

HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT SRINAGAR

HCP No.70/2026 c/w

(i) HCP No.82/2026

(ii) HCP No.46/2026

CM No.4269/2026

Reserved on: 10.09.2026

Pronounced on: 19.09.2026

Uploaded on: _____

Operative part or full judgment: Full

1. Altaf Ahmad Sheikh

S/O Mohammad Rajab Sheikh
R/O Panzipora, Tarzoo, Krankshivam,
Tehsil Khoie, District Baramulla.

2. Muzamil Mushtaq Changa

S/O Mushtaq Ahmad Changa
R/O Yaseen Colony, Arampora,
Sopore, District Baramulla.

3. Mubashir Ahmad Gilkar

S/O Fayaz Ahmad Gilkar
R/O Naseemabad Sopore,
District Baramulla.

...Petitioner(s)

Through: Adv. Mukhtar Ahmad Makroo.

Vs.

1. Union Territory of J&K

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

2. District Magistrate, Baramulla.

3. Sr. Superintendent of Police,
Baramulla.

4. Superintendent,
District Jail Baderwah.

5. Station House Officer,
Police Station Sopore, Baramulla.

...Respondent(s)

Through: Dy.AG Hakim Aman Ali with
AC Nadiya Abdullah.

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

- 1.** Since the questions of law and facts arising for consideration in the above referred three petitions are substantially common, the same are proposed to be disposed of by this common judgment.
- 2.** The petitioners have invoked the jurisdiction of this Court under Article 226 of the Constitution of India, seeking quashment of the respective detention Orders No. **02/DMB/PSA/2026**, **05/DMB/PSA/2026** and **03/DMB/PSA/2026** all dated **22.04.2026**, passed by the respondent No.2-District Magistrate, Baramulla, whereby the petitioners have been placed under preventive detention with the stated object of preventing them from indulging in activities prejudicial to the 'maintenance of Public Order'.
- 3.** The case of the petitioners in nutshell is that their detentions are wholly unwarranted and amount to an impermissible use of the preventive detention mechanism as a substitute for ordinary criminal law; that all the petitioners were implicated in case **FIR No.91/2026** registered for the commission of offences punishable under Sections **191(2), 191(3), 324(4), 125, 121(1)** and **132 of**

the Bharatiya Nyaya Sanhita (BNS), 2023, besides **Section-3** of the **Prevention of Damage to Public Property Act, 1984**; that the very occurrence relied upon by the detaining authority is already the subject matter of the aforesaid FIR and is, therefore, capable of being dealt with under the ordinary criminal process; that the grounds of detention do not disclose any material from which the detaining authority could reasonably arrive at the satisfaction that the petitioners, if not preventively detained, were likely to indulge in activities prejudicial to the maintenance of Public Order; that the grounds merely reproduce the allegations forming the subject matter of the FIR and do not disclose any independent or additional material demonstrating a propensity on the part of the petitioners to disturb the even tempo of life of the community, so as to constitute the activity prejudicial to the 'Public Order'.

- 4.** The respondents, on the other hand, have opposed the petitions by filing counter Affidavits, asserting therein that the activities attributed to the petitioners are serious in nature and have the potential of disturbing Public Order; that the subjective satisfaction of the detaining authority cannot be substituted by the satisfaction of the Court and that the detention orders have been passed after consideration of the material placed before the detaining authority; that the representations made by the petitioners

were considered by the competent authority but were rejected; that the mere fact that the petitioners are involved in a criminal case cannot, by itself, render their preventive detention illegal.

5. There can be no quarrel with the proposition that preventive detention is a constitutionally recognised mechanism and that the satisfaction of the detaining authority is ordinarily not to be substituted by the Court with its own subjective satisfaction. At the same time, the power of preventive detention is an exceptional power, trenching upon the fundamental right to personal liberty, and is therefore hedged with constitutional safeguards.

6. Article 22(5) of the Constitution of India mandates that the detenu be furnished, as soon as may be, the grounds on which the order of detention has been made and be afforded the earliest opportunity of making a representation against the order. The constitutional safeguards relating to preventive detention have to be construed with particular care because preventive detention is not intended to punish a person for an act already committed but to prevent him from acting in a particular manner in the future.

7. The distinction between **“law and order”** and **“public order”** is fundamental to the exercise of preventive detention jurisdiction. The Constitution Bench in **‘Dr. Ram Manohar Lohia v. State of Bihar’** reported as **1966**

Supp SCR 709 explained that every disturbance of law and order does not necessarily amount to a disturbance of Public Order. The test is essentially the degree and extent of the impact of the alleged act upon the community. The Supreme Court has reiterated this distinction in recent decisions. In '**Nenavath Bujji v. State of Telangana**' reported as **2024 INSC 239** the Supreme Court emphasised that "**public order**" has a narrower ambit and is attracted only where the alleged conduct affects the community or the public at large. The Court further held that the detaining authority must consider relevant and vital material, apply its mind to pertinent and proximate circumstances and reflect its satisfaction in clear and categorical terms. The mere recital that detention is necessary to prevent conduct prejudicial to public order is not by itself sufficient. Thus, the mere use of expressions such as "**prejudicial to the maintenance of public order**" in a detention order cannot substitute the requirement of demonstrating, from the material relied upon, how and in what manner the alleged conduct of the detainee has the potential of disturbing 'Public Order'.

8. In the present case, the main material relied upon against the petitioners is **FIR No.91/2026**. The offences alleged therein are undoubtedly serious and are required to be investigated and dealt with in accordance with law. However, seriousness of an offence, by itself, cannot be

equated with disturbance of Public Order. What the preventive detention law requires is a further satisfaction that the conduct attributed to the detainee has such a reach and potentiality as to disturb the even tempo of life of the community. The distinction assumes particular significance in the present case because the very allegations forming the basis of the detention are already the subject matter of the criminal prosecution. Preventive detention cannot be employed merely because the ordinary criminal process is considered inadequate or because the alleged offence is serious.

9. The Supreme Court has repeatedly cautioned that preventive detention cannot become a substitute for ordinary criminal law. In ***Nenavath Bujji (supra)*** the Supreme Court specifically observed that inability of the State's Police machinery to tackle a law-and-order situation cannot furnish a justification for invoking preventive detention.

10. Equally important is the requirement of a live and proximate link between the material relied upon and the necessity for preventive detention. In '***Sama Aruna v. State of Telangana***' reported as **2018 (12) SCC 150**, the Supreme Court held that the detention order must be founded upon material having a live and proximate connection with the imperative need to detain the person, stale material cannot be converted into the basis of

preventive detention. The requirement of such live and proximate link has also been reiterated by the Supreme Court in subsequent cases. Preventive detention proceeds upon a prognosis of future conduct; therefore, the material must reasonably support the inference that unless detained, the person is likely to indulge in conduct prejudicial to the specified interest.

11. In the present case, on a careful examination of the grounds of detention, this Court finds that the detaining authority has principally referred to the involvement of the petitioners in the aforesaid FIR. What is conspicuously absent is any independent material demonstrating that, notwithstanding their facing the ordinary criminal process, the petitioners were likely to indulge in further activities prejudicial to maintenance of Public Order.

12. There is another significant aspect of the matter. The material placed before the Court does not demonstrate that the detaining authority had before it any cogent basis for arriving at the conclusion that the petitioners were likely to be released from custody and, upon such release, were likely to repeat the alleged activities.

13. It is well settled that where a person is already in custody in connection with a criminal case, preventive detention cannot be ordered mechanically. The detaining authority must demonstrate awareness of the existing custody and must also have material before it constituting

compelling circumstances justifying preventive detention notwithstanding such custody. The Supreme Court has recently reiterated this principle in ***Priyanka Sarkariya v. Union of India, 2026 INSC 371***, holding that where a person is already in custody, the existence of a real possibility of release and the likelihood of indulging in prejudicial activities upon such release are relevant considerations for the subjective satisfaction of the detaining authority.

- 14.** In the case at hand, the grounds of detention, as placed before this Court, do not disclose such compelling circumstances. There is no discernible material showing that the petitioners were on the verge of release or that there was a reasonable and proximate possibility of their release followed by their indulging in activities prejudicial to Public Order. Mere possibility of release in the abstract cannot constitute the foundation for preventive detention.
- 15.** It is true that the absence of a pending bail application may not, in every conceivable case, be conclusive of the invalidity of preventive detention. However, where the detinue is already in custody, the detaining authority must demonstrate from the material before it why ordinary custody was insufficient and why preventive detention was immediately necessary. Such satisfaction cannot rest on a mere ipse dixit. The Court is also conscious of the limited scope of judicial review in matters of preventive detention.

This Court does not sit in appeal over the sufficiency of the material or substitute its subjective satisfaction for that of the detaining authority. However, the Court is duty bound to examine whether the constitutional and statutory requirements have been complied with and whether the satisfaction recorded by the detaining authority is based upon relevant, proximate and legally permissible material.

16. Tested on the aforesaid parameters, this Court finds that the detention orders in the present cases do not satisfactorily disclose the necessary nexus between the material relied upon and the preventive purpose sought to be achieved.

17. The petitioners have also questioned the manner in which their representations were dealt with. It is settled that the right of representation under Article 22(5) of the Constitution of India is a valuable constitutional right and the representation has to be considered with reasonable expedition. At the same time, no rigid period can be prescribed for every case; what is required is consideration with a sense of urgency and without negligence, callous inaction or avoidable delay. From the material placed before the Court, however, it appears that the representations were considered and rejected. No convincing material has been placed before this Court to establish any unexplained or inordinate delay in their consideration.

18. The Court is not oblivious to the seriousness of the allegations contained in FIR No.91/2026. The allegations must be investigated and, if supported by evidence, the criminal proceedings must be carried to their logical conclusion. The petitioners shall remain subject to the ordinary criminal law in that regard. But the seriousness of the allegations cannot, by itself, furnish a justification for preventive detention. The preventive detention jurisdiction has a distinct constitutional purpose. It is intended to prevent future prejudicial conduct and cannot be utilised as an additional form of punishment for an offence already alleged to have been committed.

19. In the instant case, the detention orders do not disclose sufficient material demonstrating that the alleged activities of the petitioners transcended the sphere of **law and order** and acquired the degree and extent of impact upon the community necessary to constitute a disturbance of Public Order, nor do the grounds disclose compelling circumstances warranting preventive detention notwithstanding the petitioners' involvement in the ordinary criminal process. The subjective satisfaction of the detaining authority, therefore, stands vitiated on account of non-application of mind to relevant and proximate circumstances and failure to demonstrate the requisite nexus between the material relied upon and the necessity for preventive detention.

- 20.** For the foregoing reasons, all the above referred three Habeas Corpus Petitions are **allowed**. The respective detention Orders No. **02/DMB/PSA/2026** dated **22.04.2026**; **05/DMB/PSA/2026** dated **22.04.2026**; and **03/DMB/PSA/2026** dated **22.04.2026** passed by the respondent No.2-District Magistrate, Baramulla against the petitioners are hereby **quashed**. The respondents are directed to release the petitioners forthwith from preventive detention, if their custody is not required in connection with any other case(s).
- 21.** Copies of this judgment shall be placed across all the connected files.
- 22.** Detention records are ordered to be returned to the learned counsel for the respondents.
- 23.** All the above referred petitions are, accordingly, **disposed of** in the terms indicated above, along-with connected application(s).

(M. A. CHOWDHARY)
JUDGE

Srinagar
19.09.2026
Muzammil. Q

Whether the order is reportable: Yes / No