional Sessions Judge, (Designated Special Court, NIA). Therefore, the plea taken by the learned counsel for the petitioner that the detention order in question has been passed on the basis of stale grounds is well-founded. It also transpires from the records that the detenu, after his arrest, had been bailed out by the court of Additional Sessions Judge, (Designated Special Court, NIA) on 12.05.2023, the fact taken note of by the respondents in their reply affidavit also, and subsequent to his release as such, no specific subversive activity, except for having allegedly reestablished contact with terrorists, has been attributed to the detenu anywhere in the records or in the reply affidavit.

13) The Apex Court, in case titled "*Ameena Begum vs. State of Telangana*" reported as (2023) 9 SCC 587, has held that the detention order cannot sustain if the same appears to have been issued without deriving subjective satisfaction by the detaining authority. It would be profitable to reproduce paragraph No. 28 of the said judgment hereinbelow:

“28. In the circumstances of a given case, a Constitutional Court when called upon to test the legality of orders of preventive detention would be entitled to examine whether

(i) the order is based on the requisite satisfaction, albeit subjective, of the detaining authority, for, the absence of such satisfaction as to the existence of a matter of fact or law, upon which validity of the exercise of the power is predicated, would be the sine qua non for the exercise of the power not being satisfied;

(ii) in reaching such requisite satisfaction, the detaining authority has applied its mind to all relevant circumstances and the same is not based on material extraneous to the scope and purpose of the statute;

(iii) power has been exercised for achieving the purpose for which it has been conferred, or exercised for an improper purpose, not authorised by the statute, and is therefore ultra vires;

(iv) the detaining authority has acted independently or under the dictation of another body;

(v) the detaining authority, by reason of self-created rules of policy or in any other manner not authorized by the governing statute, has disabled itself from applying its mind to the facts of each individual case;

(vi) the satisfaction of the detaining authority rests on materials which are of rationally probative value, and the detaining authority has given due regard to the matters as per the statutory mandate;

(vii) the satisfaction has been arrived at bearing in mind existence of a live and proximate link between the past conduct of a person and the imperative need to detain him or is based on material which is stale;

(viii) the ground(s) for reaching the requisite satisfaction is/are such which an individual, with some degree of rationality and prudence, would consider as connected with the fact and relevant to the subject-matter of the inquiry in respect whereof the satisfaction is to be reached;

(ix) the grounds on which the order of preventive detention rests are not vague but are precise, pertinent and relevant which, with sufficient clarity, inform the detenu the satisfaction for the detention, giving him the opportunity to make a suitable representation; and

(x) the timelines, as provided under the law, have been strictly adhered to.”

- 14) The Apex Court has come down heavily on the functionaries of the State for issuing the detention orders on stale grounds in case titled “*Khaja Bilal Ahmad vs. State of Telangana*”, reported as (2020) 13 SCC 632, and has held as under:

“If the pending cases were not considered for passing the order of detention, it defies logic as to why they were referred to in the first place in the order of detention. The purpose of the Telangana Offenders Act 1986 is to prevent any person from acting in a manner prejudicial to the maintenance of public order. For this purpose, Section 3 prescribes that the detaining authority must be satisfied that the person to be detained is likely to indulge in illegal activities in the future and act in a manner prejudicial to the maintenance of public order. The satisfaction to be arrived at by the detaining authority must not be based on irrelevant or invalid grounds. It must be arrived at on the basis of relevant material; material which is not stale and has a live link with the satisfaction of the detaining authority. The order of detention may refer to the previous criminal antecedents only if they have a direct nexus or link with the immediate need to detain an individual. If the previous criminal activities of the

Appellant could indicate his tendency or inclination to act in a manner prejudicial to the maintenance of public order, then it may have a bearing on the subjective satisfaction of the detaining authority. However, in the absence of a clear indication of a causal connection, a mere reference to the pending criminal cases cannot account for the requirements of Section 3. It is not open to the detaining authority to simply refer to stale incidents and hold them as the basis of an order of detention. Such stale material will have no bearing on the probability of the detenu engaging in prejudicial activities in the future.” (bold in original) (underlining ours, for emphasis) (2020) 13 SCC 632.”

- 15) The Division Bench of this court also in a judgment delivered in case titled “*Suraj Masih vs. U.T. of J&K and Ors.*” reported as 2026:JKLHC-JMU:58-DB while relying on the judgment of the Apex court in case titled “*Saeed Zakir Hussain Malik vs. State of Maharashtra*” reported as (2012) 8 SCC 233, has laid down the same ratio.
- 16) In view of above, the other grounds raised in the writ petition or urged by the learned counsel for the petitioner need not be adverted to as the petition has succeeded on the above two cardinal principles of law already.
- 17) The instant petition, in the above background, succeeds and is allowed as such. The impugned order bearing No. 15/DMB/PSA/2025 dated 07.05.2025, passed by respondent No. 2- District Magistrate Baramulla, is held to be not in consonance in law, therefore quashed. The detenu, Abid Parvaiz Hajam S/O

Parvaiz Ahmad Hajam R/O Andergam Pattan, Baramulla, is directed to be released from the preventive custody forthwith.

- 18) The detention record be returned to learned counsel for the respondents.

(Moksha Khajuria Kazmi)
Judge

Srinagar
18.08.2026
"Misba Sajad"

Whether the judgment is reportable: Yes/No

