

HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT SRINAGAR

HCP No. 221/2025

Reserved on: 07.05.2026

Pronounced on: 13.05.2026

Uploaded on: 14.05.2026

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

**Shakeel Ahmad Maglo
S/O Abdul Gani Maglo,
R/O Batamurran Wanpora,
Keller, District Shopian.**

...Petitioner(s)

Through: Adv. Zahid Hussain Dar.

Vs.

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

2. District Magistrate, Shopian.

...Respondent(s)

Through: Dy.AG Bikramdeep Singh.

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

JUDGMENT

1. By way of the present Habeas Corpus Petition, the petitioner seeks quashment of Detention Order No. **07/DMS/PSA of 2025** dated **01.05.2025** passed by respondent No. 2-District Magistrate Shopian, under the provisions of the Jammu & Kashmir Public Safety Act, 1978, whereby the detainee has been placed under preventive

detention to deter him from acting in any manner prejudicial to the 'security of UT of J&K'.

2. On perusal of the grounds of detention, it transpires that the detainee was involved in antinational activities, which are highly prejudicial to the sovereignty of the State and peace of the district; that the detainee is in contact with active terrorists and is working as an OGW for them which succinctly described his abnormal behaviour and prejudicial nature towards peace and stability in the district; that the detainee was previously involved in case registered as FIR No.62/2020 under sections 307 IPC, 7/27 IA Act, 16, 18, 19, 20 UL(P)A of Police Station Shopian; that the detainee was released on bail in the said FIR by the competent court of law; that thereafter the petitioner was kept under surveillance and the secret information received from intelligence agencies revealed that the petitioner was continuously working as OGW of the terrorists; that the activities of the petitioner were found highly prejudicial to the security of UT of J&K, as such, in order to prevent him from indulging in similar activities it has become imperative to detain him under the provisions of J&K Public Safety Act, 1978.

1. The main grounds urged by learned counsel for the petitioner are that the allegations forming basis of detention are general, vague and bereft of material particulars; that the detainee had already been granted bail by the competent criminal court and the said bail order was never challenged by the respondents before any superior forum; that the detaining authority has failed to record any compelling reason showing that the ordinary law of the land was insufficient to

deal with the detainee; that the grounds of detention are nothing but a verbatim reproduction of the police dossier, demonstrating complete non-application of mind by the detaining authority.

2. Learned counsel for the petitioner submits that preventive detention being an exception to a cherished right to personal liberty guaranteed under Article 21 of the Constitution of India, the procedural safeguards provided under Article 22(5) of the Constitution and the Public Safety Act are required to be strictly complied with. It is argued that the detention order cannot sustain, once the record demonstrates mechanical exercise of power and absence of genuine subjective satisfaction.
3. Per contra, learned counsel appearing for the respondents has supported the detention order and submitted that the activities of the detainee were prejudicial to the maintenance of security of UT of J&K and, therefore, the detaining authority was justified in passing the impugned order.
4. Heard learned counsel for the parties, perused the detention record produced by the respondents and considered the same.
5. A perusal of grounds of detention reveals that the allegations leveled against the detainee except his involvement in case FIR No.62/2020 registered at Police Station Shopian, are couched in general and vague expressions without specifying precise particulars regarding dates, places and overt acts attributable to the detainee. Preventive detention, which directly impinges upon personal liberty, cannot be sustained on the basis of indefinite and ambiguous allegations.
6. Significant aspect which goes to the root of the matter is that the detainee had already been enlarged on bail by the competent criminal

court in the substantive criminal case registered against him. The record does not indicate that the said bail order was ever challenged by the respondents before the appellate or revisional forum. Once a competent court had granted bail to the detenue, it was incumbent upon the detaining authority to demonstrate compelling reasons necessitating preventive detention despite availability of ordinary criminal law remedies. The Hon'ble Supreme Court in **Rekha v. State of Tamil Nadu & Anr.** reported as (2011) 5 SCC 244 categorically held that where ordinary law of the land is sufficient to deal with the situation, recourse to preventive detention laws is unwarranted. The Court observed that preventive detention cannot be used as a substitute for ordinary criminal law. Likewise, in **Ramesh Yadav v. District Magistrate, Etah** reported as (1985) 4 SCC 232, the Supreme Court held that detention cannot be justified merely because the accused has been enlarged on bail. In **Sama Aruna v. State of Telangana & Ors.** reported as (2018)12 SCC 150, the Supreme Court reiterated that preventive detention laws cannot be invoked when ordinary penal law is sufficient to take care of the situation. In Para-16 the Apex Court came up with the following reference:-

“16. Obviously, therefore, the power to detain, under the Act of 1986, can be exercised only for preventing a person from engaging in, or pursuing or taking some action which adversely affects or is likely to affect adversely the maintenance of public order; or for preventing him from making preparations for engaging in such activities. There is little doubt that the conduct or activities of the detenu in the past must be taken into account for coming to the conclusion that he is going to engage in or

make preparations for engaging in such activities, for many such persons follow a pattern of criminal activities. But the question is how far back? There is no doubt that only activities so far back can be considered as furnish a cause for preventive detention in the present. That is, only those activities so far back in the past which lead to the conclusion that he is likely to engage in or prepare to engage in such activities in the immediate future can be taken into account. In Golam Hussain alias Gama v. Commissioner of Police, Calcutta and Ors. (1974)4 SCC 530, this Court observed as follows:

“5. No authority, acting rationally, can be satisfied, subjectively or otherwise, of future mischief merely because long ago the detenu had done something evil To Rule otherwise is to sanction a simulacrum of a statutory requirement. But no mechanical test by counting the months of the interval is sound. It all depends on the nature of the acts relied on, grave and determined or less serious and corrigible, on the length of the gap, short or long, on the reason for the delay in taking preventive action, like information of participation being available only in the course of an investigation. We have to investigate whether the causal connection has been broken in the circumstances of each case.

Suffice it to say that in any case, incidents which are said to have taken place nine to fourteen years earlier, cannot form the basis for being satisfied in the present that the detenu is going to engage in, or make preparation for engaging in such activities...”

7. In the present case, the detention order nowhere records as to why the ordinary law was inadequate or why the respondents could not seek cancellation of bail if the detenu had allegedly indulged in unlawful activities after grant of bail. Absence of such satisfaction renders the detention order legally unsustainable. Preventive

detention cannot be used as a substitute for ordinary criminal process.

8. The detainee is entitled to make an effective representation against his detention and such right becomes illusory where the allegations are vague and lacking in material particulars. The Hon'ble Supreme Court in **Khudiram Das v. The State of West Bengal & Ors.** reported as (1975) 2 SCC 81 held that vague grounds strike at the very root of constitutional safeguards guaranteed to a detainee. Similarly, in **Smt. Shalini Soni Etc v. Union of India & Ors.** reported as (1980) 4 SCC 544, it was held that the grounds of detention must be clear, specific and definite so as to enable the detainee to make an effective representation.
9. Reliance can also be placed on the judgment of Apex Court in case titled **Chaju Ram v. State of J&K** reported as AIR 1971 SC 263, wherein vague and uncertain allegations were held sufficient to vitiate the detention order. The Court has 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 detenue 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."

10. The detention record further reveals that the grounds of detention are substantially a reproduction of the police dossier supplied by the sponsoring agency. A comparative reading of the dossier and grounds of detention leaves no manner of doubt that the detaining authority has merely copied the contents of the dossier verbatim without independent application of mind. Such mechanical exercise defeats the very purpose of subjective satisfaction contemplated under the Public Safety Act. The Apex Court in **Jai Singh & Ors. v. State of J&K** reported as **AIR 1985 SC 764** deprecated the practice of reproducing the police dossier word-for-word while passing detention orders and held the same to be indicative of non-application of mind. 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 detenue forthwith, provided

he is not required in connection with any other case".

Similarly, in **Anant Sakharam Raut & Ors. v. State of Maharashtra & Anr.** reported as **(1987) 1 SCC 340**, the Supreme Court held that mechanical exercise of detention power vitiates the subjective satisfaction of the detaining authority.

11. Preventive detention laws confer extraordinary powers upon the executive to detain a person without trial and, therefore, the constitutional and statutory safeguards must receive strict interpretation. Liberty of a citizen cannot be sacrificed at the altar of mere suspicion or mechanical satisfaction. The subjective satisfaction contemplated under the statute must be real, genuine and based upon independent application of mind.
12. Viewed thus, this Court is of the considered opinion that the allegations against the detainee are vague and non-specific. The detainee had already been granted bail and the respondents failed to demonstrate why ordinary law was insufficient, also the detaining authority failed to record compelling reasons necessitating preventive detention. Consequently, the impugned detention order cannot withstand judicial scrutiny.
13. Having regard to the afore-stated reasons and discussion made hereinabove, the present Habeas Corpus Petition is, **allowed**, and Detention Order No. **07/DMS/PSA of 2025** dated **01.05.2025** passed by respondent No. 2- District Magistrate, Shopian, is quashed. The respondents are directed to release the detainee namely Shakeel Ahmad Maglo S/O Abdul Gani Maglo R/O Batamurra Wapora,

District Shopian, forthwith from preventive custody, provided he is not required in connection with any other case(s).

14. Scanned detention record be returned to learned counsel for the respondents.

(M. A. CHOWDHARY)
JUDGE

Srinagar
13.05.2026
Muzammil. Q

Whether the order is reportable: Yes / No

