

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

Reserved on : 31.03.2026
Pronounced on : 03.04.2026.

HCP No. 211/2025

**Mehmoodul Hassan Shah,
Aged 48 years
S/o Late Naseem Din Shah
R/o Lalpora Lolab, District Kupwara
Through his wife
Nuzhat
Aged about 42 years,
W/o Mehmoodul Hassan Shah,
R/o Lalpora Lolab, District Kupwara**

.....Petitioner

Through: Mr. Syed Sajad Geelani, Advocate

Vs

- 1. Union Territory J&K through Principal Secretary to Govt., Home Department, J&K, Srinagar – Jammu.**
- 2. District Magistrate, Kupwara.**
- 3. Superintendent Central Jail Kotbhalwal, Jammu.**

..... Respondents

Through: Mr. Faheem Nisar Shah, GA

**CORAM: HON'BLE MR. JUSTICE RAHUL BHARTI, JUDGE
JUDGMENT**

01. Heard learned counsel for the petitioner as well as for the respondents.

02. Perused the writ pleadings as well as the counter affidavit along with the documents on record.

03. The petitioner came to suffer loss of his personal liberty when the respondent No. 2 – District Magistrate, Kupwara, by virtue of an **Order No. 14-DMK/PSA of 2025** dated **30.04.2025**, came to direct the petitioner's preventive detention under section 8(1)(a)(i) read with clause (ii) of sub-section (2) of section 8 of the Jammu & Kashmir Public Safety Act, 1978 in order to prevent the petitioner from acting in a manner prejudicial to the security of UT of Jammu & Kashmir and directed his confinement to be in the Central Jail Kotbhalwal, Jammu.

04. The occasion for the respondent No. 2 – District Magistrate, Kupwara to come up with issuance of said detention order came into play when Sr. Superintendent of Police (SSP), Kupwara addressed a communication **No. PSA-Cell/DOS/02/2025/21607-10** dated **26.04.2025** to the respondent No. 2 – District Magistrate, Kupwara accompanied with a dossier in which the alleged state of activities of the petitioner in his state of personal liberty were reckoned to be prejudicial to the security of UT of Jammu & Kashmir by the District Police, Kupwara.

05. In the dossier, Sr. Superintendent of Police (SSP), Kupwara came referring to the petitioner as 48 years old

person with B. Sc. qualification working as a private teacher in AI-Noor English Medium Public School, Lalpora and before that the petitioner appointed as Forester in the Forest Department in the year **2010** wherefrom he came to be terminated in the year **2016** on account of alleged misconduct as a Government servant in intentionally and willfully generating and spreading disaffection amongst the youth towards the Government of India and political establishment while remaining in constant touch with the militant outfits operating in the valley especially in District, Kupwara.

06. The petitioner was mentioned to be a chronic disruptor of peace and tranquility by creating mayhem and chaos amongst the people stroking anti-national and anti-establishment activities by creating intimidation in public, shopkeepers and transporters so as to make them to observe hartals and complete shutdown. The petitioner was alleged to be found instigating and provoking the youth of Lalpora, Lolab and adjoining areas.

07. The petitioner's position as Chairman of Auqaf Markazi Jamia Masjid, Lalpora since **2016** also found

mention in the dossier and lately holding the position of Chairman of Ali Public School, Wavoor.

08. The petitioner's criminal antecedents by reference to **FIR No. 09/2016 & FIR No. 76/2016**, both of Police Station Lalpora, came to be highlighted by reference to which the petitioner is stated to be undergoing trial while being on bail. The last precipitating incident referred in the dossier is proceedings under section 127/170 of Bharatiya Nagarik Suraksha Sanhita (BNSS), 2023 initiated on **25.04.2025** before the Executive Magistrate without bearing any further essential detail.

09. Taking cognizance of said dossier, the respondent No. 2 - District Magistrate, Kupwara came to reproduce the dossier in the name of grounds of detention literally transporting each and every word of the dossier into the grounds of detention and on that basis the respondent No. 2 - District Magistrate, Kupwara came up with a subjective satisfaction that the petitioner had rendered himself liable to suffer preventive detention so as to prevent him from acting in a manner prejudicial to the security of UT of Jammu & Kashmir and on that basis the detention **Order No. 14-DMK/PSA of 2025** dated **30.04.2025** came to be passed.

10. The petitioner came to be taken into preventive detention custody on **05.05.2025** when detention warrant came to be executed by SI Farooq Ahmed, No. 104/H, EXK-871406 of DPL, Kupwara who took the petitioner into custody and handed over him to the Superintendent Central Jail Kotbhalwal, Jammu by carrying out the purported procedural compliances of reading over the contents of the detention order/warrant and the grounds of detention and explaining to the petitioner in the language as understood by the petitioner and in acknowledgment of the same fetching execution report/receipt from the petitioner and also apprising the petitioner about his right of making a representation to the detaining authority or to the Government.

11. The approval to the aforesaid detention **Order No. 14-DMK/PSA of 2025** dated **30.04.2025** of the respondent No. 2 – District Magistrate, Kupwara came forth from the end of the Government of UT of J&K with passing of **Govt. Order No. Home/PB-V/807 of 2025** dated **06.05.2025** followed by submission of the case for the Advisory Board's opinion which also came forth by holding the petitioner's detention to be on justifiable grounds, and, thus, by virtue of **Govt. Order**

No. Home/PB-V/1208 of 2025 dated **12.06.2025** the petitioner's preventive detention came to be confirmed and the period of detention settled.

12. It is from his said state of preventive detention custody that the petitioner came up with the institution of the present writ petition filed on **17.06.2025**, acting through his wife, and thereby seeking quashment of detention order and consequent release from the preventive detention custody.

13. In the writ petition, the petitioner assails his preventive detention custody on the grounds as set out in para 7 (A) to (I).

14. The petitioner pleads that by reference to two criminal cases relatable to **FIR No. 9/2016** under sections 147, 148, 149, 336 RPC and **FIR No. 76/2016** under sections 147, 148, 149, 152, 307 and 332 RPC both of Police Station Lalpora, he had come to be released on bail and thereafter he has no involvement whatsoever in any sort of criminal act of omission or commission and, therefore, said two criminal cases ought not to have been mentioned even for the sake of reference lest that of reliance for the purpose of formulation of subjective satisfaction on the part of the

respondent No. 2 – District Magistrate, Kupwara. The petitioner submits that said two criminal cases self ruled out any live link to the grounds of detention.

15. In this regard, the petitioner has drawn reference from the judgments of this Court in case titled “Javeed Ahmed Bhat Vs State” 2003 (Sup) JKJ HC 241, “Mohd. Rafeeq Rather Vs State” 2005(2) JKJ HC 306 & “Mohd. Hussain Vs State” 2005(1) SLJ 251.

16. The petitioner pleads that acting through his second wife, he came to submit a detailed representation to the respondent No. 2 – District Magistrate, Kupwara on **08.05.2025** and also before the Home Department, UT of Jammu & Kashmir on **17.05.2025** which have remained unconsidered and unresponded and, therefore, attracting the position of law settled by this Court in the case of “Haris Majeed Bhat Vs UT of J&K and others” decided on 20.04.2022.

17. The petitioner has hit out at the claim of the respondent No. 2 – District Magistrate, Kupwara that there was a subjective satisfaction at his end. The petitioner submits that there was no material linking the petitioner with alleged activities mentioned in the grounds of detention and,

therefore, there could not be any subjective satisfaction on the basis of non-existing material.

18. The grounds of detention have been assailed as vague, stale and no specific content in it to the extent of even missing of mention of incident, date and place.

19. The petitioner draws reliance from the judgment of the Hon'ble Supreme Court of India in a Criminal Appeal No. 2897/2025 titled "Dhanayam Vs State of Kerala" disposed of vide judgment dated 06.06.2025 to draw support to the fact that where cancellation of bail should have been resorted to then preventive detention recourse is misconceived.

20. The petitioner also draws reference from the Hon'ble Supreme Court of India's judgment reported as 2009 AIR SC 2185, 1980 AIR SC 1715, 1999 AIR SC 3251, 1999 AIR SC and lastly 2005(2) JKJ SC 400. The petitioner has further drawn reliance in impugning the detention order by citing 2011(2) JKJ 216, "Mohd. Ehsan Antoo Vs State" and 2014(4) JKJ 21, Ishfaq Ahmed Sofi Vs State."

21. The petitioner's wife, through whom the petitioner has preferred this writ petition, is Mst. Nuzhat who has come

forward with the supporting affidavit accompanying the writ petition.

22. Counter affidavit to the writ petition came to be filed on **04.11.2025** with the respondent No. 2-District Magistrate, Kupwara coming forward and defending the preventive detention inflicted upon the petitioner.

23. In the counter affidavit, reliance and reference is drawn from the judgment of the Hon'ble Supreme Court of India in the case of "Harabhan Saha Vs State of W.B." 1975(3) SCC 198, "Secretary to Govt., Public (Law & Order) and another Vs Nabila and another" 2015 (12) SCC 127, "Debu Mahato Vs State of West Bengal" 1974 AIR SC 816 and lastly "Ashok Kumar Vs Delhi Administration" AIR 1982 SC 1143.

24. In the counter affidavit, the respondent No. 2 – District Magistrate, Kupwara submits that in the issuance of detention order and its service upon the petitioner all requisite formalities, be it statutory, constitutional or otherwise, came to be followed and there is no lacuna as such. The counter affidavit filed by the respondent No. 2 – District Magistrate, Kupwara is heavily loaded with sermoning on the law of preventive detention and then

following the repeat of the dossier and the grounds of detention content.

25. In the entire counter affidavit, the respondent No. 2 – District Magistrate, Kupwara is found missing in adverting to fact as to the fate of the representation made by the petitioner except a bald averment that the representation received by the office of District Magistrate, Kupwara was forwarded to the Home Department, UT of J&K which after being considered was found to be without merit and the said fate has been conveyed to the petitioner through Sr. Superintendent of Police (SSP), Kupwara and through Superintendent Central Jail Kotbhalwal, Jammu. There are no particulars worth name set out in counter affidavit as to when said representation came to be considered and when the adverse outcome of said consideration came to be apprised to the petitioner. Thus, there is a very evasive averment in reply from the end of the respondent No. 2 – District Magistrate, Kupwara.

26. There is no doubt to the fact that a person's fundamental right to personal liberty as guaranteed under article 21 of the Constitution of India is amenable to curtailment/deprivation under the preventive detention

jurisdiction but for that purpose personal liberty is too heavyweight a fundamental right to suffer curtailment and deprivation on the fleeting impressions and elusive assessments of the District Police as well as District Magistracy without any material worth factual content relatable to a person who is meant to be subjected to suffer loss of personal liberty under preventive detention regime.

27. When this Court examines the dossier as well as the grounds of detention both of which are spitting image of each other, this Court finds that by no stretch of claim from the end of the District Police as well as the District Magistrate, Kupwara, two criminal cases of 2016 can be said to be feeding material for considering the petitioner's personal liberty from the perspective of being prejudicial to the security of UT of J&K.

28. Thus, taking out said two adverse references out of the purview what is left to be found in the dossier as well as in the grounds of detention is nothing but bad and foul profiling of the petitioner without any supporting factual reference and this is where the so-called subjective satisfaction of the respondent No. 2 – District Magistrate,

Kupwara finds itself on slippery ground rendering the entire narrative as mere froth and nothing else.

29. The very tone and tenor of the dossier as well as the grounds of detention is so feeble and fakery that the same ought to count as nothing but *ipse dixit* of Sr. Superintendent of Police (SSP), Kupwara as well as of the District Magistrate, Kupwara against which no ordinary person being made to suffer loss of personal liberty can enable himself or herself to make an effective representation for the sake of persuasion of revocation and recall of the detention order issued for curtailing his/her personal liberty.

30. This Court draws a reference from the judgment of the Hon'ble Supreme Court of India in the case of **"Ameena Begum Vs State of Telangana," 2023(9) SCC 587** in which ten number of tests have been laid out to determine the validity of the detention order. Present preventive detention case of the petitioner fails to come up to said laid down tests and standards.

31. In view of aforesaid, the preventive detention custody of the petitioner is held to be misconceived and unwarranted. Preventive detention **Order No. 14-DMK/PSA of 2025** dated **30.04.2025** read with approval/confirmation/

extension order passed by the Home Department, Govt. of UT of Jammu & Kashmir are held to be illegal and are, hereby, quashed with immediate effect. The petitioner is directed to be restored to his personal liberty by his release from the concerned jail wherever the petitioner is being kept in detainment. Superintendent of the concerned jail to carry into compliance the writ hereby being issued for the release of the petitioner.

32. ***Disposed of.***

(RAHUL BHARTI)
JUDGE

SRINAGAR
03.04.2026
Opinder

Whether the judgment is speaking :	Yes
Whether the judgment is reportable :	Yes