

HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT SRINAGAR

HCP No.224/2025

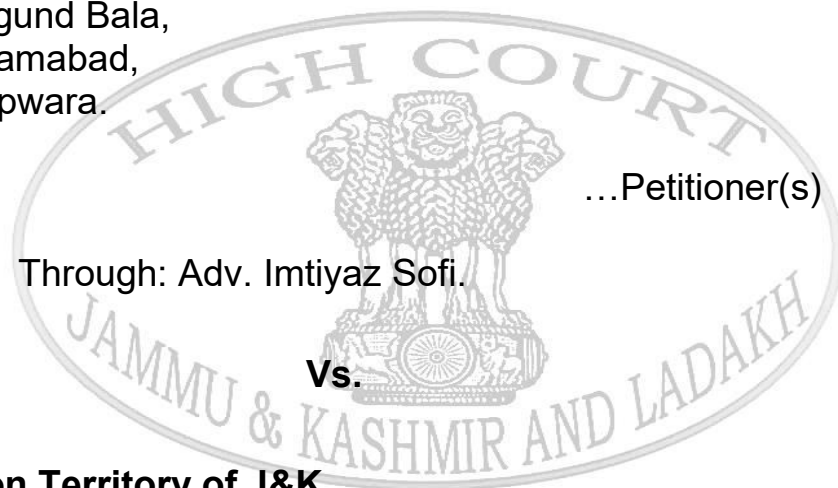
Reserved on: 03.09.2026

Pronounced on: 11.09.2026

Uploaded on: 11.09.2026

Operative part or full judgment: Full

Showkat Ahmad Bhat
S/O Ghulam Nabi Bhat
R/O Shartgund Bala,
Tehsil Qalamabad,
District Kupwara.



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

2. District Magistrate,
Kupwara.

3. Sr. Superintendent of Police,
Handwara.

...Respondent(s)

Through: GA Faheem Nisar Shah.

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

1. The instant petition has been filed by the petitioner seeking quashing of detention Order No. **12-DMK/PSA of 2025** dated **30.04.2025** passed by respondent No.2-

District Magistrate, Kupwara, whereby the petitioner has been placed under preventive detention with a view to prevent him from acting in any manner prejudicial to the security of the UT of J&K.

2. The petitioner has assailed the detention order primarily on the ground that the constitutional safeguards guaranteed under Article 22(5) of the Constitution of India have not been complied with and that the material relied upon by the Detaining Authority was not furnished to him in its entirety.
3. Learned counsel for the petitioner has contended that the grounds of detention themselves disclose reliance upon two communications received from the police, dated **27.04.2025** and **29.04.2025**. However, while the communication dated **27.04.2025** was furnished to the detainee, the communication dated **29.04.2025** was admittedly not received by him; that the communication dated **29.04.2025** constituted relied-upon material and, therefore, its non-supply deprived the detainee of an effective opportunity to understand and controvert the allegations forming the basis of the detention order.
4. Learned counsel for the petitioner further contended that the grounds of detention make reference to an **FIR No. 75/2018** under Sections 307 RPC, 7/27 IA Act, 19, 29 UA(P) Act registered at Police Station Qalamabad and refer generally to the alleged recent activities of the detainee, but

fail to furnish adequate particulars of the alleged activities which, according to the Detaining Authority, were prejudicial to the security of the UT of J&K.

5. It is also submitted that the representation made by the detainee was in English and that the manner in which the representation was dealt with further demonstrates that the detainee was not afforded a meaningful and effective opportunity to challenge his detention.
6. Learned counsel appearing for the respondents, ex-adverso, while reiterating the assertions made in the counter affidavit, opposed the petition and submitted that the detention order has been passed after the Detaining Authority, upon consideration of the material placed before it, arrived at the requisite subjective satisfaction that the detention of the petitioner was necessary to prevent him from acting in a manner prejudicial to the security of the UT of J&K; that the relevant documents were supplied to the detainee and that no prejudice has been caused to him. It is further submitted that the detention order has been passed strictly in accordance with the provisions of law and that the petition deserves dismissal.
7. Heard and considered the rival submissions and also perused the detention record.
8. Perusal of grounds of detention would show that the petitioner was involved in a criminal case registered vide FIR No.75/2018 for the commission of offences punishable

under Sections 307 RPC, 7/27 IA Act and 19, 29 of UA(P) Act at Police Station Qalamabad but was later on enlarged on bail in the said case by the competent court of law; that the petitioner was having strong association with the banned terrorist organization 'HM'; that the petitioner was a bad character and relevant entries about his behavior were recorded in the concerned police station from time to time; that the activities of the petitioner, if not curbed at this moment by invoking provisions of J&K Public Safety Act, 1978, the same will prove detrimental to the security of the UT of J&K; that the respondents have reached to the conclusion that there exists cogent grounds to take the petitioner into preventive custody under Section-8 of the J&K Public Safety Act, 1978, as the petitioner poses a serious threat to the security of the UT of J&K.

- 9.** There can be no quarrel with the settled proposition that preventive detention is an exceptional measure which permits deprivation of personal liberty without a criminal trial. The power, therefore, has to be exercised strictly in accordance with the constitutional and statutory safeguards governing such detention. The Court is equally conscious that it does not sit in appeal over the subjective satisfaction of the Detaining Authority. The adequacy or sufficiency of the material on the basis of which such satisfaction has been arrived at, is ordinarily not to be examined by the Court as if it were exercising appellate

jurisdiction. However, the subjective satisfaction of the Detaining Authority is not immune from judicial scrutiny where the constitutional safeguards accompanying preventive detention have not been complied with.

10. Article 22(5) mandates that the detainee shall be communicated the grounds on which the order of detention has been made and shall be afforded the earliest opportunity of making a representation against the order. The right to make a representation necessarily means a real and effective right of representation. A detainee cannot effectively exercise that right unless the material relied upon for making the detention order is supplied to him.

11. The most significant issue arising for consideration is whether the detainee was supplied the entire material relied upon by the Detaining Authority. The grounds of detention admittedly refer to two police communications, one dated **27.04.2025** and the other dated **29.04.2025**. The record, however, does not establish that both communications were furnished to the detainee. On the contrary, the material placed before the Court indicates that while the communication dated 27.04.2025 was received by the detainee, but the communication dated **29.04.2025** was not received by him.

12. This omission cannot be treated as a mere technical or inconsequential irregularity. The communication dated 28.04.2025 finds specific mention in the grounds of

detention and, therefore, forms part of the material which was before the Detaining Authority and which had a bearing upon its subjective satisfaction. Once a document is relied upon as a basis for arriving at the subjective satisfaction, its non-supply to the detainee assumes constitutional significance. The detainee cannot be expected to effectively controvert material, the contents of which have not been made available to him.

- 13.** The Supreme Court in **Jaseela Shaji v. Union of India**, reported as **2024 INSC 683**, has reiterated that documents relied upon by the Detaining Authority must be furnished to the detainee, since non-supply of such material may deprive the detainee of his constitutional right to make an effective representation under Article 22(5). The Court held as under:-

“...There can be no doubt that it is not necessary to furnish copies of each and every document to which a casual or passing reference may be made in the narration of facts and which are not relied upon by the Detaining Authority in making the order of detention. However, failure to furnish copies of such document/documents as is/are relied on by the Detaining Authority which would deprive the detainee to make an effective representation would certainly amount to violation of the fundamental right

guaranteed under Article 22(5) of the Constitution of India...

14. The principle is not only elementary but fundamental. The detainee must know the material which has persuaded the Detaining Authority to deprive him of his liberty, so that he may meaningfully challenge it. It would also be inappropriate to accept the contention that the petitioner must demonstrate some additional or independent prejudice caused to him by non-supply of the communication dated **29.04.2025**. Where a document is relied upon by the Detaining Authority and is not supplied to the detainee, the constitutional right to make an effective representation itself stands impaired if the document was necessary for that purpose.

15. The issue is not whether the Court considers the omitted document important in retrospect. The relevant question is whether the detainee was placed in possession of the material which the Detaining Authority itself considered relevant for arriving at the satisfaction that his detention was necessary. In the present case, the answer is in negative.

16. There is another aspect which reinforces the conclusion reached by this Court. The grounds of detention make reference to an earlier **FIR No. 75/2018**, and thereafter refer to the alleged recent activities of the detainee. However, the grounds, as placed on record, do

not furnish sufficient particulars of such alleged recent activities so as to enable the detainee to understand with reasonable clarity what particular conduct is attributed to him and in what manner such conduct was considered prejudicial to the security of the UT of J&K.

17. Preventive detention is not intended to punish a person for an act already committed. Past conduct may certainly constitute relevant material for preventive detention, but there must be some material demonstrating its continuing relevance to the apprehension of future prejudicial conduct. In the present case, the reference to an FIR of the year 2018 being stale without any live and proximate link, coupled with general assertions regarding recent activities without adequate particulars and without supplying the entirety of the relied-upon material, does not provide the detainee with a meaningful opportunity to meet the allegations. This Court is not holding that an old FIR can never constitute relevant material for preventive detention. The question is one of live link and continuing relevance. That link must emerge from the grounds and the material supplied to the detainee.

18. This Court is mindful and conscious that the object of the impugned detention is stated to be prevention of acts prejudicial to the security of the UT of J&K, which is undoubtedly a matter of grave constitutional and public importance. That consideration, however, cannot dispense

with the procedural safeguards guaranteed to a person subjected to preventive detention. Indeed, the more serious the consequence of the detention, the greater is the need for strict adherence to the constitutional safeguards. The Court cannot sustain deprivation of personal liberty merely because the allegation relates to the security of the State, if the statutory and constitutional procedure prescribed for such deprivation has not been followed.

19. The Court's concern in the present case is, therefore, not with the gravity of the object sought to be achieved by the detention, but with the legality of the procedure by which the petitioner's liberty has been curtailed.

20. The record further shows that the detainee submitted a representation against his detention. The fact that the detainee could make a representation, however, does not by itself establish compliance with Article 22(5). The constitutional guarantee is of an **effective opportunity** to represent against the detention. That opportunity must necessarily be considered in the context of the material actually supplied to the detainee. Where one of the relied-upon communications was not furnished to him, his representation necessarily proceeded without knowledge of the complete material which had contributed to the Detaining Authority's subjective satisfaction. Thus, even assuming that the representation was duly received and

considered, the defect arising from non-supply of relied-upon material remains fundamental.

21. On an overall consideration of the matter, this Court is satisfied that the impugned detention order cannot be sustained. The communication dated **29.04.2025**, which was specifically relied upon by the Detaining Authority, was not received/supplied to the detainee. The omission assumes constitutional significance because the detainee was thereby deprived of an opportunity to examine and effectively controvert material which had a bearing upon the subjective satisfaction resulting in his detention. This defect is compounded by the absence of sufficiently specific particulars regarding the alleged recent activities and the reliance, without a clearly demonstrated live link, upon an old criminal case.

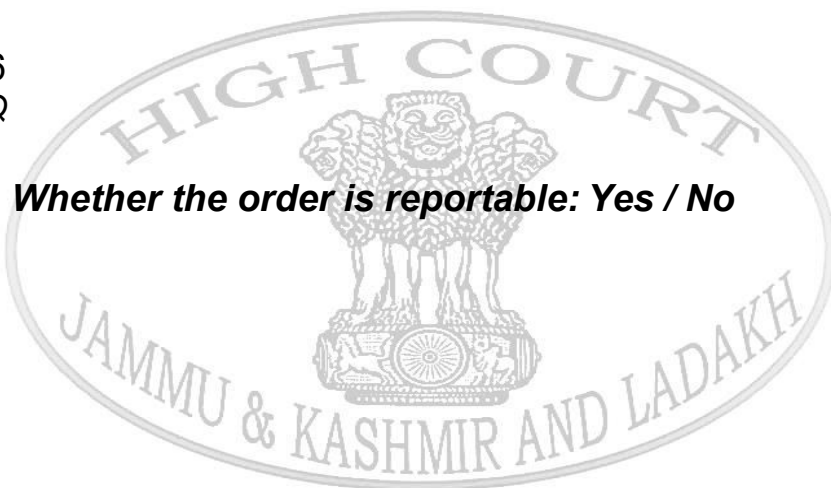
22. For the foregoing reasons, the petition is **allowed**. The detention Order No. **12-DMK/PSA of 2025** dated **30.04.2025** passed by respondent No.2-District Magistrate, Kupwara, whereby the petitioner/detainee has been detained with a view to prevent him from acting in any manner prejudicial to the security of the UT of J&K, is hereby, **quashed**. The respondents are directed to release the petitioner/detainee forthwith, if his custody is not required in connection with any other case or lawful proceedings.

23. Scanned detention record, as produced by learned counsel for the respondents, is directed to be sent back through him.

24. Disposed of, accordingly.

(M. A. CHOWDHARY)
JUDGE

Srinagar
11.09.2026
Muzammil. Q



Whether the order is reportable: Yes / No