

HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT SRINAGAR

HCP No.261/2025

Reserved on: 20.04.2026

Pronounced on: 29.04.2026

Uploaded on: 30.04.2026

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

**Nisar Ahmad Bhagat (23 years)
S/O Bashir Ahmad Bhagat,
R/O Balpora Wathoor, Chadoora,
Budgam.
Through his Uncle Khurshid Ahmad Bhat.**

...Petitioner(s)

Through: Adv. Wajid Mohammad Haseeb.

Vs.

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

2. District Magistrate, Budgam.

3. Sr. Superintendent of Police, Budgam.

...Respondent(s)

Through: Dy.AG Bikramdeep Singh.

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

JUDGMENT

- 1.** Challenge in this petition has been thrown to a Detention Order No. **DMB/PSA/11 of 2025** dated **29.04.2025** ('impugned order') passed by District Magistrate, Budgam-respondent No.2, vide which petitioner namely Nisar Ahmad Bhagat ('the detainee' for short) has been ordered to be detained and lodged in District Jail Jammu, under

the provisions of The J&K Public Safety Act, 1978, in order to deter him from acting in any manner prejudicial to the 'security of the State'.

- 1.** The petitioner has invoked writ jurisdiction of this Court to question the impugned detention order, *inter-alia*, on the ground that the grounds of detention being vague, no prudent man can make an effective representation against his detention; that the representation dated 02.06.2025 filed by the detenu has not been accorded any consideration; that the procedural safeguards prescribed under J&K Public Safety Act, 1978 and under Article 21 and 22 of the Constitution of India have not been followed; that neither any reference pertaining to the detention of the detenu has been made to the Advisory Board within prescribed period of limitation under PSA nor the Board has made any report with respect to sufficiency of the material; that the grounds of detention are unreasonable and suffer from non-application of mind; that the detenu has not been apprised of his right to make representation; that the detenu has not been served with dossier copy and the connected documents; that the grounds of detention were supplied to the detenu in a language not understandable or intelligible to him; that there is no nexus between the alleged prejudicial activity of the detenu and the security of the State, sought to be achieved by detention of the detenu.
- 2.** The stand of the petitioner has been resisted by the other side. The District Magistrate in the counter affidavit is affront with the contention that no legal, fundamental or statutory right of the detenu has been infringed in the present case, as the respondents have complied with all the statutory and constitutional provisions

and followed the requisite formalities before passing of the impugned detention order.

3. It is contention of the respondents that the detainee came to be detained under the provisions of PSA by virtue of the impugned detention order issued by District Magistrate, Budgam, after due adherence of statutory requirements and constitutional guarantees, as also keeping in mind the object of lawful preventive detention, which is preventive in nature and not punitive. The grounds of detention, order of detention and the relevant material relied upon by the detaining authority was furnished to the detainee within statutory period provided under Section 13 of PSA. In compliance to the order passed by the detaining authority, detention order/warrant came to be executed by the concerned police on 02.05.2025, by virtue of which the detainee was lodged in District Jail, Jammu. According to the respondents, the contents of the detention order/warrant and the grounds of detention were read over and explained to the detainee in the language, which he fully understands, and in lieu whereof the detainee subscribed his signatures on the execution report. It is also contended that the detainee was well informed about his right to make representation to the detaining authority or to the Government against his detention, however, he did not choose to do so. It is further contention of the respondents that the detention case of the detainee was referred to Advisory Board for its opinion, in terms of Section 15 of the PSA, and the Board, constituted under PSA, considered the material placed before it and opined that there is sufficient cause for detention of the detainee and it was only after the report/opinion of the Advisory Board, the impugned detention order

came to be confirmed by the Government vide order No. Home/PB-V/1018 of 2025 dated 23.05.2025.

4. On the factual front, it is contention of the respondents that the detainee, through his continuous subversive activities over the years, established clear and unbroken nexus between his initial involvement and the present engagement in unlawful activities which are detrimental to the security of the State. He is mainly responsible for his involvement in cases registered vide FIR No.180/2020 under sections 13, 20, 23, 38 ULA(P) Act, and FIR No. 235/2020 under sections 18, 19, 20, 23 ULA(P) Act, P/S Chadoora and subsequently he was bound down on several times i.e., on 04.11.2023, 04.03.2024, 04.07.204, 01.01.2025, 21.01.2025 and 23.04.2025 under relevant provisions of law. He is reportedly working as OGW of the banned terrorist outfits TRF/LeT actively facilitating their operations by providing logistic support, shelter and other assistance in the area. It is the allegation of respondents that the detainee indulged in various antinational activities which facilitated strengthening of network of antinational grid in district Budgam. According to the respondents, as per the reports received from field agencies, the aim and objective of the detainee is to target the members of different communities, creating fear and panic and disrupt the peaceful atmosphere prevailing in the area.

5. Therefore, in view of aforesaid facts and circumstances, the District Magistrate found it necessary and imperative to invoke the provisions of PSA and to detain the detainee in order to preclude him from indulging in activities prejudicial to the security of the State.

6. Heard, perused the detention record as has been made available by learned counsel for the respondents and considered the same.
7. Learned counsel for the petitioner has questioned the impugned detention order on the ground that procedural safeguards prescribed under the provisions of PSA and guaranteed under Constitution of India, have not been complied with by the respondents.
8. The contention of learned counsel for the petitioner is that the detainee has not been served with the copies of dossier and other relevant material which prevented him from making effective representation against his detention. It is also urged by learned counsel for the petitioner that the detainee has not been provided an opportunity of making representation within prescribed period of law nor he was informed of his right to make representation.
9. Next ground raised by learned counsel for the petitioner to question the impugned detention order is that neither translated script of the detention order in Kashmiri or Urdu language was furnished to the detainee nor grounds of detention were read over and explained to him in the language understood by him, which according to the petitioner is reflection of non-application of mind on the part of the detaining authority.
10. Section-13 of PSA provides that when a person is detained in pursuance of a detention order, the authority making the order shall, as soon as may be, but ordinarily not later than five days and in exceptional circumstances, for the reasons to be recorded in writing not later than ten days from the date of detention, communicate to him, in the language understandable to him, the grounds on which

the order has been made and shall afford him the earliest opportunity to make a representation against the detention order.

11. It is, indeed, a settled position of law that communication, as envisaged by Section 13 of PSA means bringing home to detainee effective knowledge of facts and grounds on which detention order is made and to a person who is not conversant with Detention order language, the grounds of detention must be given in a language which the detainee understands and in a script that he can read, in order to satisfy the requirements of the Constitution.

12. The petitioner has assailed the impugned order of detention, primarily on the ground of vagueness of grounds of detention. According to the petitioner, the grounds of detention being vague, no prudent man could make an effective representation against the said allegation. It is the contention of learned counsel for the petitioner that since the grounds of detention are vague in nature, it prevented the petitioner from making an effective representation, as a result whereof fundamental rights of the petitioner, guaranteed in terms of Article 22(5) of the Constitution of India, has been infringed.

13. Article 22(5) of the Constitution of India reads as below:-

“22(5). When any person is detained in pursuance of an order made under any law providing for preventive detention, the authority making the order shall, as soon as may be, communicate to such person the grounds on which the order has been made and shall afford him the earliest opportunity of making a representation against the order.”

It is manifest on a plain reading of Article 22(5) of Constitution of India that consists of two parts. While first part gives a right to a detainee to be furnished with grounds on which the order has been

made as soon as may be, and the second part provides a right to the detinue to be afforded earliest opportunity of making representation against the order of detention.

14. The import of Article 22(5) of Constitution of India arose for discussion before six Judges Bench of Hon'ble Supreme Court of India, way back in 1951 in *State of Bombay Vs. Atma Ram Shridhar Vaidya* reported in *1951 AIR SC 157*, wherein it was observed that though both the rights are separate, to be exercised at different times, however, they are connected with each other and it may not be possible for the detinue to make representation against the detention order without getting information sufficient to make an effective representation, otherwise, it was held, that the right will be illusory one and not real one. It was further observed by the Apex Court in the aforesaid case that the detinue may be able to make representation only if he has knowledge of the grounds on which the authorities conveyed that they were satisfied about the necessity of making detention order. Relevant excerpt of the judgment contained in Para-14 reads as under:-

“14. The contention that the grounds are vague requires some clarification. What is meant by vague? Vague can be considered as the antonym of 'definite.' If the ground which is supplied is incapable of being understood or defined with sufficient certainty it can be called vague. It is not possible to state affirmatively more on the question of what is vague. It must vary according to the circumstances of each case. It is, however, improper to contend that a ground is necessarily vague if the only answer of the detained person can be to deny it. That is a matter of detail which has to be examined in the light of the circumstances of each case. If, on reading the ground furnished it is capable of being intelligently understood and is sufficiently definite to furnish materials to enable the

detained person to make a representation against the order of detention it cannot be called vague. The only argument which could be urged is that the language used in specifying the ground is so general that it does not permit the detained person to legitimately meet the charge against him because the only answer which he can make is to say that he did not act, as generally suggested. In certain cases that argument may support the contention that having regard to the general language used in the ground he has not been given the earliest opportunity to make a representation against the order of detention. It cannot be disputed that the representation mentioned in the second part of Art. 22(5) must be one which on being considered may give relief to the detained person.”

- 15.** It is apparent from the aforesaid observations of the Supreme Court that if the grounds of detention furnished by the detaining authority are not capable of being intelligently understood and sufficiently definite, so as to enable the detainee to make an effective representation, the grounds of detention may be termed as vague. In other words, the detainee may be able to make an effective and meaningful representation if the details of the facts, on the basis of which the conclusion is drawn by the detaining authority, are furnished to him.
- 16.** Keeping in mind the aforesaid observations of the Hon’ble Supreme Court, what comes to fore is that the grounds of detention provided to the detainee are not only vague but there is no proximity between the acts attributed to the detainee to the apprehension of the detaining authority.
- 17.** The allegations against the detainee are that he is working as OGW of the banned terrorist outfits TRF/LeT actively facilitating their operations by providing logistic support, shelter and other assistance

in the area. It is the allegation of respondents that the detainee is indulged in various antinational activities which facilitated strengthening of network of antinational grid in district Budgam. According to the respondents, as per the reports received from field agencies, the aim and objective of the detainee is to target the members of different communities, creating fear and panic and disrupt the peaceful atmosphere prevailing in the area. The detaining authority, however, has not provided any details to establish the allegations.

18. Next allegation against the detainee is that he has involved himself in various anti-national activities which facilitated strengthening of anti-national grid of district Budgam. Here again the impugned detention order lacks categoric details of anti-social/anti-national elements, with which the detainee is associated.

19. On the basis of the aforesaid allegations, the detaining authority has concluded that there is every apprehension that if the detainee is left at large he will continue to pursue subversive ideology by aiding and abetting the terrorists in order to perpetrate the acts of violation and by targeting the members of different communities, creating fear and panic and disrupt the peaceful atmosphere prevailing in the area.

20. On the first blush, a plain reading of grounds of detention would suggest that the detainee is indulged in various anti-national/anti-social activities as he is an active OGW of separatist organizations or militant outfits, however, it is surprising to note that there is not even a single specific incident which can be suggestive of the fact that the detainee was involved in any such incident. Since the allegations against the detainee are general in nature, therefore, I do not find any

legality in the order of detention. The allegations against the detainee are devoid of specific details, and the detainee is left with no option but to make general denial of allegations against him that he is not involved in any such activity alleged to have been committed by him. It appears that the grounds of detention furnished to the detainee in the present case are mere conclusion drawn by the detaining authority based on some material or reports received from the field agency.

21. It is pertinent to mention that the Hon'ble Supreme Court in '***State of Bombay Vs. Atma Ram Shridhar Vaidya***' reported in **1951 AIR SC 157**, has held that something more will be required other than mere grounds mentioned in the detention order or the grounds of detention which will enable the detainee to make an effective and meaningful representation. As already discussed, the detaining authority in the present case, apart from few documents/material has not furnished details on the basis of which it formulated the opinion that normal law of land did not prove sufficient to dissuade him from indulging in activities prejudicial to the security of the State.

22. I am fortified with the observations made by Hon'ble Supreme Court in '***Jahangir Khan Fazal Khan Pathan Vs. Police Commissioner & Anr.***' reported in **(1989) 3 SCC 590**, where the allegations against the detainee was that he was a prohibition bootlegger, doing illegal activity of selling English and Deshi liquor and he along-with his associates was showing deadly weapons like Rampuri knife to the innocent persons and was beating the innocent persons who oppose his activity of liquor etc. Hon'ble Supreme Court held that the said statements are vague as the detainee could

not make an effective representation against the said allegations.

Relevant portion of the judgment is reproduced below:-

“8. The other grounds regarding the vagueness of the averments made in the grounds about the petitioner indulging in criminal activities apart from the five criminal cases lodged under the Prohibition Act and mentioned in the ground of detention do not satisfy the requirements envisaged in Section 3(1) of the PASA Act inasmuch as the said five specific criminal cases have no connection with the maintenance of public order. The aforesaid criminal activity does not appear to have disturbed the even tempo of life of the people of Ahmedabad City or of the particular locality. Furthermore the averments have been made in the grounds are; Accordingly, upon careful perusal of complaint and papers enclosed with the proposal it appears that you are a prohibition bootlegger, doing illegal activity of selling English and Deshi liquor. You and your companion are bearing and showing deadly weapons like Rampuri knife to the innocent persons passing through the said locality on the premise of being of police „Batmider” of Police. And you are beating innocent persons who oppose your activity of liquor etc. These statements are vague and without any particulars as to what place or when and to whom the detenue threatened with Rampuri knife and whom he has alleged to have beaten. These vague averments made in the grounds of detention hereinbefore are bad inasmuch as the detenue could not make an effective representation against the impugned order of detention. As such the detention order is illegal and bad.”

23. For what has been held by the Apex Court in the afore-quoted case laws and having regard to the factual aspects of the case on hand as observed hereinabove, the impugned detention order does not sustain in the eyes of law. As such, the present petition is allowed and the impugned detention order No. **DMB/PSA/11 of 2025** dated **29.04.2025**, is set aside. As a sequel, the detenue namely Nisar Ahmad Bhagat S/O Bashir Ahmad Bhagat R/O Balpora Wathoor,

Chadoora Budgam, is directed to be released from the custody forthwith, if not required in any other case(s).

24. HCP No.261/2025 is, thus, **disposed of**, in terms of the above, alongwith pending application(s).

25. Scanned detention record is directed to be returned back to the learned counsel for the respondents.

Srinagar
29.04.2026
Muzammil. Q

(M. A. CHOWDHARY)
JUDGE

Whether the order is reportable: *Yes / No*