

IN THE HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT SRINAGAR

HCP No. 258/2025

Reserved on: 23.07.2026

Pronounced on: 28.07.2026

Uploaded on: 28.07.2026

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

Sakib Akbar Waza, Age: 25 Years
S/o Mohammad Akbar Waza,
R/o Gulshanpora, Tral, District Pulwama
Through his Father
Mohammad Akbar Waza, Age 58 years.

...Petitioner(s)/Appellant(s)

Through: Mr. Sheikh Aamir Mushtaq, Adv.

Vs.

1. Union Territory of JK Th.
Principal Secretary to Govt.
Home Department, Civil Secretariat,
Srinagar.

...Respondent(s)

2. District Magistrate, Pulwama.

3. Superintendent,
District Jail, Kathua.

Through: Mr. Jehangir Ahmad Dar, GA

CORAM:

HON'BLE MR. JUSTICE SHAHZAD AZEEM, JUDGE

J U D G M E N T

1. The petitioner has challenged the detention order No. 16/DMP/PSA/25 dated 1 May 2025 passed by District Magistrate, Pulwama (for short "detaining authority") under the Jammu and Kashmir Public Safety Act, 1978 (for short "Act of 1978"), whereby petitioner-Sakib Akbar Waza, (for short "the detenu") has been ordered to be detained with a view to preventing him from acting in any manner prejudicial to the security of the State. The detenu has been lodged in District Jail, Kathua.

2. The principal grounds of challenge are that the detention order suffers from non-application of mind inasmuch as the detaining authority has relied

solely upon the Dossier submitted by Senior Superintendent of Police, Pulwama; that the detention order, grounds of detention and the material documents forming the basis of the detention order were not supplied to the detenu, thereby depriving him of the valuable right to make an effective representation under Article 22(5) of the Constitution of India; that the grounds of detention are vague, uncertain, indefinite and ambiguous; that the detention order and ground were neither explained nor supplied in Urdu/Kashmiri, the language understood by the detenu nor were translated copies furnished; that the reasoning that normal criminal law is insufficient is not a legally recognized ground; that the detaining authority overlooked the fact that the detenu had been enlarged on bail in the FIRs forming the foundation of the detention; and that the procedural safeguards mandated under Article 21 and 22(5) of the Constitution and the Act of 1978 stand violated.

3. The respondents have filed a detailed reply affidavit asserting that no legal, fundamental or statutory right of the petitioner has been infringed and that all constitutional and statutory safeguards under Article 22(5) and the Act of 1978 have been duly complied with. It is specifically contended that the detention order, grounds of detention and entire supporting material were furnished to the detenu within the statutory period. It is also averred that contents were read over and explained to him in the language understood by him; that the detenu has signed the execution report, acknowledging receipt; and that he was duly informed of his right to make a representation. It is further contended that the detaining authority has applied its independent mind and arrived at the requisite subjective satisfaction that preventive detention was necessary to prevent activities prejudicial to the security of the

State. The grounds, it asserted are precise, proximate and relevant and there is neither vagueness nor staleness, rather the detaining authority stated to have drawn its satisfaction on compelling reasons of security scenario in the Union Territory of Jammu and Kashmir and Ladakh.

4. Heard learned counsel for the parties and perused the detention record.

5. The petitioner's challenge rests primarily on two limbs: first, that the detaining authority failed to provide the relevant material, thereby, violated the right to make an effective representation; and second, that the detenu was not communicated the grounds in a language he understands, resulting in complete non-compliance with Article 22(5) of the Constitution and the Act of 1978.

6. A careful examination of the detention record reveals that the detention order was passed on 1 May 2025 by the District Magistrate, Pulwama. On the same day, the detenu was communicated the grounds of detention in terms of Section 13 of the Act of 1978 and was informed of his right to make a representation. While executing the order, the executing Police Officer obtained the signature of the detenu on the execution report dated 03 May 2025. The report specifically records that the detenu was provided all relevant documents comprising the detention order, the letter addressed to him, the grounds of detention and other supporting material altogether 46 leaves, against a proper receipt. The execution report further records that the contents of the detention warrant, the grounds of detention and all other documents comprising of 46 leaves have been read over to the detenu in Kashmiri also. A certificate issued by the executing Police officer and attested by two witnesses categorically states that the warrant of detention was executed on 3 May 2025, that the detenu was lodged in

District jail, Kathua and that the detention warrant and grounds of detention were read over and explained to him in the language he fully understands i.e., Kashmiri/Urdu. The certificate also records that translated copies of the grounds of detention and police Dossier were supplied to the detenu, who acknowledged receipt in writing.

7. The record also contains the receipt of the grounds of detention duly signed by the detenu. On reference to the Advisory Board, the detention was confirmed after the Board derived satisfaction from the material placed before it. The Advisory Board specifically noted that the detention was well founded and in conformity with the principles as enshrined under Article 22(5) of the Constitution and the provisions of the Act of 1978. Pursuant to the confirmation by the Advisory Board, the Government, in exercise of provisions under Section 17(1) of the Act of 1978, confirmed the impugned detention order.

8. Turning to the grounds of detention, it is seen that the detaining authority drew its subjective satisfaction on the basis of material placed before it by the SSP Awantipora. The material discloses that the detenu was earlier arrested in FIR No. 153/2020 arising out of an anti-militancy operation in which one militant was killed; he was later enlarged on bail. He was again found involved in FIR No. 24/2021, relating to an encounter in which two terrorists of Ansar Gazwat-ul-Hind were killed and huge cache of arms and ammunition was recovered, leading to his arrest.

9. Despite these cases, the detenu continued to indulge in subversive activities including dissemination of anti-national sentiments, sharing of information regarding movement of security forces/police, and providing logistic support including, food, shelter, clothing and transport to JeM

terrorists. The detenu was repeatedly taken into preventive custody under Section 107/151 CrPC and 126 BNSS in the year 2023, four times in the year 2024, and lastly on 11 January 2025 and 5 April 2025; on each occasion he was released on bonds to keep the peace and be of good behavior. The material further indicates continuous allegiance of the detenu to the banned terrorist organizations HeM and LeT and his continued involvement in secessionist activities, including hatching conspiracy to carry out attacks of the nature of recent in Pahalgam incident in which 26 innocent lives were brutally snatched and scores were injured. In the circumstances, the authorities were left with no option but to resort to preventive detention so as to prevent the detenu from acting in any manner prejudicial to the security of the State.

10. From the above factual narration emerging from rival pleadings and the detention record, there remains no iota of doubt that the petitioner was provided all the relevant material on the basis of which the detaining authority arrived at its subjective satisfaction. It is equally well documented that the material was supplied in the vernacular language understood by the detenu together with translated versions. The contention that the detenu was deprived of the safeguards under Article 21, 22(5) of the Constitution and the statutory rights under the Act of 1978 is, therefore, wholly misconceived and unworthy of acceptance.

11. Insofar as the contention that once normal criminal law is sufficient, there is no occasion for preventive detention is concerned, the same is liable to be rejected at the threshold. In **Sasti alias Satish Chowdhary vs. State of West Bengal (1972) 3 SCC 826**, the Hon'ble Supreme Court held that it is always open to the detaining authority to pass an order of detention if the

grounds are germane to the object for which a detention order can legally be made, and that the mere fact that the particular act of the detenu constitutes an offence under the penal law does not prevent the detaining authority from passing an order for detention instead of proceeding against him in a court of law. Relying upon **Mohd Salim Khan vs. Shri C.C. Bose & Anr. AIR 1972 SC 1670**, the court further observed that the mere fact that a detenu was discharged in a criminal case relating to an incident does not render a detention order based on that incident incompetent, nor does it lead to an inference that the order is without basis or is mala fide.

12. The scope of preventive detention was authoritatively explained in **Haradhan Saha vs. State of West Bengal & Ors. (1975) 3 SCC 198**, Hon'ble Supreme Court held thus:

“32. The power of preventive detention is qualitatively different from punitive detention. The power of preventive detention is a precautionary power exercised in reasonable anticipation. It may or may not relate to an offence. It is not a parallel proceeding. It does not overlap with prosecution even if it relies on certain facts for which prosecution may be launched or may have been launched. An order of preventive detention, may be made before or during prosecution. An order of preventive detention may be made with or without prosecution and in anticipation or after discharge or even acquittal. The pendency of prosecution is no bar to an order of preventive detention. An order of preventive detention is also not a bar to prosecution.

13. Thus, preventive detention is a precautionary power exercised in reasonable anticipation and need not necessarily relate to any offence. Once it is found that immediately events lead to passing of orders under Section 107/151 CrPC and 126 BNSS, provide a live and proximate link with activities prejudicial to the security of the State, the same furnishes a reasonable basis for resorting to preventive detention. The order under

Section 126 of BNSS passed immediately prior to the impugned detention order further supplies a live and proximate material for the preventive detention of the petitioner.

14. A conspectus of the record reveals that the detaining authority has derived its subjective satisfaction on cogent and relevant material placed before it. The grounds of detention are specific, proximate and bear a live link with the alleged prejudicial activities of the detenu. There is no procedural infirmity in the service of documents, consideration of representation, or the proceedings before the Advisory Board.

15. It is well settled that in preventive detention, the Constitutional Courts do not sit as an Appellate Authority. Once it is found that the order is based on relevant material and the procedural requirements have been satisfied, the court would not substitute its own opinion for that of the detaining authority. In the absence of any violation of constitutional or statutory provisions, no ground for quashing the detention order is made out.

16. For the foregoing reasons, the petition is found to be devoid of any merit and is, accordingly dismissed. The impugned detention order is upheld.

17. The detention record be returned to the learned counsel for the respondents.

(SHAHZAD AZEEM)
JUDGE

SRINAGAR:
28.07.2026
Altaf

Whether approved for reporting? Yes/No