

HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT SRINAGAR

HCP No. 238/2025

Reserved on: **07.05.2026**

Pronounced on: **14.05.2026**

Uploaded on: _____

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

**Saleem Mushtaq Beigh
S/O Mushtaq Ahmad Beigh,
R/O Jalalabad Sopore,
District Baramulla.**

...Petitioner(s)

Through: Adv. Syed Sajad Geelani.

Vs.

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

2. District Magistrate, Baramulla.

3. Superintendent District Jail Amphalla.

...Respondent(s)

Through: Dy.AG Hakim Aman Ali.

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

JUDGMENT

1. Through the instant petition filed under Article 226 of the Constitution of India, the petitioner seeks quashment of detention Order No. **07/DMB/PSA/2025** dated **29.04.2025** passed by respondent No. 2-District Magistrate, Baramulla under the

provisions of the Jammu & Kashmir Public Safety Act, 1978, whereby the detenue has been placed under preventive detention in order to stop him from indulging in the activities prejudicial to the maintenance of 'security of State'.

2. Contention of learned counsel for the petitioner is that the impugned detention order is illegal, unconstitutional and unsustainable in law on several grounds, namely:

- (i) non-application of mind by the detaining authority;
- (ii) reliance upon stale and irrelevant grounds;
- (iii) verbatim reproduction of police dossier;
- (iv) non-supply of entire material relied upon by the detaining authority; and,
- (v) cryptic rejection of representation submitted by the detenue.

3. It is contended that the detenue was falsely implicated in three cases registered vide FIR No. 126/2012 under sections 307 RPC, 7/27 Arms Act; FIR No.106/2015 under sections 3/5 Explosive Substances Act and 7/27 Arms Act; and, FIR No.10/2018 under section 7/25 Arms Act, all at Police Station, Sopore. Out of three cases, the detenue had been granted bail in two and had been acquitted in one, prior to passing of the impugned order, yet these material facts were neither properly considered nor reflected in the grounds of detention. According to learned counsel for the petitioner, omission to consider such vital facts demonstrates complete non-application of mind by the detaining authority.

4. Counter affidavit has been filed by respondent No. 2-District Magistrate Baramulla, vehemently resisting the petition, contending that detaining a person under the provisions of Public Safety Act is always preventive in nature and its sole aim is to prevent a person from pursuing anti-national/anti-social activities, which are prejudicial to the maintenance of public order/security of the State/UT. In the instant case there is enough material against the detenue which is highly suggestive of the fact that the normal law of the land is not sufficient to prevent him from continuing with his anti-national activities and it is evident that the detenue is highly motivated and is not likely to desist from anti-national and unlawful activities.
5. Heard learned counsel for the parties, perused the pleadings and considered the detention record produced by the respondents.
6. Learned counsel for the petitioner, while reiterating the grounds urged in the petition, argued that the allegations relied upon by the detaining authority pertain to incidents which had allegedly occurred long prior to issuance of the detention order and had no live or proximate link with the object sought to be achieved by preventive detention. It is argued that stale incidents cannot form basis for preventive detention. It is also submitted that though the detention order refers to various FIRs, statements, police dossier and other connected material, the same were never furnished to the detenue, thereby depriving him of making an effective and meaningful representation against the order of detention as guaranteed under Article 22(5) of the Constitution of India.

7. Per contra, learned counsel appearing for the respondents submits that the detinue was involved in activities prejudicial to maintenance of security of the State and that the detaining authority, after deriving subjective satisfaction from the material placed before it, validly passed the impugned detention order. It is submitted that all constitutional and statutory safeguards were complied with.
8. Preventive detention being an exceptional measure affecting personal liberty guaranteed under Article 21 of the Constitution, the procedural safeguards provided under Article 22(5) are required to be strictly complied with.
9. A perusal of the detention record reveals that the grounds of detention are substantially reproduction of the police dossier supplied by the sponsoring agency. The detaining authority has merely changed few words here and there without independently applying its mind to the facts and circumstances of the case. The Supreme Court in '**Jai Singh & Ors. vs. State of J&K**' reported as **AIR 1985 SC 764** held that where the grounds of detention are verbatim reproduction of police dossier, it clearly reflects non-application of mind on the part of detaining authority. 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 detainee forthwith, provided he is not required in connection with any other case".

10. In the present case, the detaining authority failed to notice that the detainee had already been enlarged on bail in two cases and stood acquitted in one case. These facts were material and germane for arriving at subjective satisfaction. Non-consideration thereof renders the detention order unsustainable. The Supreme Court in **Anant Sakharam Raut & Ors. v. State of Maharashtra & Anr.** reported as (1987) 1 SCC 340 observed that non-consideration of relevant and vital material vitiates the subjective satisfaction of the detaining authority.
11. The allegations relied upon in the grounds of detention pertain to incidents which are remote in point of time in the years 2012-2018 and had no proximate nexus with the purpose of detention in the year 2025. Preventive detention must be based on a live and proximate link between past conduct and necessity of detention. The Supreme Court in **Sama Aruna v. State of Telangana & Ors.** reported as (2018)12 SCC 150, observed that ordinary criminal law is sufficient to deal with law and order problems and preventive detention cannot be used as substitute for punitive law. 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...”

12. In the case on hand, no cogent reason has been indicated by the detaining authority as to why ordinary law was insufficient to deal with the detainee particularly when he had already been admitted to bail by competent courts. The record further reveals that copies of dossier, statements recorded under Section 161 Cr.P.C., seizure memos and other material relied upon by the detaining authority were not furnished to the detainee.
13. The right to make effective representation against detention order is a valuable constitutional safeguard enshrined under Article 22(5) of the Constitution of India. Such right becomes illusory unless all material relied upon is supplied to the detainee. The Hon'ble Apex Court in the judgment rendered in the case of ***“Sophia Gulam Mohd. Bham V. State of Maharashtra & Ors.*** reported as (AIR 1999 SC 3051), has held as under:-

“The right to be communicated the grounds of detention flows from Article 22(5) while the right to be supplied all the material on which the grounds are based flows from the right given to the detainee to make a representation against the order of detention. A representation can be made and the order of detention can be assailed only when all the grounds on which the order is based are communicated to the detainee and the material on which those grounds are based are also disclosed and copies thereof are supplied to the person detained, in his own language.”

Similar view was taken in **Thahira Haris v. Government of Karnataka & Ors.** reported as **AIR 2009 SC 2184**, wherein it

was held that non-supply of documents prejudices the detainee in making effective representation.

14. Since whole of the relied upon material was not furnished to the detainee, the constitutional mandate under Article 22(5) stands violated, as a result vitiating the impugned detention order.

15. Next argument of learned counsel for the petitioner is that the representation submitted by the detainee against the detention order came to be rejected by the Government in a mechanical and cryptic manner without assigning any reasons. The record produced by the respondents also reveals that the representation was disposed of casually without proper consideration of the grounds raised therein. Consideration of representation against preventive detention is not an empty formality. The authority concerned is under constitutional obligation to consider the representation independently, expeditiously and meaningfully. In **Jayanarayan Sukul v. State of West Bengal** reported as (1970) 1 SCC 219, the Supreme Court held that representation of detainee must be considered with utmost expedition and seriousness. The Court has observed that:-

“It is established beyond any measure of doubt that the appropriate authority is bound to consider the representation of the detainee as early as possible. The appropriate Government itself is bound to consider the representation as expeditiously as possible. The reason for immediate consideration of the representation is too obvious to be stressed. The personal liberty of a person is at stake. Any, delay would not only be an irresponsible act on the part of the appropriate authority but also unconstitutional because the Constitution

enshrines the fundamental right of a detainee to have his representation considered and it is imperative that when the liberty of a person is in peril immediate action should be taken by the relevant authorities...”

Likewise, in **Haradhan Saha & Anr. v. State of West Bengal & Ors.** reported as **1974 AIR 2154**, it was held that the constitutional safeguard available to a detainee cannot be reduced to mere ritualistic formality.

- 16.** The cryptic rejection of representation in the present case clearly violates the constitutional guarantee enshrined under Article 22(5) of the Constitution.
- 17.** Viewed from any angle, the impugned detention order cannot sustain in law. Resultantly, the petition is allowed and Detention Order No. **07/DMB/PSA/2025** dated **29.04.2025** passed by respondent No. 2- District Magistrate, Baramulla, is quashed. The detainee shall be released from preventive custody forthwith, provided he is not required in any other case(s).
- 18.** Scanned detention record be sent back.
- 19. Disposed of**, as indicted above.

**(M. A. CHOWDHARY)
JUDGE**

Srinagar
14.05.2026
Muzammil. Q

Whether the order is reportable: Yes / No