

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

HCP 303/2025

Date of pronouncement 12-02-2026

Uploaded on 13-02-2026.

YASIR HAYAT AHANGER

...Petitioner/Appellant(s)

Through: Mr. Shariq J Riyaz, Advocate.

Vs.

UNION TERRITORY OF J AND K (HOME) AND ORS

...Respondent(s)

Through: Mr. Mohsin Qadri, Sr. AAG with
Ms. Maha Majeed, AC.

CORAM:

HON'BLE MR JUSTICE JAVED IQBAL WANI, JUDGE

ORDER

12.02.2026

1. Through the medium of the instant petition filed under Article 226 of the Constitution, the petitioner has challenged detention order No. DMS/PSA/37/2025 dated 12-09-2025 (for short impugned order) passed by the District Magistrate-respondent 2 hereinafter (for short "detaining authority") under and in terms of the provisions of J&K Public Safety Act, 1978.
2. The impugned order has been challenged on multiple grounds urged in the petition.
3. Reply has been filed by the respondents to the petition, wherein the petition is being opposed on the premise that the collective assessment of the grounds for detention has led the detaining authority to reach subjective satisfaction for placing the petitioner under preventive detention. It is further stated that since the detainee was deeply influenced by radical ideology upon coming into contact with terrorist and OGWs, who motivated him to work for

them as OGWs of Let/TRF outfit, as a consequence, the petitioner got indulged in anti-national activities and started providing logistic support/financial and operational support to the terrorist of Let/TRF, besides sharing sensitive information regarding movement of Police and Security forces in the area.

It is further stated that the petitioner was found involved in receiving/collecting money from local individuals and businessmen on behalf of handlers operating from PoK and was involved in case FIR No. 69/2025 registered with Police Station Handwara, relating to one Shafat Maqbool Wani who was inciting the people of Handwara to engage in anti-national activities, whereupon the petitioner was arrested by the NIA thereafter in connection with re-registration of the said FIR No. 69/2025 being FIR No. RC/03/2025/NIA/JMU under Sections 13, 17 and 18 of UAP Act.

It is also stated that after examining the dossier carefully and perusal the material made available to it, the detaining authority was satisfied that the petitioner's activities are prejudicial to the maintenance of the security of the state, as such, ordered preventive detention of the petitioner in terms of the order of detention 12-09-2025.

It is further stated that the order of detention was executed upon the petitioner on 14-09-2025, and the grounds of detention and other material was read over and explained to him in the language he understood and was also informed that he has a right to make a representation against the detention to the detaining authority and the Government.

It is also stated that the Advisory Board examined the detention case of the petitioner and found sufficient grounds existing warranting detention of

the petitioner and consequently the Government confirmed the order of detention on 06-10-2025.

It is lastly stated that the order under challenge came to be passed by the detaining authority in accordance with the provisions of the Act of 1978 complying with all procedural safeguards prescribed under the Act, as also adhering to the guarantees provided under the constitution.

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

4. It is significant to mention here that notwithstanding multiple grounds of challenge urged by the petitioner in the petition. Mr. Shariq Jan, the counsel for the petitioner confined his arguments to a solitary ground that the order of detention stands vitiated on account of complete non application of mind by the detaining authority, in that, the detaining authority did not take cognizance of the fact that the petitioner have had been granted bail in the FIR referred in the grounds of detention on 11-09-2009 by the competent court of law and even though the said fact have had been provided in the dossier drawn by the responding agency based upon which the detaining authority passed the impugned order, yet the detaining authority overlooked the said fact and proceeded to pass the impugned order even having failed to record reasons much less compelling reasons thereof warranting preventive detention of the petitioner and also having ignored the conditions set out in the bail order imposed by the court granting bail to the petitioner which conditions, inter alia, provided a liberty to prosecution to seek cancellation of the bail in the event the petitioner misuses his liberty or gets in touch with the witnesses or influences the course of investigation.

5. On the contrary, the counsel for the respondents Mr. Mohsin Qadri, Sr. AAG while opposing the submissions of Mr. Shariq Jan, would insist that the order under challenge has been passed validly and legally owing to the activities of the petitioner being found prejudicial to the security of the state. Mr Qadri would further submit that the involvement of the petitioner in a criminal case or else his release on bail therein the said case in law would not operate on a bar to invoke the provisions of the preventive detention statute.

6. It is an admitted fact emerging from the record that the petitioner has been granted default bail in FIR supra by the court of Additional Sessions Judge, the Designated Special Court, under NIA Act, on 11-09-2025, and the perusal of the said bail order manifestly reveals that the same has been passed in presence of the counsel for the accused/petitioner as also counsel for the NIA suggesting that the NIA (sponsoring agency) have had sufficient knowledge about the grant of bail to the petitioner in the FIR in question and the conditions subject to which the said bail have had been granted.

7. Further perusal of the record available on the file as also the record produced by the counsel for the respondents bears also testimony to the fact that the sponsoring agency in the dossier drawn by it qua the petitioner have had specifically referred the grant of bail to the petitioner in the FIR in question. However, it is manifest that the detaining authority has failed to take note of the said fact of grant of bail to the petitioner and seemingly has overlooked the order of bail containing multiple conditions imposed upon the petitioner subject to which the bail have had granted including the one referred in the preceeding paras.

8. Under these circumstances, it cannot, but be said that either the detaining authority has been oblivious to the said fact or else chosen to overlook the same for unknown reasons and in the process proceeded to detain the petitioner under the provisions of the Act of 1978. The said approach of the detaining authority and exercise of power thereof under the Act of 1978 in the process of detaining the petitioner under preventive law can said to be a callous exercise of the exceptional power of preventive detention vested in it vitiating the impugned order reflecting complete non application of mind on the part of the detaining authority.

In the context of above it would be profitable to refer to the judgment passed by Apex Court in case ***Ameena Begum vs The State of Telangana and Ors*** reported in (2023) 9 SCC 587 wherein at paras 51 and 52 following has been held: -

“51. We are of the opinion that the aforesaid excerpts from the Detention Order lay bare the Commissioner's attempt to transgress his jurisdiction and to pass an order of detention, which cannot be construed as an order validly made under the Act. The quoted observations are reflective of the intention to detain the Detenu at any cost without resorting to due procedure. It is neither the case of the respondents that the Detenu had not complied with the terms of the notice issued under section 41-A of the Cr. PC, nor has it been alleged that the conditions of bail had been violated by the Detenu. It is pertinent to note that in the three criminal proceedings where the Detenu had been released on bail, no applications for cancellation of bail had been moved by the State. In the light of the same, the provisions of the Act, which is an extraordinary statute, should not have been resorted to when ordinary criminal law provided sufficient means to address the apprehensions leading to the impugned Detention Order. There may have existed sufficient grounds to appeal against the bail orders, but the circumstances did not warrant the circumvention of ordinary criminal procedure to resort to an extraordinary measure of the law of preventive detention.

52. In Vijay Narain Singh vs. State of Bihar 20, Hon'ble E.S. Venkataramiah, J. (as the Chief Justice then was) observed:

32....It is well settled that the law of preventive detention is a hard law and therefore it should be strictly construed. Care should be taken that the liberty of a person is not jeopardised unless his case falls squarely within the four corners of the relevant law. The law of preventive detention should not be used merely to clip the wings of an Accused who is involved in a criminal prosecution. It is not intended for the purpose of keeping a man under detention when under ordinary criminal law it may not be possible to resist the issue of orders of bail, unless the material available is such as would satisfy the requirements of the legal provisions authorising such detention. When a person is enlarged on bail by a competent criminal court, great caution should be exercised in scrutinising the validity of an order of preventive detention which is based on the very same charge which is to be tried by the criminal court."

9. Viewed thus, for what has been observed, considered and analyzed hereinabove, the instant petition succeeds, as a consequence whereof, the impugned order No. DMS/PSA/37/2025 dated 12-09-2025 is quashed with a direction to the detaining authority including the jail authority to release the petitioner from preventive detention, if not required in any other case.

10. The detention record produced by the counsel for the respondents is returned back in the open Court.

(JAVED IQBAL WANI)
JUDGE

SRINAGAR

12.02.2026

Sarvar

Whether the order is Speaking Yes.

Whether the order is reportable Yes/No