

HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT SRINAGAR

HCP No.217/2025

Reserved on: 03.09.2026

Pronounced on: 14.09.2026

Uploaded on: 14.09.2026

Operative part or full judgment: Full

Ishfaq Ahmad Wani

S/O Ab. Rasheed Wani
R/O Baghwadi Nowshera,
Srigufwara, District Anantnag.

...Petitioner(s)

Through: Adv. Mohammad Ibrahim Wani.

Vs.

1. Union Territory of J&K

Through Principal Secretary to Govt.
Home Department,
Civil Sectt. Srinagar.

2. District Magistrate, Anantnag.

3. Sr. Superintendent of Police,
Anantnag.

...Respondent(s)

Through: GA Ilyas Nazir Laway with
AC Nadiya Abdullah.

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

1. The instant petition under Article 226 of the Constitution of India has been filed by the petitioner seeking quashing of the order of detention bearing **No.18/DMA/PSA/DET/2025** dated **29.04.2025** passed by respondent No.2- District Magistrate, Anantnag

whereby the petitioner has been detained under the provisions of Jammu and Kashmir Public Safety Act, 1978 (for short, “the Act”) in order to curtail his activities prejudicial to the security of the State/UT of J&K.

2. The petitioner has assailed the impugned order, *inter alia*, on the grounds that the same suffers from complete non-application of mind; that the grounds of detention are substantially a reproduction of the police dossier; that the material relied upon is stale and has no live or proximate nexus with the alleged necessity of preventive detention; that **FIR No. 60/2016** for the commission of offences punishable under sections 147, 148, 149, 336, 332, 353, 307, 427 RPC of Police Station Srigufwara, which constitutes the main basis of the detention, had culminated in grant of bail in favour of the petitioner; that the factum of grant of bail was not considered by the detaining authority; that the grounds of detention are vague and incapable of enabling the petitioner to make an effective representation; that the grounds merely contain generalized assertions regarding the petitioner being an “OGW” of LeT outfit and that his activities are likely to pose danger to the security of the State/UT of J&K, without disclosing any concrete, proximate or contemporaneous material demonstrating such likelihood; that the detention order is founded upon conjectures and

stale material rather than a genuine subjective satisfaction based upon relevant material.

- 3.** Learned counsel for the respondents, ex-adverso, reiterating the assertions pleaded in the counter affidavit, submitted that the petitioner has been found to be involved in activities prejudicial to the security of the State/UT of J&K and that preventive detention is a distinct jurisdiction which can be invoked notwithstanding the pendency of criminal proceedings or the availability of the ordinary criminal law; that the material contained in the dossier was duly considered by the detaining authority and that merely because the petitioner was facing criminal proceedings or had obtained bail therein would not denude the authority of its power to pass an order of preventive detention; that even if a subsequent FIR is registered, the same by itself does not prevent the competent authority from resorting to preventive detention provided the statutory conditions are otherwise satisfied; that the representation submitted on behalf of the petitioner was duly considered and rejected by the competent authority.
- 4.** Heard learned counsel for both the sides, perused the detention record and considered the matter.
- 5.** Preventive detention constitutes an exceptional encroachment upon the cherished right of personal liberty guaranteed under Article 21 of the Constitution. The power is preventive and not punitive. Its object is not to punish a

person for an act already committed but to prevent him from engaging in conduct which is apprehended to be prejudicial to the security of the State/UT of J&K or maintenance of public order, as the case may be.

6. The subjective satisfaction of the detaining authority is undoubtedly entitled to due weight, however, such satisfaction is not wholly immune from judicial scrutiny. The Court can examine whether the satisfaction has been arrived at on the basis of relevant material, whether the authority has applied its mind to such material, whether irrelevant or extraneous material has been taken into consideration and whether there exists a live and proximate link between the antecedent conduct and the necessity for preventive detention. This principle stands firmly settled in **Khudiram Das v. State of West Bengal**, reported as **(1975) 2 SCC 81**.

7. The Supreme Court has repeatedly emphasized that preventive detention cannot be permitted to become a substitute for ordinary criminal law. In **Rekha v. State of Tamil Nadu** reported as **(2011) 5 SCC 244**, the Supreme Court reiterated that the object of preventive detention is prevention and not punishment and that there must be a reasonable prognosis of future conduct based upon relevant antecedent material. Similarly, in **Sama Aruna v. State of Telangana** reported as **(2018) 12 SCC 150**, the Supreme Court held that past conduct can be taken into

account only to the extent that it furnishes a reasonable basis for concluding that the detainee is likely to engage in similar prejudicial activities in the immediate future. The Court emphasized that the live and proximate link between the past conduct and the imperative need for detention cannot be permitted to snap.

8. The detention record has been carefully examined. What emerges is that **FIR No. 60/2016** has been relied upon in support of the detention, although the said criminal case had admittedly culminated in grant of bail in the said case by the competent court of law. There is nothing on record to demonstrate that this material fact was meaningfully considered by the detaining authority while arriving at the requisite subjective satisfaction. The distinction between **existence of material** and **consideration of material** is significant. The fact that a particular FIR forms part of the dossier does not by itself establish application of mind. Once the criminal case relied upon by the authority had culminated in grant of bail, the said fact constituted a relevant and vital circumstance requiring consideration. The detaining authority was required to examine whether such material could still legitimately furnish the basis for present apprehension regarding the petitioner's future conduct.

9. The Supreme Court in **Vijay Kumar v. State of J&K**, reported as **(1982) 2 SCC 43**, while dealing with

preventive detention under the J&K Public Safety Act, underscored the necessity of the detaining authority applying its mind to the circumstances relevant to the necessity of preventive detention. The Court has consistently treated the constitutional safeguards surrounding preventive detention as substantive safeguards and not mere formalities.

10. Another circumstance which assumes considerable significance is the apparent similarity between the police dossier and the grounds of detention. From the material placed before this Court, it appears that, except for changes in the numbering and form of the paragraphs, the substance of the allegations remains substantially identical.

11. It is true that there can be no absolute proposition that reproduction of material from a police dossier, by itself and in every case, invalidates an order of detention. However, where the grounds disclose that the detaining authority has merely adopted the police version without independently evaluating the allegations, the inference of non-application of mind becomes irresistible. The principle was authoritatively stated by the Supreme Court in **Jai Singh v. State of Jammu & Kashmir** reported as **AIR 1985 SC 764**, where the Court deprecated the casual and routine manner in which preventive detention orders affecting personal liberty were passed. The same principle

has repeatedly been applied in cases arising under the J&K Public Safety Act. The Supreme Court's approach is that the detaining authority must itself arrive at the requisite satisfaction and cannot act as a mere conduit for the police dossier.

- 12.** The very recent jurisprudence of the Supreme Court also makes it clear that the detaining authority cannot act as a mere rubber stamp. In **Vinod Bihari Lal Vs. State of Uttar Pradesh & Anr.**, reported as **2025 INSC 767**, the Court reiterated that the satisfaction of the competent authority must be the natural culmination of consideration of relevant and material facts and that absence of application of mind to pertinent and vital material vitiates the detention.
- 13.** In the present case, the difficulty is compounded by the fact that the grounds use broad expressions such as the petitioner being an 'OGW' of LeT outfit and his activities being prejudicial to the security of the State/UT of J&K and likely to pose danger to common law-abiding people, but do not, in the manner required by law, disclose concrete and proximate facts from which such an apprehension could reasonably be drawn.
- 14.** Preventive detention cannot rest upon mere labels. The authority must disclose the factual position which connects the alleged activities of the detainee with the statutory purpose for which the extraordinary power is

exercised. A bald assertion that a person is an “OGW” or that his activities are prejudicial to the security of the State/UT of J&K, without sufficient particulars enabling him to understand what precisely weighed with the detaining authority, does not meet the constitutional standard.

15. Article 22(5) of the Constitution and Section 13 of the Public Safety Act confer upon the detainee a valuable right to be informed of the grounds of detention and to make an effective representation. The grounds, therefore, must be sufficiently clear, definite and proximate to enable the detainee to meet the allegations effectively. The Supreme Court in *Ram Krishan Bhardwaj v. State of Delhi*, reported as **AIR 1953 SC 318** explained that communication of the grounds means communication of the material necessary to enable the detainee to make an effective representation. The requirement is not satisfied by furnishing vague or unintelligible grounds. The principle was reiterated in *Thahira Haris v. Government of Karnataka*, **(2009) 2 SCC 46**, that the constitutional and statutory safeguards would be rendered meaningless if the detainee is not supplied with the material which has actually weighed with the detaining authority.
16. In the instant case, the representation submitted on behalf of the petitioner was rejected by the Government on **12.08.2025**. However, the mere rejection of the

representation cannot cure an otherwise invalid detention order. The representation is an additional constitutional safeguard. It cannot substitute the independent and meaningful application of mind required at the stage of making the detention order.

- 17.** This Court is conscious of the settled proposition that the existence of a criminal case or the fact that a person has been enlarged on bail does not, by itself, bar preventive detention. Preventive detention may, in an appropriate case, be resorted to where the authority, upon consideration of relevant material, is satisfied that ordinary criminal law is insufficient to prevent the person from engaging in prejudicial activities. But such power cannot be exercised mechanically. There must be a demonstrable and rational connection between the material relied upon and the necessity for preventive detention. In **Rekha (supra)**, the Supreme Court cautioned that preventive detention cannot be used as a substitute for the ordinary criminal process. Likewise, in **Sama Aruna (supra)**, the Court held that stale incidents cannot furnish the foundation for a present preventive detention when the live and proximate link with the apprehended future conduct has disappeared.
- 18.** The Court is not called upon to determine the truth or otherwise of the allegations contained in the police dossier. That is not the permissible scope of judicial review in

preventive detention. However, the Court is duty-bound to ascertain whether the statutory and constitutional safeguards have been observed and whether the subjective satisfaction is founded upon relevant, proximate and duly considered material.

- 19.** On such examination, this Court finds that the impugned detention order suffers from non-application of mind, reliance upon stale and materially weakened antecedents, failure to consider vital intervening circumstances including bail granted in favour of petitioner in case FIR No.60/2016 and insufficiently specific grounds to establish the requisite live nexus between the past conduct and the necessity for present preventive detention. Once the subjective satisfaction is found to be vitiated on these foundational grounds, the detention cannot be sustained merely on the basis of the seriousness of the allegations or the executive assertion that the petitioner is prejudicial to the security of the State/UT of J&K. As observed by the Supreme Court, personal liberty of a person is too precious.
- 20.** Having regard to the afore-stated discussion and foregoing reasons, the petition succeeds. The impugned detention Order **No.18/DMA/PSA/DET/2025** dated **29.04.2025** passed by respondent No.2-District Magistrate, Anantnag under the Jammu & Kashmir Public Safety Act, 1978, is hereby **quashed**. The respondents are directed to release

the petitioner forthwith from preventive detention, if his custody is not required in any other case(s).

21. The petition is, accordingly, **disposed of** in the above terms.

22. Detention record is ordered to be returned to the learned counsel for the respondents.

(M. A. CHOWDHARY)
JUDGE

Srinagar
14.09.2026
Muzammil. Q

Whether the order is reportable: Yes / No