

HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT SRINAGAR

HCP No.304/2025

Reserved on: 14.09.2026
Pronounced on: 17.09.2026
Uploaded on: 17.09.2026
Operative part or full judgment: Full

Zubair Altaf Sheikh

(Through his wife Nafeeza Zubair)
S/O Mohammad Altaf Sheikh
R/O 90-Feet Soura,
District Srinagar.

...Petitioner(s)

Through: Adv. S.R.Hussain.

Vs.

1. Union Territory of J&K

through Principal Secretary to Govt.
Home Department,
Civil Sectt. Srinagar.

2. District Magistrate,
Srinagar.

3. Superintendent Central Jail,
Jammu.

...Respondent(s)

Through: Sr.AAG Mohsin Qadri with
Assisting Counsel Haris Khan.

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

JUDGMENT

1. The petitioner, through his wife, has called in question the detention Order No.**DMS/PSA/40/2025** dated **12.09.2025** passed by the respondent No.2-District Magistrate, Srinagar (hereinafter referred as 'detaining

authority'), whereby the detenue was placed under preventive detention in exercise of the powers conferred under the Jammu and Kashmir Public Safety Act, 1978 (for short, "the Act"), with a view to prevent him from acting in any manner prejudicial to the 'security of the State'.

2. The case set up by the petitioner is that the detention order is vitiated on account of non-application of mind, reliance upon stale and irrelevant material, non-supply of material relied upon by the detaining authority, vagueness of the grounds of detention and failure to afford the detenue an effective opportunity to make a representation against his detention; that a case vide FIR No. **15/2022** under Sections 13, 18, 23, 39 UA(P) Act and Sections 201 IPC, 7/25 I.A Act, at Police Station Bemina, had earlier been registered against the detenue; that the detenue was arrested in connection therewith and was subsequently admitted to bail on **26.09.2022**; that thereafter an order of detention under the Public Safety Act came to be passed against him on **30.09.2022**; that the said order of detention was challenged before this Court in **WP(Crl) No. 707/2022** and was ultimately quashed by this Court vide judgment dated **03.04.2024**; that notwithstanding the quashing of the earlier detention order the very same FIR of the year **2022** has again been relied upon as one of the grounds for passing the impugned detention order in the

year **2025**; that the incident forming the basis of the FIR is, thus, almost three years old and has no proximate or live link with the necessity of detaining the detainee in the year **2025**; that the detainee had been working as a Store Manager with Blinkit Commerce Private Limited, Gurugram, NCR Delhi; that this specific assertion made on behalf of the detainee has remained un-rebutted by the respondents; that the allegation that the detainee was indulging in activities prejudicial to the 'security of the State' is rendered doubtful, particularly when the material relied upon by the detaining authority does not disclose any specific overt act attributable to him, during the relevant period.

3. Learned counsel for the petitioner, while reiterating the grounds urged in the petition, has drawn the attention of the Court to the Beat Books/Patrol Books dated **21.05.2025**, **04.06.2025** and **04.08.2025**, which, according to the learned counsel, constitute material relied upon by the authorities but were not supplied to the detainee; that withholding such material has seriously impaired the constitutional right of the detainee to make an effective representation against his detention; that the allegation that the detainee was an "OGW" or was involved in motivating youth to join separatist groups is couched in general and vague terms; that no particular incident, date, place, person or specific activity has been disclosed so as

to enable the detainee to understand the precise nature of the allegations, so as to effectively controvert the same.

4. Learned Counsel appearing for the respondents, ex-adversus, has opposed the petition and submitted that the impugned detention order is not founded merely upon the FIR of the year 2022; that the earlier PSA order had been quashed by this Court on **03.04.2024**, whereas the present detention order has been passed on the basis of a fresh dossier containing more material and fresh inputs received through discreet sources; that the dossier for the present detention was prepared and submitted on **08.08.2025** and that the material collected, thereafter, was considered by the competent authorities; that the discreet information revealed the involvement of the detainee in activities aimed at motivating youth to join separatist groups and that such activities constitute a serious threat to the security of the State; that the reference to FIR No. **15/2022** was not intended to constitute the sole basis of the present detention but was incorporated in the grounds merely to place before the detaining authority the antecedents of the detainee.
5. Heard and considered the rival submissions and perused the detention record produced by the respondents.
6. Before examining the individual grounds of challenge, it would be apposite to reiterate that preventive detention is an extraordinary measure and is qualitatively different

from punitive detention. The object of preventive detention is not to punish a person for what he has done in the past, but to prevent him from acting in a prejudicial manner in future. The Supreme Court in ***Sama Aruna v. State of Telangana, (2018) 12 SCC 150***, emphasised the necessity of a live and proximate link between the past conduct of the detainee and the imperative need for his detention. The Court held that where the link between the prejudicial activity and the necessity for detention has snapped by passage of time, the detention order cannot be sustained. This principle was reiterated and explained in ***Khaja Bilal Ahmed v. State of Telangana, (2020) 13 SCC 632***, wherein the Supreme Court held that the satisfaction of the detaining authority must be based upon relevant material which is not stale and has a live link with the satisfaction recorded. The Court further held that previous criminal activities may be relied upon only where they have a direct nexus with the immediate need to detain the individual; stale incidents, in the absence of a clear causal connection, cannot furnish the basis for preventive detention.

7. In the present case, it is not disputed that FIR No. **15/2022** relates to an incident of the year **2022**. The detainee was granted bail on **26.09.2022**. The earlier detention order dated **30.09.2022**, founded upon the said background, on being challenged, was subsequently

quashed by this Court on **03.04.2024** in **WP(Cr1) No.707/2022**. The impugned detention order in the present case, however, has been passed in the year **2025** and the dossier is stated to have been submitted on **08.08.2025**. Thus, an incident which formed the basis of the earlier preventive detention in the year **2022** has again been brought into the picture after a considerable lapse of time.

8. It is true that merely because an earlier detention order has been quashed, the detaining authority is not precluded from passing a subsequent detention order if fresh material has subsequently come into existence and such material independently satisfies the statutory requirements. However, the subsequent order must stand on its own legs and must disclose a live and proximate nexus between the alleged prejudicial activity and the imperative necessity of detention. In **Sushanta Kumar Banik v. State of Tripura, (2022) 1 SCC 416**, the Supreme Court reiterated that the underlying principle in cases of preventive detention is the existence of a "live and proximate link" between the grounds of detention and the confirmed purpose of detention. Unexplained delay can snap such link and render the subjective satisfaction vulnerable.

9. In the case on hand, the respondents seek to overcome the staleness of FIR of **2022** by relying upon discreet

information and other material allegedly gathered in **2025**.

This Court has carefully examined whether the said fresh material discloses any specific and proximate prejudicial activity attributable to the detainee.

10. The allegation that the detainee was an over ground worker "OGW" of LeT/TRF banned outfits and had been motivating youth to join separatist groups, however, remains substantially general in character. The grounds of detention do not disclose with sufficient specificity the particular acts allegedly committed by the detainee, the dates and places of such activities, the identity or particulars of the persons allegedly motivated by him, or any other concrete circumstance demonstrating his continuing involvement in such activities. A mere description of a person by a particular label, without particulars of the acts which constitute the alleged prejudicial conduct, cannot by itself furnish an adequate basis for preventive detention. The constitutional requirement is that the grounds must be sufficiently specific to enable the detainee to understand and effectively meet the allegations.

11. Another significant circumstance is that the detainee was working as a Store Manager at Gurugram, Delhi. The assertion that he was in Delhi in connection with his employment has remained un-rebutted. Petitioner has placed on record documents in support of his assertion of

being in Gurugram NCR Delhi, having received wages for the period regarding which discreet reports were made foundational basis to pass impugned detention order. While employment at another place cannot, by itself, negate allegations of prejudicial activity, it was nevertheless a relevant circumstance which required due consideration by the detaining authority, while assessing whether there existed a continuing and immediate threat warranting preventive detention.

12. The record also assumes significance in the context of the earlier detention. The earlier PSA order dated **30.09.2022** was quashed by this Court on **03.04.2024**. The said judicial development was a material circumstance which necessarily required consideration while assessing the present detention. The detaining authority could not mechanically revive the earlier narrative without demonstrating how the subsequent material overcame the effect of the passage of time and established a fresh and continuing threat.

13. Article 22(5) of the Constitution mandates that the grounds on which the detention order has been made shall be communicated to the detinue as soon as may be and that he shall be afforded the earliest opportunity of making a representation against the order. The right to make a representation necessarily means a right to make an effective representation. In ***M. Ahamedkutty v. Union of***

India, (1990) 2 SCC 1, the Supreme Court held that where documents are referred to or relied upon in the grounds of detention, the grounds are not complete without such documents and failure to supply the same can amount to denial of the constitutional right to make an effective representation.

14. In the present case, the petitioner has specifically identified the **Beat Books/Patrol Books** dated **21.05.2025, 04.06.2025** and **04.08.2025** as material relied upon by the authorities but not supplied to the detainee. If these documents formed part of the material considered by the detaining authority in arriving at its subjective satisfaction, the detainee was entitled to their copies. The respondents have not satisfactorily demonstrated that the said documents were either not relied upon or were duly supplied to the detainee.

15. The distinction between a document merely referred to and a document relied upon is well settled. The former may not invariably require supply; the latter does. Where the material has influenced the subjective satisfaction and is necessary for the detainee to meet the allegations, non-supply thereof strikes at the very root of the right guaranteed by Article 22(5). The prejudice in the present case is apparent. Without access to the Beat/Patrol Books, the detainee could not have effectively verified the entries allegedly relating to his movements or activities, nor could

he have controverted the manner in which the said material was being used against him.

16. This Court is unable to accept the submission of learned counsel for the respondents that the earlier FIR was merely referred to as an antecedent. An antecedent can undoubtedly be referred to for a limited purpose, but where the antecedent is relied upon as a circumstance supporting the conclusion that the detainee continues to pose a threat to the 'security of the State', it must have a live and proximate nexus with the present necessity of detention. The Supreme Court in ***Khaja Bilal Ahmed*** (supra) has made it clear that previous criminal activities may have relevance where they indicate a continuing tendency or inclination to act prejudicially but in the absence of a clear causal connection, stale incidents cannot be relied upon to establish the probability of future prejudicial activity.

17. In the present case, the FIR of **2022**, viewed against the subsequent quashing of the earlier PSA detention order, the passage of nearly three years, the unrebutted assertion regarding the detainee's employment at Gurugram, and the absence of specific contemporaneous acts attributable to him, cannot by itself furnish the requisite live link.

18. The respondents have also relied upon the Screening Committee report. There can be no quarrel with the

proposition that the opinion of the Screening Committee may constitute relevant material for consideration by the competent authority. However, the mere fact that the Screening Committee has recommended detention cannot cure an otherwise infirm detention order. The ultimate subjective satisfaction must itself be based upon relevant, proximate and legally sustainable material. Similarly, the fact that the present dossier contains more material than the dossier considered at the time of the earlier detention does not, by itself, answer the constitutional objection. What matters is the quality, specificity and proximity of the material and whether the detainee was supplied the material necessary to make an effective representation.

19. Preventive detention cannot become a substitute for ordinary criminal law. Nor can the extraordinary power of preventive detention be exercised merely because the authorities entertain a general apprehension regarding a person's antecedents. There must be material from which a rational prognosis of future prejudicial conduct can be made.

20. In the present case, the material relied upon by the respondents, when examined cumulatively, does not, in the considered view, establish the requisite live and proximate link between the past conduct and the imperative necessity of detaining the detainee in the year **2025**. More importantly, the non-supply of the Beat/Patrol

Books, formed part of the relied-upon material, has deprived the detenue of the opportunity to effectively controvert the material relied upon against him. This constitutes a substantive infraction of Article 22(5) of the Constitution of India.

21. This Court is not required to sit in appeal over the subjective satisfaction of the detaining authority. Judicial review in preventive detention matters is limited and the Court does not substitute its own opinion for that of the detaining authority. Nevertheless, where the satisfaction is founded on stale or irrelevant material, where the live and proximate link has snapped, or where the constitutional safeguards have not been complied with, the detention order cannot be permitted to withstand. The law is also well settled that where an irrelevant or legally untenable ground has materially contributed to the subjective satisfaction, the Court cannot speculate as to whether the detaining authority would have reached the same conclusion had such ground not been considered. This principle finds expression in the Constitution Bench decision in *Shibban Lal Saksena v. State of Uttar Pradesh*, AIR 1954 SC 179, and has been consistently followed in preventive detention jurisprudence.

22. In the facts of the present case, this Court is satisfied that the impugned detention order suffers from the following infirmities:-

- (i) reliance upon the stale antecedent of FIR No. **15/2022** without demonstrating a sufficient live and proximate nexus with the necessity for detention in **2025**;
- (ii) failure to satisfactorily demonstrate specific and contemporaneous prejudicial activities attributable to the detainee;
- (iii) general and vague allegations regarding the detainee being an "OGW" and allegedly motivating youth to join separatist groups;
- (iv) failure to satisfactorily deal with the material circumstance that the detainee was working as a Store Manager at Gurugram, Delhi, an assertion which has remained un-rebutted;
- (v) failure to demonstrate due consideration of the fact that the earlier PSA detention order dated **30.09.2022** had been quashed by this Court on **03.04.2024**;
- (vi) non-supply of the **Beat Books/Patrol Books** dated **21.05.2025, 04.06.2025** and **04.08.2025**, relied upon for arriving at the subjective satisfaction, thereby impairing the detainee's right to make an effective representation under Article 22(5); and
- (vii) the cumulative failure of the material to establish a live and proximate link between the alleged past

conduct and the imperative necessity of preventive detention.

23. Consequently, the subjective satisfaction recorded by the detaining authority cannot be sustained in law.

24. For the foregoing reasons, the petition succeeds and is allowed. The detention Order No. **DMS/PSA/40/2025** dated **12.09.2025** passed by respondent No.2-District Magistrate, Srinagar under the Jammu and Kashmir Public Safety Act, 1978, directing detention of the detenu herein, is hereby **quashed**. The respondents are directed to release the detenu forthwith from preventive detention, if his custody is not required in connection with any other case(s).

25. Scanned detention record, as produced by learned counsel for the respondents, is directed to be returned to him.

26. The petition stands **disposed of** as indicated above.

(M. A. CHOWDHARY)
JUDGE

Srinagar
17.09.2026
Muzammil. Q

Whether the order is reportable: Yes / No